



PHILLIPS LYTLE LLP CLIENT ALERT

EMPLOYEE BENEFITS AND EXECUTIVE COMPENSATION



MAY 2023

End of the COVID-19 National Emergency—What It Means for ERISA-Covered Group Health Plan Sponsors

Public Health Emergency. National Emergency. Outbreak Period. If you sponsored, administered or otherwise provided services to an Employee Retirement Income Security Act (ERISA)-governed plan during the COVID-19 pandemic, you are likely familiar with these terms. With these emergency periods nearing conclusion, groups responsible for administering employee benefit plans should be prepared for their plan's successful transition back to its normal status.

This article focuses on certain Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) and group health plan (“plan”) timeframes that were extended during the National Emergency (“NE”) and will revert back to pre-COVID-19 pandemic rules.

BACKGROUND

In early 2020, the Trump administration declared both a Public Health Emergency (“PHE”) and NE. On January 30, 2023, the Biden administration announced its intent to extend the COVID-19 PHE and NE once more before ending both emergency periods on **May 11, 2023**.

In April 2020, the U.S. Department of Labor, the U.S. Department of the Treasury and the Internal Revenue Service (IRS), (collectively, the “Agencies”)—which rely on the presidentially determined emergency period to measure the extensions they implement—delayed certain ERISA- and COBRA-specific timeframes for employee benefit plans, participants and beneficiaries impacted by the COVID-19 pandemic.

These include the:

- 60-day COBRA election period
- 45- or 30-day COBRA premium payment period
- Qualified beneficiary, employer and plan administrator COBRA notice periods
- 30- or 60-day Health Insurance Portability and Accountability Act (HIPAA) special enrollment period
- Time periods for filing benefit claims and appeals

NATIONAL EMERGENCY PERIOD AND OUTBREAK PERIOD—RELEVANT DATES

There are several key points for group health plan sponsors, administrators and service providers impacted by these timeframes to keep in mind as they prepare for the end of the NE. First, it is important to recall the definition of the Outbreak Period and note how it operates in relation to the NE designation. The “Outbreak Period” is defined as the period from March 1, 2020 until 60 days after the announced end of the NE or such other date announced by the Agencies in a future notification. Because the NE is slated to end on May 11, 2023, the Outbreak Period will end July 10, 2023.

MODIFIED DEADLINES

The Outbreak Period is to be disregarded for all plan participants, beneficiaries, qualified beneficiaries or claimants in determining the following periods and dates:

1. The 30-day period (or 60-day period, if applicable) to request special enrollment under ERISA section 701(f)



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and Internal Revenue Code (“Code”) section 9801(f) (“Special Enrollment”).

2. The 60-day election period for COBRA continuation coverage under ERISA section 605 and Code section 4980B(f)(5),[9] (“COBRA Election Period”).
3. The date for making COBRA premium payments pursuant to ERISA section 602(2)(C) and (3) and Code section 4980B(f)(2)(B)(iii) and (C),[10] (“First COBRA Payment Due Date” and “COBRA Payment Due Date”).
4. The date for individuals to notify the plan of a qualifying event or determination of disability under ERISA section 606(a)(3) and Code section 4980B(f)(6) (C), (“Qualifying Event Notice”).
5. The date within which individuals may file a benefit claim under the plan’s claims procedure pursuant to 29 CFR section 2560.503-1, (“Claim Filing Deadline”).
6. The date within which claimants may file an appeal of an adverse benefit determination under the plan’s claims procedure pursuant to 29 CFR section 2560.503-1(h), (“Internal Appeal Deadline”).
7. The date within which claimants may file a request for an external review after receipt of an adverse benefit determination or final internal adverse benefit determination pursuant to 29 CFR section 2590.715-2719(d)(2)(i) and 26 CFR section 54.9815-2719(d)(2)(i) (“External Appeal Deadline”).
8. The date within which a claimant may file information to perfect a request for external review upon a finding that the request was not complete pursuant to 29 CFR section 2590.715-2719(d)(2)(ii) and 26 CFR section 54.9815-2719(d)(2)(ii).

The 14-day time period for providing a COBRA election notice under ERISA section 606(c) and Code section 4980B is also disregarded for group health plans and their sponsors and administrators.

As mentioned, the NE and Outbreak Period have been in effect for three years. The deadline extensions were implemented by the Agencies and authorized plans, plan sponsors and plan administrators, *in response to a presidentially declared disaster*, to disregard a period of up to one year for determining dates by which an action is required to be permitted or completed under ERISA or the Internal Revenue Code.

