

COVID-19 RELIEF: EXTENSION OF COBRA DUE DATES

Earlier this year, the Department of Labor and Treasury Department (the “Departments”) issued a Final Regulation extending certain due dates under the Consolidated Omnibus Budget Reconciliation Act (COBRA). The guidance, intended to provide relief for participants impacted by COVID-19, essentially suspends the COBRA election and payment deadlines during the declared National Emergency due to the coronavirus pandemic.

Summarized below is the guidance issued by the Departments and the administrative considerations for employers in complying with the extension of the COBRA due dates.

Guidance Extending COBRA Deadlines

The Consolidated Omnibus Budget Reconciliation Act (COBRA), prescribes time periods for electing coverage, paying premiums, and notifying the group health plan of certain qualifying events. Under the Final Regulation those time periods are suspended. Specifically, the Final Regulation requires that plan administrators disregard the period from March 1, 2020, until 60 days after the end of the coronavirus National Emergency (the “Outbreak Period”) when determining the following COBRA deadlines:

- The 60-day period for qualified beneficiaries to elect COBRA coverage;
- The date for making COBRA premium payments (at least 45 days after the day of the initial COBRA election, and a grace period of at least 30 days for subsequent premium payments); and
- The date for individuals to notify the plan of a qualifying event or disability determination (in general, at least 60 days from the date of the event, loss of coverage, or disability determination).

Example of COBRA Election and Premium Payment Extension

Joe loses health coverage on September 30, 2020 due to a termination of employment and is provided a COBRA election notice on October 14, 2020. Under the “normal” COBRA rules, Joe would have 60 days to elect COBRA continuation coverage (deadline December 13, 2020) and another 45 days (deadline January 27, 2021) to make the first premium payment. However, pursuant to the Final Regulation the “outbreak period” is disregarded. This means that Joe will have 120 days after the declared end of the coronavirus National Emergency to elect COBRA continuation coverage retroactive to October 1, 2020.

The National Emergency related to the coronavirus pandemic remains in effect so at this time the Outbreak Period cannot be determined. However for purposes of this example assume the National Emergency ends December 31, 2020.

If the National Emergency ends December 31, 2020, Joe would have until May 1, 2021 – 60 days after the end of the National Emergency plus the 60 day election period provided under the “normal” COBRA rules – to elect COBRA continuation coverage retroactive to October 1, 2020, and 45 days from the date of his election to pay the first COBRA premium.

Administrative Considerations

Although the policy behind the Final Regulations is understandable, COBRA administration can become quite difficult when election and payment deadlines are extended for an indefinite period. Below are a few key issues to consider as you and or your administrator address the extended COBRA deadlines.

Prior COBRA Communications. The Final Regulation was issued on May 4, 2020, but, as indicated above the Outbreak Period was established retroactively to March 1, 2020. As a result, some qualified beneficiaries may have received incorrect COBRA notices. Specifically, a qualified beneficiary who lost coverage on or before March 1, 2020, may have received a notice indicating that their COBRA election period would expire, or that their initial premium was due, as of a date during the Outbreak Period.

Under the COBRA rules the plan administrator is required to provide a COBRA election notice that informs qualified beneficiaries of their rights and obligations. The Final Regulation does not modify the rules governing the content of the COBRA election notice so the inaccurate election and payment information could create compliance risk under the “normal” COBRA rules.

One option to address the compliance risk is for the plan administrator to furnish an interim notice that explains the COVID-19 extension and advises qualified beneficiaries they have extended time to act. Another option is to modify the plan’s COBRA election notice to include the COVID-19 election and payment extensions and issue new elections to affected qualified beneficiaries.

Coverage During Extended Election Period. Under the COBRA regulations plan administrators have two (2) options for handling qualified beneficiary claims during the COBRA election period (the period after the qualifying event and before a qualified beneficiary has elected and paid for coverage):

1. The plan can provide coverage during the election period and retroactively terminate the coverage if the qualified beneficiary does not timely elect COBRA and pay the required premiums; or
2. The plan can terminate coverage during the COBRA election period and retroactively reinstate coverage if the qualified beneficiary timely elects and pays for COBRA coverage.

Plans should consider which procedure they will follow during the Outbreak Period. Regardless of the option chosen by the plan, the COBRA regulations require that providers be informed that the qualified beneficiary is in a COBRA election period and that coverage is subject to a timely election and full premium payment. So, employers and administrators should also consider how the plan will respond to coverage inquiries during the Outbreak Period.

Termination Due to Untimely Payment. As indicated above the Final Regulation extends the deadline for payment of COBRA premiums. This includes not only the initial premium (typically due within 45 days of the date the qualified beneficiary elects COBRA) but also any monthly COBRA premiums. Employers and administrators should ensure COBRA continuation coverage was not terminated due to a missed or late premium that was due during the Outbreak Period.

Conclusion

Although it is not yet known how long the Outbreak Period will last and, thus, how long the extension of the COBRA deadlines will continue, employers and administrators should take steps now to identify and address the administrative and legal questions in complying with the extended COBRA deadlines.