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It's Not Over Yet: Extension of Certain Deadlines During the Ongoing Coronavirus Era

Like so many things in our lives, COVID-19 has changed group health plan benefits for now and for an unknown period of time. Employers and practitioners should be aware of the changes mandated by the federal government as a relief effort. This column discusses the ongoing extension of certain deadlines that affect group health plans.

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2020 has been quite a year, with everyone trying to adapt to our changed circumstances living with COVID-19. As is often the case, events which affect so many will necessarily lead to issues related to employee benefit plans. Between government efforts at relieving the impact of COVID-19 on individuals, and the adaptations that employers have had to make in order to continue

operations in an injured economy, complicated further by the seemingly endless nature of the crisis, employers and practitioners need to be mindful of the effects on group health plan benefits. This column specifically discusses the extension of certain deadlines, which continues to grow without a defined end.

Extensions of Certain Deadlines

On May 4, 2020, the Employee Benefits Security Administration (EBSA) and the Internal Revenue Service (IRS) issued joint guidance giving relief with regards to certain timeframes affecting employee benefit plans (Joint Guidance). [Final Rule: Extension of Certain Timeframes for Employee Benefit Plans, Participants, and Beneficiaries Affected by the COVID-19 Outbreak, 29 CFR Parts 2560 and 2590, 26 CFR Part 54, 85 Fed. Reg. 26351 (May 4, 2020)] Under this Joint Guidance, group health plans must not count the period from March 1, 2020 until sixty (60) days after the announced end of the COVID-19 National Emergency, called the “Outbreak Period,” for purposes of certain deadlines. As of the date of finalizing this article for publication, no announcement has been made regarding the end of the Outbreak Period, so this period is ongoing.

How this works is that if one of the events specified in the Joint Guidance occurs during the Outbreak Period, the associated deadline will be based as though the event happened the day after the end of the Outbreak Period. If the event happened prior to the beginning of the Outbreak Period, but before the associated deadline, the remainder of the time period leading up to the deadline will be counted beginning the day after the end of the Outbreak Period. However, the authority under which the extension was granted limits any extension to one year. As this article was going to print, the EBSA issued EBSA Disaster Relief Notice 2021-01, which clarifies that the extensions will end on the earlier of: (a) 1 year from the date the individual and plans were first eligible for relief, or (b) 60 days after the end of the Outbreak Period.

COBRA Deadlines

The Joint Guidance provides extended timeframes for certain deadlines related to continuation coverage under the Consolidated Omnibus Budget Reconciliation Act (COBRA). This means that the Outbreak Period will not count when determining:

- The 60-day election period for COBRA continuation coverage [ERISA § 605 and Code § 4980B(f)(5)]
- The date for making COBRA premium payments [ERISA § 602(2)(C) and (3) and Code §§ 4980B(f)(2)(B)(iii) and (C)]
- The date for individuals to notify the plan of a qualifying event or determination of disability [ERISA § 606(a)(3) and Code § 4980B(f)(6)(C)]
- The date for health plans to provide a COBRA election notice [ERISA § 606(c) and Code § 4980B(f)(6)(D)]

(Note: For all of the examples in this column, assume that the COVID-19 National Emergency is announced to end on December 30, 2020, then the Outbreak Period would end 60 days later, on February 28, 2021. So, the period from March 1, 2020 to February 28, 2021 would be the Outbreak Period.)

Example 1—(Electing COBRA; Qualifying Event on or after March 1, 2020). Ashley experiences a qualifying event and receives an election notice on April 1, 2020. Under the standard COBRA rules, she would have until May 30, 2020 to elect COBRA coverage (60 days after April 1, 2020). [26 CFR §54.4980B-6, Q&A-3] Under the extended deadlines, she would have until April 29, 2021 to elect COBRA coverage (60 days after February 28, 2021, the end of the Outbreak Period).

Example 2—(Electing COBRA; Qualifying Event Prior to March 1, 2020). Brendan experiences a qualifying event and receives an election notice on February 15, 2020. Under the standard COBRA rules, he would have until April 15, 2020 to elect COBRA coverage (60 day after February 15, 2020). Under the extended deadlines he would have until April 14, 2021 to elect COBRA coverage. This is because 15 days of the 60-day period passed before the beginning of the Outbreak Period (February 15, 2020 to March 1, 2020), and so Brendan has 45 days (the remainder of the 60-day period) after the end of the Outbreak Period (February 28, 2021) to elect COBRA coverage.

Example 3—(Making Premium Payments). Carson previously elected COBRA and was making premium payments each month. Carson stops making premium payments for December 2020, January 2021, February 2021, and March 2021. Under the standard COBRA rules, [Treas. Reg. § 54.4980B-8, Q/A-5] and the terms of the plan, which permit a 30-day grace period for COBRA payments, Carson would have failed to make a timely payment as of December 30, 2020 (30

days after the December 1, 2020 due date), and would lose COBRA coverage at that point. However, under the extended deadline, these payments would not be considered late as long as they are paid by March 30, 2021 (30 days after February 28, 2021, the end of the Outbreak Period). Carson's coverage would continue during this period, and the insurer may make retroactive payments for services during the period for which retroactive premiums are eventually paid. If Carson eventually only pays premiums for December 2020 and January 2021 by March 30, 2021, then he would only receive coverage for those two months and the group health plan would not be required to cover expenses incurred after January 30, 2021.

