

## COVID-19

### Relief for COBRA, Special Enrollment & Other Timeframes during “Outbreak”

The Departments of Labor, Treasury and Health and Human Services jointly released emergency guidance providing additional relief for employees in the form of timeframe relief for benefits. The relief during the COVID-19 National Emergency Period will, essentially, result in a stay of timeframes occurring during that emergency. This is called the Outbreak Period. The Outbreak Period will expire 60 days after the end of the National Emergency. This has yet to occur.

What the relief provides is that specified timeframes will be provided an additional 60 days following the end of the Outbreak Period to meet the requirement; whether payment or submission of a notice or appeal. No payment for COBRA, claim deadline or timeframe for special enrollment will apply during the Outbreak Period.

#### COBRA & Claimant Relief

All group health plans, disability and other employee welfare benefit plans, and employee pension benefit plans subject to ERISA or the Internal Revenue Code **must disregard the period 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 notification (the “Outbreak Period”) for all plan participants, beneficiaries, qualified beneficiaries, or claimants wherever located in determining the following periods and dates—

- (1) The 30-day period (or 60-day period, if applicable) to request special enrollment
- (2) The 60-day election period for COBRA continuation coverage
- (3) The date for making COBRA premium payments
- (4) The date for individuals to notify the plan of a qualifying event or determination of disability
- (5) The date within which individuals may file a benefit claim under the plan's claims procedure
- (6) The date within which claimants may file an appeal of an adverse benefit determination under the plan's claims procedure
- (7) The date within which claimants may file a request for an external review after receipt of an adverse benefit determination or final internal adverse benefit determination, and
- (8) The date within which a claimant may file information to perfect a request for external review upon a finding that the request was not complete.

#### ERISA Relief

The outbreak period shall be disregarded when determining the date for providing a COBRA election notice under [ERISA](#) and the [Internal Revenue Code](#).

## EXAMPLES

Examples assume the National Emergency ended April 30, 2020, with the Outbreak Period then ending June 29, 2020 (the 60<sup>th</sup> day after the end of the National Emergency).

### Example 1 - Electing COBRA

**Facts** Individual A works for Employer X and participates in X's group health plan. Due to the National Emergency, Individual A experiences a qualifying event for COBRA purposes as a result of a reduction of hours below the hours necessary to meet the group health plan's eligibility requirements and has no other coverage. Individual A is provided a COBRA election notice on April 1, 2020. *What is the deadline for A to elect COBRA?*

**Conclusion** In Example 1, Individual A is eligible to elect COBRA coverage under Employer X's plan. 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 June 29, 2020, which is August 28, 2020.

### Example 2 -Special enrollment period

**Facts** Individual B is eligible for, but previously declined participation in, her employer-sponsored group health plan. On March 31, 2020, Individual B gave birth and would like to enroll herself and the child into her employer's plan; however, open enrollment does not begin until November 15. *When may Individual B exercise her special enrollment rights?*

**Conclusion** In Example 2, the Outbreak Period is disregarded for purposes of determining Individual B's special enrollment period. Individual B and her child qualify for special enrollment into her employer's plan as early as the date of the child's birth. Individual B may exercise her special enrollment rights for herself and her child into her employer's plan until 30 days after June 29, 2020, which is July 29, 2020, provided that she pays the premiums for any period of coverage.

### Example 3 - COBRA premium payments

**Facts** On March 1, 2020, Individual C was receiving COBRA continuation coverage under a group health plan. More than 45 days had passed since Individual C had elected COBRA. Monthly premium payments are due by the first of the month. The plan does not permit qualified beneficiaries longer than the statutory 30-day grace period for making premium payments. Individual C made a timely February payment, but did not make the March payment or any subsequent payments during the Outbreak Period. As of July 1, Individual C has made no premium payments for March, April, May, or June. *Does Individual C lose COBRA coverage, and if so for which month(s)?*

**Conclusion** In this Example 3, the Outbreak Period is disregarded for purposes of determining whether monthly COBRA premium installment payments are timely. Premium payments made by 30 days after June 29, 2020, which is July 29, 2020, for March, April, May, and June 2020, are timely, and Individual C is entitled to COBRA continuation coverage for these months if she timely makes payment. Under the terms of the COBRA statute, premium payments are timely if made within 30 days from the date they are first due. In calculating the 30-day period, however, the Outbreak Period is disregarded, and payments for March, April, May, and June are all deemed to be timely if they are made within 30

days after the end of the Outbreak Period. Accordingly, premium payments for four months (i.e., March, April, May, and June) are all due by July 29, 2020. Individual C is eligible to receive coverage under the terms of the plan during this interim period even though some or all of Individual C's premium payments may not be received until July 29, 2020. Since the due dates for Individual C's premiums would be postponed and Individual C's payment for premiums would be retroactive during the initial COBRA election period, Individual C's insurer or plan may not deny coverage, and may make retroactive payments for benefits and services received by the participant during this time.

