

# EXTENSION OF CERTAIN TIMEFRAMES FOR EMPLOYEE BENEFIT PLANS, PARTICIPANTS, AND BENEFICIARIES AFFECTED BY THE COVID-19 OUTBREAK

TRI-AGENCY GUIDANCE ISSUED ON 4/28/2020

<https://www.federalregister.gov/documents/2020/05/04/2020-09399/extension-of-certain-timeframes-for-employee-benefit-plans-participants-and-beneficiaries-affected>

All group health plans, disability and other employee welfare benefit plans, and employee pension benefit plans subject to ERISA or the Code must disregard the period from March 1, 2020 until sixty (60) days after the announced end of the National Emergency or such other date announced by the Agencies in a future notice (the “Outbreak Period”) for all plan participants, beneficiaries, qualified beneficiaries, or claimants wherever located in determining the following periods and dates...

## RELIEF PRINCIPLE

# WHAT IS THE OUTBREAK PERIOD?

- The window of time beginning on March 1<sup>st</sup>, 2020 and ending 60 days after the announced end of the National Emergency.
- We don't know when the end will be yet, other than it will not exceed one year.
- If some parts of the country recover faster than others, additional guidance will be issued.

The guidance states that the plans are required to disregard the Outbreak Period for calculations of any deadlines related to:

- A request for a Special Enrollment Period due to a qualifying life event.
- Notifying the plan of a COBRA qualifying event
- Notifying a participant of COBRA Rights
- Electing COBRA Coverage
- Paying COBRA Premiums
- Filing a claim for benefits
- Filing an appeal or triggering external review.

AND THAT  
PRINCIPLE  
APPLIES TO  
WHAT?

Many deadlines that fell between 3/1-today are pushed out until at least 7/5.

Plan years are unchanged, but runout is extended by the Outbreak Period.

COBRA administration is significantly impacted

Chorus: The Outbreak Period must be disregarded.

IF YOU'RE  
ALREADY  
TUNING OUT

In general, HIPAA requires a special enrollment period in certain circumstances, including when an employee or dependent loses eligibility for any group health plan or other health insurance coverage in which the employee or the employee's dependents were previously enrolled, and when a person becomes a dependent of an eligible employee by birth, marriage, adoption, or placement for adoption.

Generally, group health plans must allow such individuals to enroll in the group health plan if they are otherwise eligible and if enrollment is requested within 30 days of the occurrence of the event

## SPECIAL HEALTH PLAN ENROLLMENT PERIODS - BACKGROUND

# RESULT OF RELIEF GUIDANCE?

THE OUTBREAK PERIOD MUST BE  
DISREGARDED WHEN DETERMINING IF  
NOTICE WAS MADE TIMELY.

Bob works for LittleCo and is enrolled in their health plan as "Employee Only."



On April 5<sup>th</sup>, Bob's spouse Nancy loses her job, and with that loses eligibility for her employer's health plan.



Until what date does Bob have to notify his employer of Nancy's loss of coverage to enable a HIPAA Special Enrollment Period?

Assume the National Emergency Ends today, 5/5/2020

## HIPAA SEP EXAMPLE



# POP QUIZ

### S.E.P.

- Under normal circumstances, Bob would have 30 days to notify his employer and avail himself of a Special Enrollment Period (May 4th)

### 1 Mar. – 4 July Outbreak Period

- Current guidance says to Disregard the Outbreak Period” (March 1- May 5th +60 days = July 4th)

### 4 July

- Start counting Bob’s 30-day window on July 4th (the day the Outbreak Period Ends)

### 3 Aug.

- Bob has until August 3rd to notify his employer of Nancy’s loss of coverage and avail himself of an SEP.

ANSWER –  
AUGUST 3<sup>RD</sup>

# COBRA ELECTION NOTICE - BACKGROUND



Notice requirements prescribe time periods for:



employers to notify the plan of certain qualifying events



for plans to notify qualified beneficiaries of their rights to elect COBRA continuation coverage



for individuals to notify the plan of certain qualifying events



a determination of disability

With respect to group health plans, and their sponsors and administrators, the Outbreak Period shall be disregarded when determining the date for providing a COBRA election notice under ERISA section 606(c) and Code section 4980B(f)(6)(D).



Plain language – employers will not be penalized for failing to provide a COBRA Election Notice during the Outbreak Period.



BUT!!!!



Employers should still take every step practical to issue timely notice.

THE DATE A  
GROUP HEALTH  
PLAN SPONSOR  
OR  
ADMINISTRATOR  
HAS TO PROVIDE  
A COBRA  
ELECTION  
NOTICE - RELIEF

# 60-DAY ELECTION PERIOD FOR COBRA CONTINUATION COVERAGE -



The COBRA continuation coverage provisions generally provide a qualified beneficiary a period of at least 60 days to elect COBRA continuation coverage under a group health plan.



plans must disregard the Outbreak Period for all qualified beneficiaries in determining the 60-day election period for COBRA continuation coverage under ERISA section



Plain language: COBRA Election Period (60 days) + Outbreak Period = Real COBRA Election Period

# COBRA ELECTION EXAMPLE

John works for BigCo and participates in BigCo's group health plan.

John's hours are reduced below the hours necessary to remain eligible, and therefore experiences a qualifying event on 4/1/2020

John is provided a COBRA election notice on 4/1/2020

What is the deadline for John to elect COBRA?

- Assume that the National Emergency ended on May 5<sup>th</sup>, 2020

# POP QUIZ

THE OUTBREAK PERIOD  
IS DISREGARDED FOR  
PURPOSES OF  
DETERMINING JOHN'S  
COBRA ELECTION  
PERIOD.

