




COVID-19

UPDATE:
May 7, 2020

**Coronavirus / COVID-19
Response Team**


MILLER 
JOHNSON
Attorneys

1

MILLER 
JOHNSON
Attorneys

**Important Participant
Deadline Extensions for
Group Health Plans**

» Mary Bauman
Tripp VanderWal

MILLER 
JOHNSON
Attorneys

The materials and information have been prepared for informational purposes only. This is not legal advice, nor intended to create or constitute a lawyer–client relationship. Before acting on the basis of any information or material, readers who have specific questions or problems should consult their lawyer.

3

Today's Topics

- The DOL/IRS issued new regulations on April 29, 2020 that provide extensions related to the following deadlines:
 - HIPAA Special Enrollment Periods
 - Various COBRA deadlines
 - Benefit claim and appeal deadlines (including external appeals for non-grandfathered group health plans)
 - Form 5500 and Form M-1 filing deadlines

4

Outbreak Period

- The guidance sets the following as the “outbreak period”
 - March 1, 2020 through the date that is 60 days after the President’s national emergency declaration for COVID-19 expires
 - The end date for the outbreak period is currently unknown
 - The end date for the outbreak period may be different for different parts of the country. In this case, the DOL and IRS indicated that they would provide additional guidance in the future

HIPAA Special Enrollment Extensions

- Individuals who are eligible for group health coverage, but are not enrolled, may enroll in the group health plan mid-year (outside of the annual open enrollment period) following:
 - A loss of eligibility for other group health coverage or health insurance coverage
 - The acquisition of a new spouse or dependent by marriage, birth, adoption, or placement for adoption

HIPAA Special Enrollment Extensions

- The loss of eligibility under Medicaid or CHIP
- Newly eligible to participate in a Medicaid or CHIP premium assistance program for obtaining coverage under an employer's group health plan
- Individuals must generally request enrollment within 30 days of these events to enroll in a group health plan. For special enrollment events that are related to Medicaid or CHIP, individuals must request enrollment within 60 days of the event

HIPAA Special Enrollment Extensions

- For purposes of determining these 30-day and 60-day periods, the outbreak period cannot be included

HIPAA Special Enrollment Extensions

- Example: An individual loses coverage under the plan maintained by his spouse's employer on March 31, 2020. The individual must normally request enrollment in his employer's group health plan by April 30, 2020. Under the DOL/IRS regulations, the individual may request enrollment by 30 days after the outbreak period

COBRA Extensions

- COBRA Elections. Typically a qualified beneficiary must elect to enroll in COBRA within 60 days of the later of the following:
 - The date of the COBRA election notice; or
 - The date coverage terminates due to a qualifying event.
- In determining this 60-day period, the outbreak period cannot be included

COBRA Extensions

- Example:
 - An employee's employment is terminated on April 15, 2020.
 - The employee's coverage terminates on April 30, 2020.
 - The COBRA election notice is dated April 27, 2020.
 - The employee most normally elect COBRA by June 29, 2020.
 - Under the DOL/IRS regulations, the individual must elect COBRA by 60 days after the outbreak period

COBRA Extensions

- Participant Notifications of COBRA qualifying events. A participant must generally notify his employer of the following qualifying events within 60 days:
 - The participant's divorce
 - The participant's dependent child attaining the limiting age (which is generally age 26 for medical/Rx benefits)
 - A disability determination by the Social Security Administration (for purposes of electing an 11-month extension of COBRA)

COBRA Extensions

- Under the DOL/IRS regulations, the outbreak period cannot be included in determining this 60-day period

COBRA Extensions

- Example: An employee is divorced on February 2, 2020. Normally, the employee or the employee's ex-spouse would need to notify the employee's employer of the divorce by April 2, 2020. Under the DOL/IRS regulations, the ex-spouse must notify the employer by 32 days after the end of the outbreak period. (March 1 - February 2 = 28 days. 60 days - 28 days = 32 days.)

COBRA Extensions

- COBRA Premiums.
 - A qualified beneficiary must generally remit the first COBRA premium by 45 days after electing COBRA
 - A qualified beneficiary must generally remit the remaining COBRA premiums by 30 days after the payment deadline (grace period). Under the DOL/IRS regulations, the outbreak period cannot be included in determining the 45-day period or the 30-day grace period

COBRA Extensions

- The DOL has informally advised that if a qualified beneficiary fails to make the COBRA premium by the original deadline, coverage can be terminated as long as coverage is retroactively reinstated if payment is later received
 - If an employer takes this approach, it should confirm with the insurer of its group health plan (if fully insured) or stop-loss carrier (if self-funded), that it will allow these retroactive reinstatements

COBRA Extensions

- Example: A qualified beneficiary's COBRA premiums are due on the first day of each calendar month. However, the qualified beneficiary has 30 days after the due date to pay the COBRA premium (i.e., the grace period). If the individual fails to make the COBRA premium by the first day of the month, COBRA coverage is terminated.