Example 4—(Notifying Plan Administrator of Qualifying Event). Dale and family elect COBRA coverage after Dale is terminated. During the 18-month COBRA coverage period, Dale gets a divorce, which is final on July 1, 2020. Under the standard COBRA rules, Dale's ex-wife would have until August 30, 2020 (60 days after the divorce) to notify the plan administrator of the second qualifying event. [ERISA § 606(a)(3); Code § 4980B(f)(6)(C); Public Health Service Act (PHSA) § 2206(3)] Under the extended deadline, Dale's ex-wife will have until April 29, 2021 (60 days after February 28, 2021, the end of the Outbreak Period) to notify the plan administrator of the second qualifying event.

Special Enrollment Deadlines

The Joint Guidance also provides extended deadlines for certain special enrollment rights in group health plans under the portability provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). [ERISA § 701, Code § 9801, 29 CFR 2590.701–6, 26 CFR 54.9801–6]. This means that the Outbreak Period will not count towards the determination of the 30-day period (or 60-day period, if applicable) to request special enrollment where other group healthcare coverage has been lost, there is a change in number of dependents, or there is a change in eligibility for Medicaid and the Children's Health Insurance Program (CHIP) [ERISA § 701(f) and Code § 9801(f)].

Example—(Request to Cover New Spouse; Marriage after March 1, 2020). Elaine marries Eddie on August 1, 2020. Under the standard special enrollment rules, Elaine would have until August 31, 2020, to add Eddie on to her employer's health plan (30 days after the marriage). [Treas. Reg. § 54.9801-6(b)(3)(i); DOL Reg. § 2590.701-6(b)(3)(i); HHS Reg. §

146.117(b)(3)(i)] Under the extended deadlines, Elaine has until March 30, 2021 (30 days after February 28, 2021, the end of the Outbreak Period) to add Eddie on to her employer's health plan.

Claims Procedures Deadlines

The Joint Guidance also provides extended periods for certain deadlines that apply to claims procedures. [ERISA § 503 and 29 CFR 2560.503–1 require employee benefit plans subject to Title I of ERISA to establish and maintain reasonable procedures governing the determination and appeal of claims for benefits under the plan. Section 2719 of the PHSA, incorporated into ERISA by ERISA § 715, and into the Code by Code § 9815, imposes additional rights and obligations with respect to internal claims and appeals and external review for non-grandfathered group health plans and health insurance issuers offering non-grandfathered group or individual health insurance coverage. *See also* 29 CFR 2590.715–2719 and 26 CFR 54.9815–2719] This means that the Outbreak Period will not count when determining:

- The date by which individuals must file any benefit claim under the plan's claims procedure; [29 CFR 2560.503–1]
- The date by which claimants must file any appeal of an adverse benefit determination under the plan's claims procedure; [29 CFR 2560.503–1(h)]
- The date by which claimants must file any request for an external review after receipt of an adverse benefit determination or final internal adverse benefit determination; [29 CFR 2590.715–2719(d)(2)(i) and 26 CFR 54.9815–2719(d)(2)(i)] and
- The date by which a claimant must file any information to perfect a request for external review upon a finding that the request was not complete. [29 CFR 2590.715–2719(d)(2)(ii) and 26 CFR 54.9815–2719(d)(2)(ii)]

Note that these deadlines apply to claims under all group health plans, [As well as other ERISA-covered employee benefit plans such as qualified retirement plans and top hat plans] including healthcare flexible spending accounts and health reimbursement arrangements (HRAs), which generally have year-end claims deadlines.

Example 1—(Claims for Medical Treatment Under a Group Health Plan). Franklin receives medical treatment on March 1, 2020, for a condition covered under the plan. Under the terms of the plan,

claims must be submitted within 365 days of the receipt of the medical treatment. Under the standard claim deadline, this would mean Franklin would have until March 1, 2021 to file a claim. Under the extended deadlines, when determining the 365-day period applicable to Franklin's claim, the Outbreak Period is disregarded. This means that Franklin's last day to submit a claim is 365 days after February 28, 2021 (the end of the Outbreak Period), which is February 28, 2022.

Example 2—(Internal Appeal under a Group Health Plan) Georgette received a notification of an adverse benefit determination from her group health plan on January 28, 2020. The notification advised Georgette that there are 180 days within which to file an appeal. Under the standard claims appeal deadline, this would mean Georgette would have until July 26, 2020, to file an appeal (January 28, 2020 plus 180 days). Under the extended deadlines, when

determining the 180-day period by which Georgette's appeal must be filed, the Outbreak Period is disregarded. This means that Georgette's last day to submit an appeal is July 26, 2021. This is because 32 days of the 180 days passed before the beginning of the Outbreak Period (January 28, 2020 to March 1, 2020), and so she has until 148 days (the remainder of the 180-day period) after the end of the Outbreak period (February 28, 2021) to file an appeal.

Caution, Care, and Counsel

Everything we do these days—wearing masks, washing hands, socially distancing—involves using caution in our actions, taking care when making decisions, and asking for advice when we need it is how we will get through this. It is no different for group health plans. Take good care of your group health plans and take care of yourselves. We will get through this. ■

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