As a result, plan extensions are capped at a one-year maximum for relief. Therefore, the total period to be disregarded for the above deadlines should be the earlier of:

- One year from the date of the action (is required to be permitted or completed under ERISA or the Internal Revenue Code) or
- The end of the Outbreak Period.

Here are some examples of how the Outbreak Period should be measured for the actions outlined above:

QUALIFYING EVENT NOTICE

Normal Rule: Individuals must notify the plan of COBRA-qualifying events or determinations of disability within 60 days of the event.

Example of Normal Rule: Individual A is an employee and has family coverage under a group health plan. Individual A’s spouse is also covered under the plan. Individual A and spouse divorce, effective April 1, 2021. Individual A must notify the plan of the divorce by May 30, 2021 (60 days from the date of the event).



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Change During National Emergency: The Outbreak Period is disregarded for purposes of the deadline to provide notice of qualifying events for COBRA and disability. Therefore, the timeline to notify the plan of a qualifying event occurring on or after March 1, 2020, does not start until the earlier of one (1) year from the date on which the qualifying event occurred or the end of the Outbreak Period.

Example of Rule During National Emergency:

Individual A is an employee and has family coverage under a group health plan. Individual A's spouse is also covered under the plan. Individual A and spouse divorce, effective April 1, 2021. Assume the Outbreak Period ends on July 10, 2023. The 60-day period in which Individual A must notify the plan of the divorce does not start until April 1, 2022 (one (1) year from the initial qualifying event, which is sooner than the end of the Outbreak Period). Therefore, Individual A must notify the plan of the divorce by May 30, 2022.

SENDING COBRA ELECTION NOTICES

Normal Rule: The COBRA election notice must be provided to qualified beneficiaries within 14 days after the plan administrator receives notice of a qualifying event.

Example of Normal Rule: Individual A is a participant in the ABC Group Health Plan. ABC Group is the plan administrator. ABC Group receives notice that Individual A is no longer eligible to participate in the plan on May 1, 2023. A COBRA election notice must be provided to Individual A by May 15, 2023.

Change During National Emergency: The Outbreak Period is disregarded for purposes of the deadline to send COBRA election notices. Therefore, the timeline to send a COBRA election notice occurring on or after March 1, 2020, does not start until the earlier

of one (1) year from the date on which the plan administrator received notice of the qualifying event or the end of the Outbreak Period.

Example of Rule During National Emergency:

Individual A is a participant in the ABC Group Health Plan. ABC Group is the plan administrator. ABC Group receives notice that Individual A is no longer eligible to participate in the plan on February 1, 2021. Assume the Outbreak Period ends on July 10, 2023. The timeline for the plan to send the COBRA election notice does not start running until February 1, 2022, (one (1) year from the date the plan initially received notice that Individual A is no longer eligible to participate in the plan, which is sooner than the end of the Outbreak Period). A COBRA election notice must be provided to Individual A by February 15, 2022.

COBRA ELECTION PERIOD

Normal Rule: Individuals eligible for COBRA have 60 days from the date of their COBRA election notice to elect COBRA coverage.

Example of Normal Rule: Individual A is a participant in a group health plan and loses coverage due to a qualifying event on June 1, 2022. Individual A receives a COBRA election notice on that same day. Individual A has until July 30, 2022 to elect COBRA coverage (60 days from the date of Individual A's COBRA election notice).

Change During National Emergency: The Outbreak Period is disregarded for purposes of COBRA election deadlines. Therefore, a COBRA election period starting on or after March 1, 2020, is tolled until the earlier of one (1) year from the date on which the election period started or the end of the Outbreak Period.



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Example of Rule During National Emergency:

Individual A is a participant in a group health plan and loses coverage due to a qualifying event on June 1, 2022. Individual A receives a COBRA election notice on that same day. Assume the Outbreak Period ends on July 10, 2023. Individual A's 60-day election period begins on June 1, 2023 (one (1) year from initial election period start date, which is sooner than the end of the Outbreak Period). Therefore, Individual A has until July 30, 2023 to elect COBRA coverage (60 days after the beginning of the election period).

FIRST COBRA PAYMENT DUE DATE

Normal Rule: The initial premium payment must be made within 45 days of the date of the COBRA election.

Example of Normal Rule: Individual A is a participant in a group health plan and elects COBRA coverage on January 1, 2023. The first premium payment is due February 14, 2023 (45 days from the date of the COBRA election).

