

Important Updates about COBRA due to COVID19 (CARES ACT)

You are receiving this due to an update related to COVID 19 and the CARES ACT. In a memo issued from the Department of Labor we have been notified of an Outbreak Period that effectively provides an additional grace period in regards to COBRA Elections and premium payments due. If you have experienced a qualifying event between 03/01/2020-04/30/2020 you now have an additional 60 days after 06/29/2020 to elect COBRA coverage. If you have not made timely payments for the month of March you have until 06/30/2020 to pay all premiums in full without possibility of termination. If ALL PREMIUMS are not PAID IN FULL by 07/28/2020 your benefits will be cancelled back to the last month paid in full. Please consult our website to review the details of this memo. During the time of waiting for payment your coverage may be temporary shut off with the insurance carrier.

In response to the COVID-19 pandemic, the U.S. Department of Labor (DOL) released a new final rule that temporarily extends the period in which eligible employees can elect COBRA health insurance coverage, and the deadline for them to begin making COBRA premium payments.

On May 4, 2020, the DOL and IRS jointly published Extension of Certain Timeframes for Employee Benefit Plans, Participants, and Beneficiaries Affected by the COVID-19 Outbreak. Please go to this URL:

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

The final rule extends time frames affecting participants' rights to health care coverage, portability and continuation of group health plan coverage under COBRA, and it extends the time for plan participants to file benefit claims or appeal denied claims.

Along with the rule, the DOL posted a new set of COVID-19 FAQ's for Participants and Beneficiaries. You can use this link to view all the rules: <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/covid-19.pdf>

New Rule's COBRA Provisions

The rule extends most COBRA deadlines to beyond the "Outbreak Period," which it defines as March 1, 2020, to 60 days after the end of the declared COVID-10 national emergency, or another date if provided by the agencies in future guidance. If the emergency declaration expires as written on June 29, 2020, the Outbreak Period will end on August 28, 2020, for instance.

No extension was granted for the 14-day deadline for plan administrators to furnish COBRA election notices.

The rule applies as follows:

- **The 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, normally have 60 days to elect continuation of coverage after receiving a COBRA election notice. Under the rule, the 60-day timeframe doesn't start until the end of the Outbreak Period.
- **The COBRA premium payment period.** COBRA enrollees normally have 45 days from their COBRA election to make the first premium payment, and subsequent monthly payments must be made within a 30-day grace period that starts at the beginning of each coverage month. The new rule extends the initial premium payment and grace period deadlines beyond the Outbreak Period.

Examples

The following examples illustrate the timeframe for extensions required by this document. An assumed end date for the National Emergency was needed to make the examples clear and understandable. Accordingly, the Examples assume that the National Emergency ends on April 30, 2020, with the Outbreak Period ending on June 29, 2020 (the 60th day after the end of the National Emergency). To the extent there are different Outbreak Period end dates for different parts of the country, the Agencies will issue additional guidance regarding the application of the relief in this document.

Example 1 (Electing COBRA). (i) *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?

(ii) *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). (i) *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?

(ii) *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). (i) *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)?

(ii) *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). (i) *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?

(ii) *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 Start Printed Page 26355 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). (i) *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?

(ii) *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). (i) *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?

(ii) *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.

Example 7 (Internal appeal—employee pension benefit plan). (i) *Facts.* Individual F received a notice of adverse benefit determination from Individual F's 401(k) plan on April 15, 2020. The notification advised Individual F that there are 60 days within which to file an appeal. What is Individual F's appeal deadline?

(ii) *Conclusion.* When determining the 60-day period within which Individual F's appeal must be filed, the Outbreak Period is disregarded. Therefore, Individual F's last day to submit an appeal is 60 days after June 29, 2020, which is August 28, 2020.