THE LAST DAY OF  
JOHN'S COBRA  
ELECTION PERIOD IS 60  
DAYS AFTER JULY 4TH,  
2020, WHICH IS  
SEPTEMBER 2ND, 2020.

JOHN HAS MORE THAN  
FIVE FULL MONTHS TO  
ELECT COBRA!

SEPTEMBER 2<sup>ND</sup>





Plans are required to allow payment of premiums in monthly installments, and plans cannot require payment of premiums before 45 days after the day of the initial COBRA election.



COBRA continuation coverage may be terminated for failure to pay premiums timely.



Under the COBRA rules, a premium is considered paid timely if it is made not later than 30 days after the first day of the period for which payment is being made.

## COBRA PREMIUM PAYMENT DEADLINES – BACKGROUND

# THE DATE FOR MAKING COBRA CONTINUATION COVERAGE PREMIUM PAYMENTS – RELIEF



With respect to group health plans, and their sponsors and administrators, the Outbreak Period shall be disregarded when determining the date the date for making COBRA premium payments



Plain language – the COBRA Premium Grace Period has been extended to 30 days (45 days in the case of the initial payment) + the Outbreak Period.

01

John qualified for COBRA on April 1<sup>st</sup>, and subsequent to the timing laid out in the prior example, elected COBRA on September 2<sup>nd</sup>.

02

By when does he have to make his first payment?

03

How much is owed?

## COBRA PREMIUM - EXAMPLE

April – May – June – July –  
August - September

**10/17/2020**

**10/31/2020**

October

# JOHN'S INITIAL PREMIUM PAYMENT DEADLINES

- Karen was enrolled in COBRA continuation when the Outbreak Period began.
- Karen's COBRA premiums are due on the first of each month for that month, with a 30-day grace period.
- Karen's last payment was on February 28<sup>th</sup>, for February's premium.

## KAREN THE CONTINUANT

# ASSUMING THE OUTBREAK PERIOD ENDS TODAY, WHEN CAN KAREN BE TERMINATED?



Outbreak period ends 7/3/20



Premium payments for all five months are due 30 days later, on 8/2.

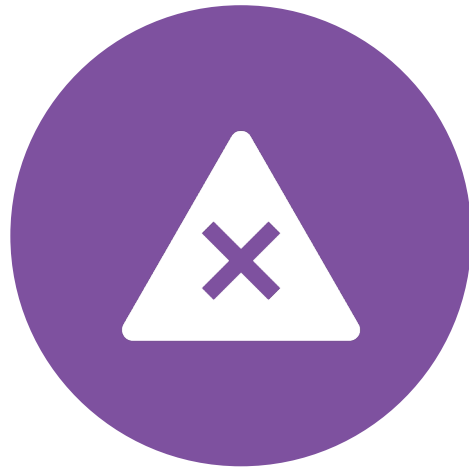


Assuming payment is made, Karen is entitled to coverage for all five months

WHAT IF KAREN  
MAKES A PAYMENT  
EQUIVALENT TO TWO  
MONTHS PREMIUM?

KAREN WOULD BE ENTITLED TO  
COVERAGE FOR THE MONTHS OF  
MARCH AND APRIL

# COBRA CONSIDERATIONS – TWO PATHS FORWARD



ADMINISTER AS-IS WITH  
EXCEPTIONS



APPLY BLANKET EXCEPTIONS AND  
CLEAN UP WHEN THIS IS  
RESOLVED





PULSE CHECK

# THE DATE FOR INDIVIDUALS TO NOTIFY A HEALTH PLAN OF A QUALIFYING EVENT OR DISABILITY



Generally, individuals must notify the plan of a Qualifying Event within 30 days.



Such timeframes are now extended by the Outbreak Period

Employee benefit plans are required to establish and maintain a procedure governing the filing and initial disposition of benefit claims, and to provide claimants with a reasonable opportunity to appeal an adverse benefit determination to an appropriate named fiduciary.

Plans may not have provisions that unduly inhibit or hamper the initiation or processing of claims for benefits. Further, group health plans and disability plans must provide claimants at least 180 days following receipt of an adverse benefit determination to appeal (60 days in the case of pension plans and other welfare benefit plans).

Plans must disregard the Outbreak Period for the purposes of calculating any such deadlines.

Extends the run-out period for reimbursement by health plans, Health FSA or HRA plans until after the pandemic is over.

# THE DATE THAT INDIVIDUALS CAN MAKE A CLAIM FOR BENEFITS

## EXAMPLE – CALENDAR YEAR HRA WITH A 90- DAY RUNOUT

HRA has a specified runout period of 90 days following the end of the plan year. (3/31/2020)

Runout ended during the Outbreak Period

The Outbreak Period must be disregarded when calculating the Runout Period

Assuming the National Emergency ended today (5/5/2020), there would be 30 days remaining in the Runout Period.

5/5/2020 + 60 days for the Outbreak Period + 30 remaining days for the Runout Period = 8/3/2020

# THE DATES FOR APPEAL OF DENIED BENEFIT PLANS AND EXTERNAL REVIEW OF CLAIMS DENIALS - BACKGROUND



- For plans or issuers that use the Federal external review process, the process must allow at least four months after the receipt of a notice of an adverse benefit determination or final internal adverse benefit determination for a request for an external review to be filed.
- The Federal external review process also provides for a preliminary review of a request for external review. The regulation provides that if such request is not complete, the Federal external review process must provide for a notification that describes the information or materials needed to make the request complete, and the plan or issuer must allow a claimant to perfect the request for external review within the four-month filing period or within the 48-hour period following the receipt of the notification, whichever is later.

The Outbreak Period must be disregarded when determining if appeal was timely.

## THE DATES FOR APPEAL OF DENIED BENEFIT PLANS AND EXTERNAL REVIEW OF CLAIMS DENIALS - RELIEF

# QUESTIONS?