Change During National Emergency: The Outbreak Period is disregarded for purposes of COBRA payment due dates. Therefore, for an initial COBRA premium payment due on or after March 1, 2020, the due date for payment does not start until the earlier of one (1) year from the date of service or the end of the Outbreak Period.

Example of Rule During National Emergency:

Individual A is a participant in a group health plan and elects COBRA coverage on January 1, 2023. Assume the Outbreak Period ends on July 10, 2023. The timeline for making the first payment does not begin running until July 10, 2023 (end of the Outbreak Period is sooner than one (1) year after the first payment obligation arose). Therefore, Individual A has until August 24, 2023, to make the first COBRA premium payment (45 days from the end of the Outbreak Period).

COBRA PAYMENT DUE DATE

Normal Rule: COBRA participants have 30 days from the first of the month to make COBRA payments for that coverage period.

Example of Normal Rule: Individual A has enrolled in COBRA continuation coverage in February 2020 and has made timely premium payments for the month of February 2020 and March 2020. The next COBRA premium payment is due April 1, 2020, and must be paid by April 30, 2020.

Change During National Emergency: The Outbreak Period is disregarded for purposes of COBRA payment due dates. Therefore, for a COBRA premium payment due on or after March 1, 2020, the due date for payment does not start until the earlier of one (1) year from the date of service or the end of the Outbreak Period.

Example of Rule During National Emergency:

Individual A has enrolled in COBRA continuation coverage in February 2020 and has made timely premium payments for the months of February 2020 and March 2020. The next COBRA premium payment is due April 1, 2020. Assume the Outbreak Period ends on July 10, 2023. Individual A's April 2020 COBRA payment is not due until April 1, 2021, and must be paid by April 30, 2022 (one (1) year from the initial due date, which is sooner than the end of the Outbreak Period).

CLAIM FILING DEADLINE

Normal Rule: Deadlines for filing claims for reimbursement vary based on plan terms. One (1) year from the date of service is common, but review the terms of the plan to determine the appropriate filing deadline.

Example of Normal Rule: Individual A is a participant in a group health plan. On March 1, 2020, Individual A received medical treatment for a condition covered under



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the plan, but a claim relating to the medical treatment was not submitted until April 1, 2021. Under the plan, claims must be submitted within 365 days of the participant's receipt of the medical treatment. Here, the claim was not timely filed.

Change During National Emergency: The Outbreak Period is disregarded for purposes of claims filing deadlines. Therefore, for dates of service on or after March 1, 2020, the timeline for claims filing does not start until the earlier of one (1) year from the date of service or the end of the Outbreak Period.

Example of Rule During National Emergency:

Individual D is a participant in a group health plan. On March 1, 2023, Individual D received medical treatment for a condition covered under the plan. Under the plan, claims must be submitted within 365 days of the participant's receipt of the medical treatment. Assume the Outbreak Period ends on July 10, 2023. The period for filing does not begin running until July 10, 2023, and submission of the claim must be made by July 10, 2024.

INTERNAL APPEAL DEADLINE

Normal Rule: The typical deadline for filing an internal appeal under ERISA is 180 days after receiving an adverse benefit determination.

Example of Normal Rule: Individual A is a participant in a group health plan and receives an adverse benefit determination on March 1, 2022. The plan requires that any appeals must be submitted 180 days from the date of the adverse benefit determination. Therefore, the appeal must be filed with the plan by August 28, 2022.

Change During National Emergency: The Outbreak Period is disregarded for purposes of internal appeal deadlines. Therefore, for adverse benefit determinations on or after March 1, 2020, the timeline for filing appeals

does not start until the earlier of one (1) year from the date of the initial notice for the adverse benefit determination or the end of the Outbreak Period.

Example of Rule During National Emergency:

Individual A is a participant in a group health plan and receives an adverse benefit determination on March 1, 2022. The plan requires that any appeals must be submitted 180 days from the date of the adverse benefit determination. Assume the Outbreak Period ends July 10, 2023. The period for filing begins March 1, 2023 (one (1) year from initial notice of adverse benefit determination, which is sooner than the end of the Outbreak Period). Therefore, the appeal must be filed with the plan by August 28, 2023.

EXTERNAL APPEAL DEADLINE

Normal Rule: Under ERISA, a group health plan or health insurance issuer must allow a claimant to file a request for an external review with the plan or issuer if the request is filed within four months after the date of receipt of a notice of an adverse benefit determination or final internal adverse benefit determination.

Example of Normal Rule: Individual A is a participant in a group health plan and receives a final internal adverse benefit determination on January 1, 2023. Under ERISA, Individual A must file a request for an internal review by May 1, 2023.