COBRA Extensions

- Example(cont.):
 - Normally, if the qualified beneficiary paid the COBRA premium by the 30-day grace period, the qualified beneficiary's COBRA coverage was retroactively reinstated (some employers may not terminate COBRA coverage until after the grace period deadline)
 - Under the DOL/IRS regulations, the individual's coverage must be retroactively reinstated as long as the qualified beneficiary remits all delinquent COBRA premiums by 30 days after the end of the outbreak period

COBRA Extensions (Employer)

- The plan administrator must generally provide a qualified beneficiary with a COBRA election notice within 14 days of receiving a notice of a qualifying event
 - If the qualifying event is a divorce or a dependent child attaining the limiting age:
 - The qualifying event notice will be provided by the participant
 - The participant generally has 60 days to provide this notice (but, as previously explained, the outbreak period cannot be included in determining this 60-day period)

COBRA Extensions (Employer)

- If the qualifying event is (1) the employee's termination of employment or reduction in hours; (2) the employee's death; (3) the employee becoming eligible for Medicare; or (4) the employer's bankruptcy (for retiree coverage):
 - The qualifying event notice will be provided by the employer
 - The employer has 30 days to provide this notice

COBRA Extensions (Employer)

- Under the DOL/IRS regulations, the outbreak period cannot be included in determining the 14-day period
- In most single employer plans, the employer and plan sponsor is the same entity. So the employer has 44 (30 + 14) days to provide the qualified beneficiary with the COBRA election notice
 - Even though the 30-day period is not extended, the extension of the 14-day period extends the time in which the COBRA election notice must be provided

COBRA Extensions (Employer)

- Example: An employee's employment is terminated on March 15, 2020. Typically, the employer must provide the employee with a COBRA election notice by April 28, 2020. Since the 14-day period in which the plan administrator must provide the COBRA election notice can't include the outbreak period, the COBRA election notice must be provided within 14 days of the end of the outbreak period

Benefit Claim Deadlines

- The outbreak period cannot be included in determining any benefit claim deadlines
 - This deadline extension applies to claim deadlines under all ERISA employee benefit plans (e.g., health plans; welfare plans, like disability plans; and retirement plans)
 - This deadline extension also applies to run-out periods under Medical Flexible Spending Accounts and Health Reimbursement Arrangements

Internal Appeal Deadlines

- Participants in group health plans and disability plans must have at least 180 days to appeal an adverse benefit determination
- Participants in non-health and non-disability plans (e.g., retirement plans) must have at least 60 days to appeal an adverse benefit determination
- Under the DOL/IRS regulations, the outbreak period cannot be included in these 180-day and 60-day periods

Internal Appeal Deadlines

■ Examples:

- Participants in a group health plan must generally appeal denied claims within 180 days from the date that the participant receives the plan's adverse benefit determination. The participant receives an adverse benefit determination on February 20, 2020. Typically the participant must appeal the adverse benefit determination by August 18, 2020. Since the outbreak period cannot be included in the 180-day period, the appeal must be submitted 170 days after the end of the outbreak period (10 days of appeal period occurred before the outbreak period)

Internal Appeal Deadlines

- Participants in a retirement plan must generally appeal denied claims within 60 days from the date that the participant receives the plan's adverse benefit determination. The participant receives an adverse benefit determination on March 15, 2020. Typically the participant must appeal the adverse benefit determination by May 14, 2020. Since the outbreak period cannot be included in the 60-day period, the appeal must be submitted 60 days after the end of the outbreak period

External Appeal Deadlines

- In addition to internal appeals, non-grandfathered group health plans must provide participants with the opportunity to request an external review by an Independent Review Organization of certain adverse benefit determinations
 - Participants must generally request an external review within four months after receiving the adverse benefit determination

External Appeal Deadlines

- If a participant's request for an external review is incomplete, the participant must correct the request by the later of:
 - The original four month period in which the participant needed to submit his request for external review; or
 - 48 hours after the participant files the original request for review
- The outbreak period cannot be included in these four-month and 48-hour-periods

External Appeal Deadlines

- **Example:** A participant receives an adverse benefit determination of his initial appeal on April 6, 2020. The participant chooses to request an external review of the adverse benefit determination of his appeal (rather than proceeding directly to litigation). The participant must typically file the request for the external review August 6, 2020. Under the DOL/IRS regulations, the participant may request the external review by four months after the outbreak period

Form 5500 and M-1 Deadlines

- Forms 5500 and Forms M-1 that are due between April 1, 2020 and July 15, 2020 are due on July 15, 2020
- This provides little relief from the Form 5500 requirement for calendar year plans or the annual Form M-1 filing requirement
 - The un-extended Form 5500 deadline for calendar year plans for the 2019 calendar year remains July 31, 2020
 - The annual Form M-1 filing requirement is March 1

Questions



Mary Bauman

616.831.1704

baumanm@millerjohnson.com



Tripp VanderWal

616.831.1796

vanderwalt@millerjohnson.com

millerjohnson.com

45 Ottawa Ave SW
Suite 1100
Grand Rapids, MI 49503

100 W Michigan Ave
Suite 200
Kalamazoo, MI 49007