

COVID-19:

Updated Outbreak Periods / EBSA Disaster Relief Notice 2021-01

BENECON

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This webinar should not be construed as legal or tax advice. The current pandemic is unprecedented. The regulations are changing on an almost daily basis. This webinar is not intended to serve as a comprehensive guide to all aspects of this pandemic. Every situation is unique and will require special attention.

This is a <u>highly</u> complex and fast moving area and we <u>strongly</u> encourage groups to seek out the advice of their own accountants, legal counsel or other specialized professional to assist with compliance with all facets of this national emergency.



Agenda

- Changes to the Outbreak Period / Effect on Plans
 - Outline of plan changes due to modification of "Outbreak Period"
 - How Benecon Can Help

• COBRA

- Outline of changes due to modification of the "Outbreak Period"
- Benecon COBRA Administration Changes
- What to ask other COBRA Administrators

What We're Watching



COVID-19: The Outbreak Period



The Outbreak Period

• In spring 2020, the federal agencies created a new period of time used in various health plan deadline calculations known as the "Outbreak Period."

• "Outbreak Period"

• The time period beginning March 1, 2020 (the first day of the national emergency period) until 60 days after the government lifts the national state of emergency status.



• The end date for the Outbreak Period has not yet been determined.

• The Outbreak Period creates a dead zone of time tolling certain benefit deadline calculations.



The Outbreak Period (misc.)

- The Outbreak Period applies in different benefits areas.
 - HIPAA Special Enrollment, Appeals, Disability Determinations, Claims, External Reviews, COBRA

- The Outbreak Period does not give automatic extensions of time for everything.
 - EX: If a dependent ages out of a plan, the Outbreak Period does not allow that dependent an additional amount of time to stay on the plan.
 - EX: The Outbreak Period does not give an automatic extension under a leave of absence policy.

The Outbreak Period- The 1 Year Problem

• ERISA section 518 (29 U.S.C. § 1148) and Code section 7508A(b) (26 U.S.C. § 7508A(b)) generally provide that, in the case of an employee benefit plan, sponsor, administrator, participant, beneficiary, or other person with respect to such a plan affected by a Presidentially declared disaster, the Secretaries of Labor and the Treasury may prescribe a period of *up to one* **year** that may be disregarded in determining the date by which any action is required or permitted to be completed.

• March 1, 2021 = 1 Year

COVID-19: EBSA Disaster Relief Notice 2021-01

https://www.dol.gov/sites/dolgov/files/ebsa/employers-and-advisers/plan-administration-and-compliance/disaster-relief/ebsa-disaster-relief-notice-2021-01.pdf



Fixing the 1 Year Problem

- EBSA Disaster Relief Notice 2021-01 issued on the last working day before the 1 year deadline (February 26, 2021).
- Individuals and plans with timeframes that are subject to the relief under the prior Outbreak Period notices will have the applicable periods under the Notices disregarded until *the earlier of*:
 - a. 1 year from the date they were first eligible for relief; or
 - b. 60 days after the announced end of the National Emergency Period (the Outbreak Period)
- On the applicable date, the timeframes for individuals and plans with periods that were previously disregarded under the Notices will resume.
- In no case will a disregarded period exceed 1 year.



Translation?

Everyone now has their own individual deadline for "unfreezing" their time clock.



COVID-19: Mandatory Health Plan Changes



Mandatory Changes Utilizing Deadline Extensions

HIPAA Special Enrollment Rights**

• Deadlines for HIPAA Special Enrollments that have taken place on or after March 1, 2020, will be disregarded until the earlier of (1) 1 year from the date of the event HIPAA Special Enrollment event, or (2) 60 days after the announced end of the National Emergency (the end of the Outbreak Period). On the applicable date, the timeframes for individuals and plans with periods that were previously disregarded under the Notices will resume. In no case will a disregarded period exceed 1 year.

Qualifying Event or Determination of Disability

• The period of time from March 1, 2020 until the earlier of (1) 1 year from the date of event, or (2) 60 days after the announced end of the National Emergency (the end of the Outbreak Period) will be ignored in calculating the date to inform a plan of a qualifying event or determination of a disability. On the applicable date, the timeframes for individuals and plans with periods that were previously disregarded under the Notices will resume. In no case will a disregarded period exceed 1 year.

Benefit Claims

• The period of time from March 1, 2020 until the earlier of (1) 1 year from the date of event, or (2) 60 days after the announced end of the National Emergency (the end of the Outbreak Period) will be ignored in calculating the date to submit benefit claims. On the applicable date, the timeframes for individuals and plans with periods that were previously disregarded under the Notices will resume. In no case will a disregarded period exceed 1 year.



Mandatory Changes Utilizing Deadline Extensions (cont.)

