

## CHRONICLE OF LATE ELECTION FORETOLD

### MANDATORY EXTENSION OF CERTAIN BENEFIT PLAN DEADLINES

The Employee Benefits Security Administration and the Internal Revenue Service have provided relief to certain plan participants, which plan sponsors and administrators will be required to implement. Essentially, the plan must disregard the coronavirus "Outbreak Period" when it is calculating certain plan deadlines. The Outbreak Period runs 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). In the event there are different Outbreak Period end dates for different parts of the country, the agencies will issue additional guidance regarding this relief. This extension impacts deadlines for the following:

- HIPAA Special Enrollment under a group health plan;
- COBRA elections, premium payments, and notice of certain changes; and
- Claims and appeals under the plan (applicable to both retirement and welfare plans).

The following chart describes how this extension works for several of the deadlines. For illustration only, we assume that the announced end of the National Emergency is April 30, 2020.

HIPAA Special Enrollment Timeframes		
Event	Deadline	Example of Extension
<u>Loss of Coverage:</u> Employee or dependent loses coverage in another plan (including Medicaid and CHIP)	Within 30 days of event, participant must request enrollment; <i>or</i> Within 60 days, in the case of the special enrollment rights added by the Children's Health Insurance Program Reauthorization Act of 2009	Toni loses eligibility to participate under her spouse's health plan because coverage under that plan ends on March 31, 2020. Assuming the announced end of National Emergency is April 30, 2020, the Outbreak Period ends on June 29, and therefore the deadline for Toni to request enrollment is July 29, 2020 (30 days after Outbreak Period ends, or 90 days after the National Emergency ends).
<u>New dependent of eligible employee due to birth, marriage, adoption or placement for adoption</u>	Within 30 days of event, participant must request enrollment	Toni gives birth on February 15, 2020. She would like to enroll her child in the health care plan. Assuming the announced end of National Emergency is April 30, 2020, the deadline for Toni to elect coverage for her and her child is July 15, 2020 (14 days before the Outbreak Period plus 16 days after June 29, 2020).

COBRA Timeframes		
Event	Deadline	Example of Extension
<u>Electing COBRA Coverage</u> : When qualifying beneficiary loses coverage under the group health plan	At least 60 days to elect COBRA continuation coverage	Toni experiences a qualifying event due to a reduction of hours because of COVID-19 on March 17, 2020. Assuming the announced end of the National Emergency is April 30, 2020, the Outbreak Period ends on June 29, and therefore the deadline for Toni to elect COBRA coverage is August 28, 2020 (60 days after June 29, or 120 days after the National Emergency ends).
<u>Payment of COBRA premiums</u>	Monthly installments, due no sooner than 30 days after the first day of the period for which payment is being made. Cannot require payment of premiums before 45 days after the day of initial COBRA election	<p>Toni began receiving COBRA coverage on January 1st. Premium payments are due monthly, on the first of each month with a 30-day grace period for making payments. Toni paid for her January and February coverage, but stopped making payments beginning on March 1. Assuming the announced end of National Emergency is April 30, 2020, the Outbreak Period ends on June 29. The deadline for Toni to pay premiums in full for March, April, May, and June is July 29, 2020 (30 days after the Outbreak Period, which is 90 days after the end of the National Emergency). Because the July payment is not due during the Outbreak Period, the deadline for that payment is not extended.</p> <p>Note: Premium payments for any months not paid during the Outbreak Period must be paid in full by the deadline. If, by July 29, 2020, Toni pays for only two months of premiums, then she is entitled to COBRA coverage for March and April, the two months for which timely payments were made.</p> <p>The plan would not be obligated to cover benefits or services that occurred after April 2020. The plan may make retroactive payments for benefits and services received in March and April.</p>

Note that the deadline for the administrator to provide the COBRA election notice is also similarly extended. However, we don't recommend intentionally utilizing this extension as there may be a number of negative consequences, including a participant's claims being denied unless and until they are provided and make a COBRA election.

Claims Procedure Timeframes		
Triggering Event/ Qualifying Event	Deadline	Example of Extension
<u>Filing of Initial Benefit Claims</u>	Plan generally sets the deadline for filing an initial claim. In this example, assume the plan requires claims to be submitted within 365 days of the medical treatment	Toni received medical treatment covered under the plan on January 1, 2020. Assuming the announced end of National Emergency is April 30, 2020, the Outbreak Period ends on June 29 (and therefore is 121 days long). The deadline for submission of the claim is May 1, 2021 (59 days before the Outbreak Period plus 306 days after the Outbreak Period).
<u>Group Health Plans and Disability Plans:</u> Provide claimants reasonable opportunity to appeal adverse benefit determination	Plan's claims procedures set the deadline for filing an initial claim, which cannot be less than 180 days following receipt of an adverse benefit determination	Toni received an adverse benefit determination from the company's disability plan on January 28, 2020. Assuming the announced end of National Emergency is April 30, 2020, the Outbreak Period ends on June 29 (and therefore is 121 days long). The deadline for Toni to submit her appeal is November 24, 2020 (240 days after April 30, 2020, minus the 32 day-period that elapsed before the beginning of Outbreak Period (January 28 through February 29)).
<u>Pension Plans and Other Welfare Plans:</u> Provide claimants reasonable opportunity to appeal adverse benefit determination to fiduciary	Plan's claims procedures set the deadline for filing appeal of an initial claim, which cannot be less than 60 days following receipt of an adverse benefit determination	Toni received a notice of adverse benefit determination from her 401(k) plan on April 15, 2020. Assuming the announced end of National Emergency is April 30, 2020, the deadline for Toni to submit an appeal is August 28, 2020 (60 days after the Outbreak Period, which is 120 days after the National Emergency ends).