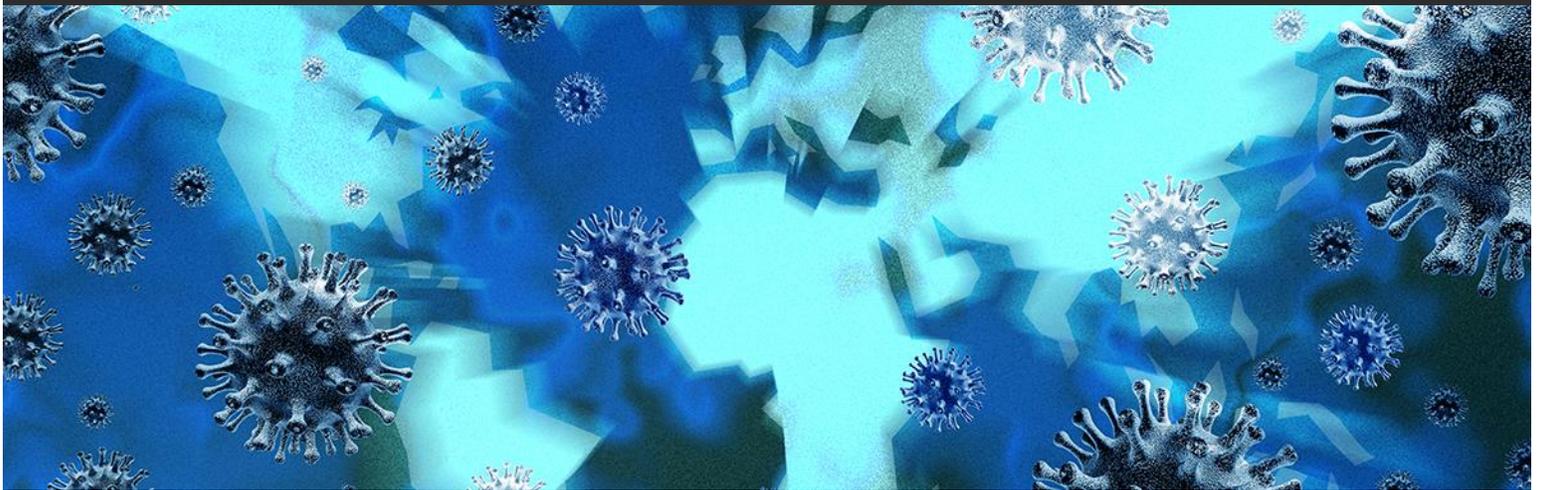


**Alert | Health Emergency Preparedness Task Force:
Coronavirus Disease 2019**



May 2020

COBRA Election and Enrollment Deadlines Extended During COVID-19 ‘Outbreak Period’

On May 4, 2020, in response to the Coronavirus Disease 2019 (COVID-19) pandemic, the Internal Revenue Service (IRS), Department of the Treasury, and the Employee Benefits Security Administration (EBSA), Department of Labor, **issued rules** extending deadlines for participants and beneficiaries of certain group health, disability, and welfare plans to make certain benefit elections, give certain notices, and make enrollment decisions. The rules are intended to prevent plan participants and beneficiaries – who may be facing unemployment, reduced employment, or other conditions affecting coverage during the COVID-19 pandemic – from losing coverage or being forced to find alternative coverage at a critical time.

These extensions of time apply to several statutory periods under ERISA: (1) the 30- or 60-day special enrollment period under HIPAA to enroll in a health care plan following a qualifying event; (2) the 14-day period under COBRA for employers or plan administrators to provide COBRA election notices to qualified beneficiaries; (3) the 60-day period under COBRA to elect continuation of coverage under a group health plan following loss of coverage; (4) the deadlines for the plan participant or beneficiary to make premium payments under COBRA; (5) the deadline to notify the plan administrator of a qualifying event for the extension of COBRA continuation coverage, such as divorce or disability determination; (6) the period for filing benefit claims under the plan’s claim procedure; (7) the period for filing appeals of an adverse benefit determination; (8) the period for seeking an external review of an adverse benefit determination; and (9) the period for filing information to perfect a request for external review after a finding that the request was not complete.

