

April 30, 2020

Emergency Regulation Has Significant Immediate COBRA Implications

New [emergency regulations](#) released by the Trump Administration to extend certain employee benefit plan deadlines will have significant impact on COBRA administration. The regulation essentially stops the clock on all COBRA deadlines for the period starting March 1, 2020 and lasting until 60 days following the end of the COVID-19 national emergency, as determined by the Administration (the “Outbreak Period”).

Relative to COBRA elections, this means that qualified beneficiaries will have the Outbreak Period PLUS 60 days to determine if they wish to elect coverage. For example, let’s say an employee loses coverage based on a termination of employment and receives their COBRA election notice on April 1, 2020. Typically, they would have 60 days, or until May 31 to elect coverage. Now, they will have the Outbreak Period PLUS 60 days. So, in our example, assuming the Outbreak Period ends June 29, they would have until August 28, 2020 to elect coverage.

This new rule also extends the payment deadlines for COBRA premiums. Meaning that no premium payment can technically be required until the end of the Outbreak Period. All COBRA premium payments that would have been otherwise due during the Outbreak Period will instead be due 30 days after the end of the Outbreak Period. Thus, for example, if a qualified beneficiary is on COBRA as of March 1 and the Outbreak Period ends June 29, he would have until July 29 (thirty days later) to pay premiums for March, April, May, and June. In this example, the qualified beneficiary IS ELIGIBLE to receive coverage under the plan during the interim period, and that coverage may not be denied until after the applicable deadline has passed.

In addition to the COBRA deadlines, the regulation extends the timeframes for group health plan participants to:

- (1) request a special enrollment period under ERISA;
- (2) notify the plan about a qualifying event or determination of a disability;
- (3) file a benefit claim;
- (4) file an appeal of an adverse claims determination;
- (5) file or address an external review.

A related piece of guidance, also just released by the Trump Administration, [EBSA Disaster Relief Notice 2020-1](#), protects group plans that need to postpone plan deadlines during the COVID-19 outbreak. Under this guidance, if a plan fiduciary acts in good faith, but fails to issue a notice, disclosure, or document on-time between March 1, 2020, and 60 days after the announced end of the COVID-19 National Emergency, they will not violate ERISA. Group plan sponsors simply need to issue the required materials as soon as practical. They can also use reasonable electronic alternative means of communicating, including email, text messages, and continuous access to websites.



KELLY's COBRA team is currently evaluating the implications of these changes and will provide additional guidance for our COBRA administration clients as soon as possible.

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