

Federal Departments Jointly Extend Employee Benefit Timeframes for COVID-19 Outbreak

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Holland & Knight Alert

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Highlights

- The U.S. Department of Labor and the U.S. Department of the Treasury Department, in consultation with the U.S. Department of Health and Human Services issued new final rules that, effective March 1, 2020, extend various timeframes applicable to employee benefit plans (Final Rules).
- A stated purpose of the Final Rules, issued on April 29, 2020, is to minimize the possibility of individuals losing benefits because of a failure to comply with an applicable timeframe.
- The Final Rules require that all group health plans, disability, other employee welfare benefit plans, and all employee pension benefit plans subject to the Employee Retirement Income Security Act or the Internal Revenue Code to disregard the COVID-19 Outbreak Period in determining various deadlines applicable to the benefit plan or participants, beneficiaries and claimants under the benefit plan.

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Of note, included amongst the timeframes extended by the Final Rules are:

- the HIPAA special enrollment period
- the COBRA election period
- the COBRA premium payment period
- the deadline to file benefit claims under the plan
- the deadline to appeal adverse benefit determinations under the Employee Retirement Income Security Act (ERISA)

The Final Rules were issued in response to President Donald Trump declaring a national emergency on March 13, 2020, in response to the coronavirus (COVID-19) outbreak (National Emergency). The extension of the various timeframes will last until 60 days after the announced end of the National Emergency.

Overview of the Timeframe Extension

The Final Rules define the period starting March 1, 2020, and ending 60 days after the announced end of the National Emergency as the "Outbreak Period." The Final Rules require that all group health plans, disability, other employee welfare benefit plans, and all employee pension benefit plans (including 401(k) plans) subject to ERISA or the Internal Revenue Code to disregard the Outbreak Period in determining various deadlines applicable to the benefit plan or participants, beneficiaries and claimants under the benefit plan.

Specifically, the Final Rules require the Outbreak Period to be disregarded in determining the following eight

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deadlines:

1. The 30-day or 60-day period, as applicable, to request a special enrollment under HIPAA
2. The 60-day period to elect continuation coverage under COBRA
3. The 45-day deadline for initial COBRA premium payments and the 30-day deadline for other COBRA premium payments
4. The COBRA deadline for notifying the plan of a divorce or legal separation, a child reaching age 26, or a disability
5. The deadline under the plan's claims procedures to file a benefit claim
6. The deadline to file an appeal of an adverse benefit determination under a plan's claims procedures
7. The deadline to request an external review after receiving an adverse benefit determination
8. The deadline to submit additional information to correct or complete a request for an external review

Timeframe Extension Examples

The Final Rules provide examples of the application of the timeframe extensions by assuming that the National Emergency ends on April 30, 2020, which would mean the Outbreak Period ends on June 29, 2020 (the 60th day after the end of the National Emergency). Under that assumption, for all of the timeframes listed above, the period from March 1, 2020, through June 29, 2020, would be disregarded. For example, if a participant in a group health plan subject to COBRA experiences a COBRA-qualifying event and receives a COBRA election notice on April 1, 2020, then the participant would have until Aug. 28, 2020 (60 days after the end of the Outbreak Period under these assumptions) to make a timely COBRA election.

Similarly, since the Final Rules extend the deadline for an individual to pay a COBRA premium, an insurer or plan may not deny coverage for a failure to pay a COBRA premium due within the Outbreak Period, as long as the individual makes the appropriate payment within 30 days (or 45 days if it is for the initial COBRA premium payment) after the end of the Outbreak Period.

However, the Final Rules do imply that an insurer or self-insured plan, as applicable, may wait to see if the individual makes the required premium payments by the revised deadline. If so, the insurer/plan "may make retroactive payments for benefits and services" received by the individual during the extended timeframe. Such a "wait and see" approach would be subject to any applicable plan or contractual provisions requiring earlier benefit payment or reimbursement.

Conclusion

If you have any questions regarding the extended employee benefit timeframes, please contact the authors or another member of Holland & Knight's [Employee Benefits and Executive Compensation Group](#), including Partners [Bob Friedman](#), [Kelly Bley](#), [Gregory Brown](#), [Christopher Buch](#), [Kerry Halpern](#), [John Martini](#), [David Pardys](#), [Rachel Shim](#) and [Victoria Zerjav](#).

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