

CCM ALERT

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New COBRA Rules During the COVID-19 National Emergency.

The Department of Labor and the Internal Revenue Service recently issued a [Joint Rule](#) which gives employees additional time to make important health insurance coverage decisions if they experience a “qualifying event” under COBRA.

The Joint Rule extends multiple COBRA deadlines related to coverage and election through the “Outbreak Period”. The Outbreak Period is defined as March 1, 2020 and ends 60 days after the end of the COVID-19 National Emergency (or another date to be specified in a future agency guidance). The 60 day extension period is reduced for anyone whose election period began before the Outbreak Period, by the number of days of coverage before March 1, 2020.

Under the Joint Rule, group health plans must disregard the Outbreak Period in determining the following timelines:

- The 60 day deadline for participants to elect COBRA coverage.
- The 30 or 60 day deadline for employers or individuals to notify the plan of a COBRA qualifying event.

- The 45 day deadline for the first monthly premium payment and 30 day deadline for subsequent premium payments.
- Deadlines for submitting benefit claims and submitting review or appeals of adverse determinations; and
- The 14 day deadline for plan administrators to furnish COBRA election notices.

While plan administrators are granted an extension under the Joint Rule, it is unclear how this extension period will apply. We recommend that administrators issue election notices within the standard 14 day deadline unless an extension is absolutely necessary. The Department of Labor's model election notices can be found [here](#).

Model Examples of What Has Changed

The DOL helpfully provided model examples of how the new COBRA rules would be interpreted. For the purpose of these examples, assume the National Emergency ends on June 15, 2020, and the Outbreak Period ends on August 14, 2020 (60 days after the end of the National Emergency).

Example 1: Due to the National Emergency, Individual A experiences a qualifying event of a reduction of hours

below the hours necessary to meet their group health plan's eligibility requirements and has no other coverage. Individual A is given a COBRA election notice on April 15, 2020. Because the Outbreak Period is disregarded for purposes of determining Individual A's COBRA election period, the last day of Individual A's COBRA election period is 60 days after August 14, 2020, which is October 13, 2020.

Example 2: Individual B's spouse notifies their plan administrator of a divorce and seeks COBRA coverage on April 14, 2020, the day the divorce is finalized. Normally, the plan administrator would have 14 days from April 14, 2020 to provide the spouse with a COBRA election notice. Under the new Joint Rule, the plan administrator must provide the spouse with a COBRA election notice by August 28, 2020. If COBRA coverage is elected and premiums are timely paid by the spouse, the COBRA coverage will be retroactive to April 14, 2020.

Example 3: Individual C elected COBRA coverage on December 1, 2019 and has paid all premiums through March 1, 2020. Beginning with the premium payment due on March 1, 2020, Individual C is not required to submit premium payments until 30 days after August 14, 2020. Insurance carriers cannot terminate coverage or reject any claims for nonpayment of premium during the

Outbreak Period. If, however, Individual C has failed to make payments on any premiums owed by October 13, 2020, they may face a loss in coverage.

The Department of Labor Provides further guidance in the form of an [FAQ](#) addressing common questions related to the COVID-19 National Emergency and COBRA as well as other health group plans.

Employer Takeaways

Many employers will recall that COBRA coverage was made more affordable under the Great Recession in 2008-09 under the American Recovery and Reinvestment Act of 2009. Some commentators and scholars identified [deficiencies](#) with that approach. For now, the DOL and the IRS are relaxing deadlines. Do not be surprised to see Congress act on COBRA after the next unemployment figures are issued on May 22, 2020. Affordability will be the next frontier now that the DOL and the IRS have relaxed the notice provisions.

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