Appeals Deadlines

• The period of time from March 1, 2020 until the earlier of (1) 1 year from the date of event, or (2) 60 days after the announced end of the National Emergency (the end of the Outbreak Period) will be ignored in calculating the date to request appeals. On the applicable date, the timeframes for individuals and plans with periods that were previously disregarded under the Notices will resume. In no case will a disregarded period exceed 1 year.

• External Review

• The period of time from March 1, 2020 until the earlier of (1) 1 year from the date of event, or (2) 60 days after the announced end of the National Emergency (the end of the Outbreak Period) will be ignored in calculating deadlines for appeals. Similarly, the deadline for perfecting those requests. On the applicable date, the timeframes for individuals and plans with periods that were previously disregarded under the Notices will resume. In no case will a disregarded period exceed 1 year.



HIPAA Special Enrollment Rights

- Most employers give eligible employees and their dependents an opportunity to enroll in the employer-sponsored group health plan when they are first eligible (e.g., after completing an eligibility waiting period).
- Most employers also provide annual enrollment periods for employees (and dependents) who are eligible for the plan but did not enroll during an initial or prior annual enrollment period. Open Enrollment
- HIPAA also requires group health plans to provide special enrollment opportunities to certain employees, dependents, and COBRA qualified beneficiaries.

HIPAA Special Enrollment Rights (cont.)

- HIPAA Special Enrollment Right Events:
 - Birth
 - Adoption
 - Placement for Adoption
 - Marriage
 - Other Loss of Coverage
- An employee has 30 days (or 60 days depending on the event) to formally request a HIPAA special enrollment based on the one of the above events.
- The Outbreak Period and new 1 year relief tolls that 30 or 60 day notice period.



EXAMPLE: COVID RELIEF / HIPAA SPECIAL ENROLLMENT RIGHTS

- Jim and Pam were married on April 14, 2020.
- Jim works for Dunder Mifflin Paper Co. and participates in the group health plan.
- Jim wishes to add Pam to his health insurance.
- Under normal circumstances, Jim would have had to notify his employer no later than May 14, 2020 (30 days after the event) that he wanted to utilize a HIPAA Special Enrollment.
- Under the 2020 Outbreak Rules, Jim would have had 60 days after the National Emergency ended to add Pam to his plan.



EXAMPLE: OUTBREAK PERIOD- HIPAA SPECIAL ENROLLMENT RIGHTS (cont.)

- National Emergency has not ended.
- April 14, 2021 will mark 1 year since Jim & Pam's wedding.
- Jim must notify his employer of his marriage (and intent to utilize his HIPAA Special Enrollment right to enroll Pam) no later than May 14, 2021 even though the National Emergency remains ongoing.
 - Jim still has his original 30 days to notify the employer
 - April 14, 2021 starts the clock back up
- Pam's coverage must be effective no later than the first day of the first month beginning after the date the plan receives the request for enrollment. <u>Prospective</u>



HIPAA Special Enrollment Rights - Misc.

- Birth, Adoption, Placement for Adoption
 - Coverage must be effective <u>retroactively</u> to the date of birth, adoption or placement for adoption.

Marriage

 Coverage must be effective no later than the first day of the first month beginning after the date the plan receives the request for enrollment. – <u>Prospective</u>

Loss of Coverage

 Coverage must be effective no later than the first day of the first month beginning after the date the plan receives the request for enrollment. – <u>Prospective</u>

All benefits packages must be available to an eligible enrollee



Notifying Employees of Mandatory Changes

- General rules require health plans to furnish a notice of special enrollment rights at or before the time an employee is initially offered the opportunity to enroll in a group health plan.
- This information is also included in the plan documents.
- COVID regs did not change this requirement.
- No additional requirements for distribution of new notices, etc. However, whenever benefits change, employers have a fiduciary duty to notify their employees of such changes.
- Groups can distribute Benecon notice or create their own, but they must notify their participants of these changes in a timely manner.



Marketplace Notification

- In the case of ERISA group health plans, plans <u>should</u> consider ways to ensure that participants and beneficiaries who are losing coverage under their group health plans are made aware of other coverage options that may be available to them, including the opportunity to obtain coverage through the Health Insurance Marketplace in their state.
- Easy enough to distribute a Marketplace Notification along with updated notice.
- No specific required language / No distribution rules
- Should also be included in updated COBRA notices.

COVID-19: COBRA



Temporary Extension of COBRA Deadlines

• Purpose is to give terminated workers more time to elect COBRA coverage and pay premiums.

• Released at the same time as the other "mandatory" health plan changes discussed earlier in this webinar.

• As with the other "mandatory" health plan changes, the COBRA extensions also utilized the "Outbreak Period" and are now also subject to the new 1 year rules.