#### Example 4 - COBRA premium payments

**Facts** Same facts as Example 3. By July 29, 2020, Individual C made a payment equal to two months' premiums. *For how long does Individual C have COBRA continuation coverage?*

**Conclusion** Individual C is entitled to COBRA continuation coverage for March and April of 2020, the two months for which timely premium payments were made, and Individual C is not entitled to COBRA continuation coverage for any month after April 2020. Benefits and services provided by the group health plan (e.g., doctors' visits or filled prescriptions) that occurred on or before April 30, 2020 would be covered under the terms of the plan. The plan would not be obligated to cover benefits or services that occurred after April 2020.

#### Example 5 - Claims for medical treatment under a group health plan

**Facts** Individual D is a participant in a group health plan. On March 1, 2020, Individual D received medical treatment for a condition covered under the plan, but a claim relating to the medical treatment was not submitted until April 1, 2021. Under the plan, claims must be submitted within 365 days of the participant's receipt of the medical treatment. *Was Individual D's claim timely?*

**Conclusion** Yes. For purposes of determining the 365-day period applicable to Individual D's claim, the Outbreak Period is disregarded. Therefore, Individual D's last day to submit a claim is 365 days after June 29, 2020, which is June 29, 2021, so Individual D's claim was timely.

#### Example 6 - Internal appeal—disability plan

**Facts** Individual E received a notification of an adverse benefit determination from Individual E's disability plan on January 28, 2020. The notification advised Individual E that there are 180 days within which to file an appeal. *What is Individual E's appeal deadline?*

**Conclusion** When determining the 180-day period within which Individual E's appeal must be filed, the Outbreak Period is disregarded. Therefore, Individual E's last day to submit an appeal is 148 days (180–32 days following January 28 to March 1) after June 29, 2020, which is November 24, 2020.

### COBRA Notices

The DOL also recently released revised COBRA notices. Employers should ensure they are using the latest notices where using the model notices. Employers are not required to use the model notices so long as content requirements are met otherwise.

News Release <https://dol.gov/newsroom/releases/ebsa/ebsa20200501>

COBRA Model Notice FAQs <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/cobra-model-notices.pdf>

COBRA Model General Notice <https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/cobra/model-general-notice.docx>

COBRA Model General Notice (Spanish) <https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/cobra/model-general-notice-spanish.docx>

COBRA Model Election Notice <https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/cobra/model-election-notice.docx>

COBRA Model Election Notice (Spanish) <https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/cobra/model-election-notice-spanish.docx>

## Conclusion

During the COVID-19 outbreak, the rules will be ever-changing. It is important to keep abreast of regulatory changes daily. L.R. Webber is here for you during these times and will provide updates as they become available. Until then, be nimble and practice good faith compliance. Some other helpful tips in compliance during the era of incomplete information and regulatory instability, include:

- Do the right thing. In most cases, that will be the right thing.
- Be patient. Additional guidance always comes.
- Document why you chose one way of doing things versus another in order to show good faith attempts at compliance where guidance was lacking.
- Error on the conservative.
- Communicate with all interested parties, such as employees, to ensure understanding that the rules are changing and incomplete...often!
- Engage with your *Trusted Advisor*. There are many tools we can provide to help ease uncertainties.

## COBRA Administration Services

If you are overwhelmed and confused by the tedious administration of COBRA compliance, our team of experts can help ease the burden for your HR department. L.R. Webber's in-house COBRA specialists can save you time on any of the following important requirements:

- New Hire letter – initial rights notice
- COBRA qualify event notification
- Open enrollment letter to qualified beneficiaries
- Acknowledgement Letter for COBRA enrollees
- COBRA benefits termination letter
- Tracking of all notices sent to employees for compliance purposes
- Customer service center for participants' COBRA calls and questions
- Provide monthly COBRA payments to employer
- Provide monthly reports detailing all administration activity
- [Click here to request more information](#)

*For more helpful information, see:*

Leavitt Group Compliance Covid-19 Resource Center <https://news.leavitt.com/covid-19/>

DOL FAQs <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/covid-19.pdf>

**Extension of Certain Timeframes Rules**

<https://www.federalregister.gov/documents/2020/05/04/2020-09399/extension-of-certain-timeframes-for-employee-benefit-plans-participants-and-beneficiaries-affected>

*The information here is intended to be educational only and not legal, financial or other advice.  
Please consult with your own legal professional to ensure compliance with all applicable law.*