Change During National Emergency: The Outbreak Period is disregarded for purposes of external appeals deadlines. Therefore, for final internal adverse benefit determinations on or after March 1, 2020, the timeline for requesting an external review does not start until the earlier of one (1) year from the date on which the final internal adverse benefit determination was received or the end of the Outbreak Period.



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Example of Rule During National Emergency:

Individual A is a participant in a group health plan and receives a final internal adverse benefit determination on January 1, 2023. Assume the Outbreak Period ends on July 10, 2023. The four-month timeframe for individual A to request an external appeal starts on July 10, 2023 (end of the Outbreak Period is sooner than one (1) year from the date on which the final internal adverse benefit determination was made). Therefore, Individual A would have until November 10, 2023, to request the external review.

SPECIAL ENROLLMENT

Normal Rule: Employee must request enrollment within 30 days of the loss of coverage or life event triggering special enrollment (60 days for employees and dependents who lose coverage under state Children's Health Insurance Program (CHIP) or Medicaid or who are eligible to receive premium assistance under those programs).

Example of Normal Rule: Individual A is eligible for, but previously declined participation in, her employer-sponsored group health plan. On March 31, 2020, Individual A gave birth and would like to enroll herself and the child into her employer's plan; however, open enrollment does not begin until November 15, 2020. Individual A must request special enrollment by April 30, 2020 (30 days from date in which birth occurred).

Change During National Emergency: The Outbreak Period ends 60 days after the end of the National Emergency. The Outbreak Period is disregarded for purposes of notices under the HIPAA special enrollment rules. Therefore, for events occurring after March 1, 2020, that qualify for HIPAA special enrollment rights, the 30- (or 60-) day period does not start until the sooner of one (1) year from the date in which the event occurred, or the end of the Outbreak Period.

Example of Rule During National Emergency:

Individual A is eligible for, but previously declined participation in, her employer-sponsored group health plan. On March 31, 2020, Individual A gave birth and would like to enroll herself and the child into her employer's plan; however, open enrollment does not begin until November 15, 2020. Assume the Outbreak Period ends on July 10, 2023. The period for Individual A to request enrollment of the child begins on March 31, 2021 (one (1) year from date of birth, which is sooner than the end of the Outbreak Period). Therefore, Individual A has until April 30, 2021, to request special enrollment of the child.

PLAN SPONSOR/ADMINISTRATOR CONSIDERATIONS

As the end of the extended timeframes near and the deadlines shift back to their pre-COVID-19 status, employers, plan sponsors and plan administrators should consider the following measures.

Communication to Impacted Plan Participants

Plan administrators should take steps to minimize the possibility of individuals losing benefits because of a failure to comply with pre-established time frames. Where a plan administrator knows that the end of the relief period for an individual action is exposing a participant or beneficiary to a risk of losing protections, benefits or rights under the plan, the administrator should consider issuing notices to participants and beneficiaries that will be impacted by the end of the deadline extensions. The purpose of the notice is to keep impacted participants and beneficiaries informed of the upcoming changes and make it clear whether the participant and beneficiaries will be responsible for any notices, payments or other action as a result of the change, and when action is required.



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Coordination with Vendors

First, to the extent that the plan uses a third-party administrator (TPA) or vendors to provide services to the plan, plan sponsors should coordinate with the TPA or vendors to ensure they are also prepared to shift back to normal plan administration processes.

This is especially true if a plan uses a TPA or vendor for COBRA administration given the changes to the COBRA eligibility and payment period deadlines.

Technology Adjustments

Plan sponsors, TPAs and vendors may have adjusted software systems and other automated technology to account for the NE's extended deadlines. For example, before the emergency, a TPA's claims processing system may have been programmed to automatically deny claims that were received past a plan's deadline for timely filing. In response to the claims-filing deadline extension during the emergency, the TPA removed this automatic denial.

With the anticipated end of the emergency timeframes, the TPA should be prepared to re-implement the automatic denial in its claims processing system.

DOCUMENT CHANGES

Plan documents, summary plan descriptions and any other documents governing the plan should be reviewed. To the extent that any changes were made to plan documents or summary plan descriptions to account for the emergency timeframes, plan sponsors should amend the documents where necessary to revert back to their pre-pandemic rules.

Additional Assistance

For further assistance, please contact any of the attorneys on our [Employee Benefits & Executive Compensation Practice Team](#) or the [Phillips Lytle attorney](#) with whom you have a relationship. ■



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