COBRA Election Period

- Under COBRA, employees and dependents who lose active coverage as a result of a qualifying event, such as termination of employment or reduction of hours, have 60 days to elect continuation of coverage after receiving a COBRA election notice.
- Under new rules, the 60 day timeframe does not <u>start</u> until the earlier of either:
 - A.) One year from the date of the qualifying event; or
 - B.) The end of the Outbreak Period (60 days after the end of declared National Emergency).



COBRA Election Period Example:

- Laverne is laid off from Shotz Brewery on April 1, 2020.
- The National Emergency remains in effect.
- Laverne's 60 day period to elect COBRA starts running April 1, 2021 (1 year after the date of her event).
- In this scenario, Laverne would have until June 1, 2021 to elect COBRA for an event that happened back in April 2020.
- In contrast:
 - If the national emergency ends on March 15, 2021, Laverne would have until July 13, 2021 to elect COBRA
 - Outbreak Period ends 60 days after declared end of national emergency (May 14) starting Laverne's 60 day clock to elect.



The COBRA Premium Payment Period

- COBRA enrollees normally have 45 days from their COBRA election to make the first premium payment.
- Subsequent monthly payments must be made within a 30-day grace period that starts at the beginning of each coverage month.
- The new rules extend the initial payment and grace period deadlines beyond the Outbreak Period or 1 year event date (whichever occurs first).



Coverage cannot be terminated for nonpayment until after the Outbreak Period or 1 year event date (whichever comes first).



If not paid, COBRA beneficiary will owe all back premium payments or can be termed retroactively.

• <u>Translation</u>: Back COBRA premium payments may soon be coming due!!



COBRA Premium Payment Example:

- Shirley was laid off from Shotz Brewery on April 1, 2020 and elected COBRA.
- Shirley paid her initial premium, but has not made any monthly COBRA premiums since then.
- On April 1, 2021, Shirley's payments for May, June, July, August, September, October, November, December, January, February, March and April are due.
- Shirley has the 30 day COBRA grace period, which begins at the 1 year anniversary of her event, which places her due date to May 1, 2021.
- Shirley will owe a balloon payment for 12 months of COBRA by May 1, 2021 or will be retroactively termed back to April 1, 2020 if not paid.



Potential Problems

- Since coverage cannot be termed for nonpayment, a COBRA beneficiary can use COBRA benefits for months for free.
 - Especially concerning for self-funded groups because they pay their own claims.
- Most carriers, for the past several years, have only agreed to retroactively terminate (and reprocess claims) for a period of 60 days leaving exposure for unpaid claims to fall on the employer.
 - Employer would then be forced to seek relief from the employee, who likely doesn't have liquid funds available for collection due to losing their job.



Check with your COBRA Administrator and Carriers!

- Are they sending out a notification to all qualified beneficiaries from March 1, 2020 to the present about the changes to the Outbreak Periods?
 - What is the charge for this notice?
 - Does it include any Marketplace Notifications?
- How are they handling premium collection for overdue premiums?

• How is your carrier going to handle retroactive terminations if premiums are not paid and claims were incurred?



If Benecon Administers Your COBRA:

- We are in the process of preparing and sending updated COBRA notices to all qualified beneficiaries from March 1, 2020 to the present advising of updated requirements and Marketplace Notification. No additional charge.
- Since Spring 2020, our COBRA Administration terminated (i.e. "Pended") coverages based upon pre-COVID grace periods and last acceptable postmark dates.
- Benecon then manages reinstatements of coverage as we are contacted by affected COBRA beneficiaries and extend the grace periods upon consumer request.
- As a result, you should have minimal (if any) balloon payment premium issues with your COBRA participants.



COVID-19: What We're Watching



Individual Notice Requirement

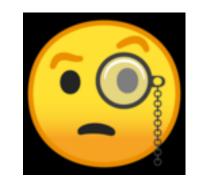
Where the plan administrator or other responsible plan fiduciary knows, or should reasonably know, that the end of the relief period for an individual action is exposing a participant or beneficiary to a risk of losing protections, benefits, or rights under the plan, the administrator or other fiduciary should consider affirmatively sending a notice regarding the end of the relief period.

- Need additional guidance
- Does this create an individual requirement to notify everyone individually of their own time deadlines closer to expiration date?
 - Mass notification sufficient?
- Seems overly burdensome and costly some ways impossible



FEDERAL. COBRA. SUBSIDIES.

• There are provisions for federal COBRA subsidies pending in the latest round of COVID relief legislation that has already passed the House. Senate expected to vote this week.



- If unchanged:
 - 85% subsidized COBRA coverage for participants (April – September 2021)
 - Subsidy paid by employer first, with credit taken in the following year on taxes.

STAY TUNED!!



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Thank you!

Why, When, and How to Address Health Benefit Continuation in Leave of Absence Policies

March 24, 2021 @ 10 am

