

COVID-19 National Emergency Extended Timelines

April 4, 2022 (updated 4/19)

Quick Facts

- On February 18, 2022, President Biden [formally extended](#) the COVID-19 National Emergency for up to another year.
- The announcement extends the National Emergency declared as of March 1, 2020, which extended several specific notice and disclosure deadlines.
- The rules apply broadly to all employer-sponsored benefits subject to the Health Insurance Portability and Accountability Act (HIPAA), the Employee Retirement Income Security Act (ERISA) and the Consolidated Omnibus Budget Reconciliation Act (COBRA).

The Original Rule

The National Emergency was originally declared on March 1, 2020, and the Department of Labor (DOL) and Internal Revenue Service (IRS) issued a final rule in April 2020. The rule extended the time participants were given for certain deadlines under COBRA, HIPAA, and ERISA. Additionally, the DOL granted some leniency to plan sponsor disclosures required under ERISA.

The guidance applies for the period of time beginning March 1, 2020, until 60 days after the National Emergency is over (the “Outbreak Period”). All group health plans must disregard this period when administering plans with respect to notices, disclosures and other deadlines covered by the rule.

Federal Law Raises Deadline Concerns

In the case of a National Emergency, federal law allows regulatory agencies to suspend statutory requirements for up to 12 months. When the final rule was issued in April 2020, it was not expected that the National Emergency would still be in place more than a year later. As the U.S. approached the end of the 12 months from the beginning of the relief period, many questions were raised about managing deadlines.

In [EBSA Disaster Relief Notice 2021-1](#), released on February 26, 2021, the DOL stated that the 12-month limit on the agencies’ ability to disregard a statutory requirement applies on a participant by participant, or event by event, basis. In other words, if during the National Emergency, a participant or plan sponsor is subject to a statutory deadline for a notice or disclosure subject to these rules, that deadline is delayed for up to 12 months from the original deadline, or until the end of the Outbreak Period, whichever is sooner.

This interpretation means that a participant’s deadline for a COBRA election, or a HIPAA special enrollment, is unique to that participant, and is based on the original deadline that would have applied absent the National Emergency. In no case will a requirement be delayed for any individual by more than one year.

HIPAA Special Enrollment Deadlines

Pre-COVID Example: Under existing rules, employees who want to exercise HIPAA special enrollment rights upon a loss of coverage or acquisition of a dependent through marriage or birth/adoption are typically required to provide notice to the plan within 30 days of the event to enroll mid-plan year.

Relief Example: Sally had a baby on April 20, 2021. Consistent with the HIPAA special enrollment rules, the plan would normally require the employee to notify the employer of the birth by May 20, 2021 (30 days from the birth). She now has one year from the regular notice date or the end of the Outbreak Period whichever is sooner to notify her employer of the change.

Certain COBRA Deadlines

Pre-COVID Example: Notice requirements prescribe time periods for employers to notify the plan of certain qualifying events and for individuals to notify the plan of certain qualifying events or submit payment. Notice requirements also prescribe a time period for plans to notify qualified beneficiaries of their rights to elect COBRA continuation coverage.

Relief Example: Sally enrolls in COBRA but fails to make the COBRA payment for the January 2022 coverage by the normal grace period of January 31, 2022. The EBSA relief allows Sally to make that payment within one year of the normal January 31, 2022 grace period deadline, or by the end of the Outbreak Period, whichever is sooner. All changes made within an individual's extension are retroactive to the original effective date and payment is retroactive as well.

Claims Processing and External Review Deadlines

Pre-COVID Example: ERISA-covered employee benefit plans are required to establish and maintain a procedure governing the filing and initial payment of claims, and to provide a reasonable opportunity to appeal an adverse benefit determination. Plans may not unduly inhibit the initiation or processing of claims and must provide at least 180 days following receipt of an adverse benefit determination to appeal.

Relief Example: Johnny is a participant in a group health plan. On March 1, 2021, he 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. His plan provides 90 days to submit a claim. The new due date to submit claims is the end of the Outbreak Period or one year after the normal deadline whichever is sooner.

Summary

This most recent extension of the National Emergency further extends the duration of the Outbreak Period. President Biden may end the National Emergency before another year passes, but this remains to be seen. Plan sponsors should be aware that the extended deadlines for participants under HIPAA, COBRA and ERISA remain in effect for the time being and ensure that their plans continue to operate in accordance with the requirements for any deadlines.

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