Duration of ‘Outbreak Period’

The rule extends the foregoing ERISA deadlines by stopping the clock from running on these statutory time limitations during the “Outbreak Period.” The rule defines “Outbreak Period” as the period between March 1, 2020, and a future date that is 60 days after the announced end of the national emergency caused by COVID-19. The Trump administration’s [Proclamation Declaring a National Emergency Concerning the Novel Coronavirus Disease Outbreak](#) was issued March 13, 2020, but no date has yet been announced for the end of this National Emergency. In addition, the administration may terminate the National Emergency with respect to certain parts of the country before others. In any case, under the new rule, if, for example, the National Emergency were to end in a particular jurisdiction on July 31, 2020, the Outbreak Period would end 60 days thereafter, on Sept. 29, 2020.

Planning for Longer Special Enrollment Periods

Under HIPAA, plan administrators must allow employees to enroll themselves or their dependents in group health plans or insurance coverage outside of an open enrollment period if enrollment is requested within the plan’s special enrollment period of at least 30 days following a qualifying event, provided that the employee or his or her dependents are otherwise eligible. *See* 29 C.F.R. § 2590.701-6. Common qualifying events include marriage, the birth or adoption of a child, and a dependent’s loss of coverage. *See id.* Plans must also provide otherwise eligible employees or their dependents a special enrollment period of at least 60 days after the employee or a dependent loses health care coverage under Medicaid or CHIP. 29 U.S.C. § 1181(f).

The administrative burden on employers associated with the extension of deadlines during the Outbreak Period may not be significant. However, plans limit enrollment periods to prevent employees from electing coverage and electing to pay health insurance premiums only after they become sick. Employers may face the risk of higher healthcare costs associated with employees or their dependents waiting to enroll in coverage until after they become sick.

Planning for Longer COBRA Election Periods

Under COBRA, employees and their dependents may elect to continue health insurance coverage under an employer’s plan after coverage terminates due to a qualifying event, such as termination of the employee’s employment or the employee losing eligibility for coverage under the plan due to a reduction of the employee’s hours. *See* 29 U.S.C. § 1165. Plan Administrators must ordinarily provide a COBRA election notice to the plan beneficiaries within 14 days after the qualifying event; the notice must describe the beneficiaries’ rights to continue coverage under COBRA. 29 U.S.C. § 1166(c). The DOL has provided an [updated model COBRA notice](#) that explains the interaction of Medicare and COBRA. However, the model notice does not address deadlines for making a COBRA continuation coverage election, and plan administrators must enter that information into the notice, keeping in mind the extension of deadlines during the Outbreak Period under the new rule.

A beneficiary who receives a COBRA election notice ordinarily has 60 days following receipt of the notice or other qualifying event, whichever is later, to elect COBRA continuation coverage. If the employer requires the COBRA beneficiary to pay a premium (which premium may not exceed 102% of the total premiums paid for or by other similarly situated plan beneficiaries), the beneficiary has an additional 45 days after electing coverage to pay the initial premium under COBRA. 29 U.S.C. § 1162(3). Thereafter, the beneficiary may elect to pay premiums in monthly installments. *Id.*

Under the new rule, all COBRA elections and premium payments are postponed during the Outbreak Period. This change may cause administrative burdens for employers and their plan administrators. Following a COBRA qualifying event, but before a beneficiary has made a COBRA election and paid premiums, the beneficiary may not be denied coverage. Beneficiaries may accrue health care costs in the interim, and those claims will remain pending until coverage of such costs can be determined after the first COBRA premium is paid. Because the new rule extends the COBRA election period and postpones premium payments due after March 1, 2020, many of these coverage determinations will be postponed until 60 days after the termination of the National Emergency, whether such termination of emergency occurs locally or nationally.

For more information and updates on the developing COVID-19 situation, visit [GT's Health Emergency Preparedness Task Force: Coronavirus Disease 2019](#).

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