Final Rule on the Extension of Certain Timeframes for Employee Benefit Plans, Participants, and Beneficiaries Due to COVID-19

On March 13, 2020, President Trump issued the Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak and by separate letter made a determination, under Section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, that a national emergency exists nationwide beginning March 1, 2020, as the result of the COVID-19 outbreak.

The Department of Labor (DOL) and the Department of the Treasury (Treasury) issued a final rule that extends certain timeframes under the Employee Retirement Income Security Act (ERISA) and Internal Revenue Code (IRC) for group health plans, disability, and other welfare plans, pension plans, and participants and beneficiaries of these plans during the COVID-19 national emergency. The timing extensions are issued to help alleviate problems faced by health plans to comply with strict ERISA and IRC timeframes and problems faced by participants and beneficiaries in exercising their rights under health plans during the COVID-19 national emergency. The final rule provides the timeframe extensions based on the end date of the "national emergency" (as of the date of this publication, the national emergency end date has not been announced) and the end date of the "outbreak period" which is the 60th day after the end of the national emergency. Under the final rule the outbreak period will be disregarded, meaning the timeframes for the group health plan requirements noted below will not begin to run until after the outbreak period has ended.

The following extensions will be effective on May 4, 2020.

HIPAA Special Enrollment Periods

Under HIPAA, group health plans must provide special enrollment periods in certain circumstances, including when an employee or dependent loses eligibility for any group health plan or other health insurance coverage in which the employee or the employee's dependents were previously enrolled (including coverage under Medicaid and the Children's Health

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Insurance Program), and when a person becomes a dependent of an eligible employee by birth, marriage, adoption, or placement for adoption. Generally, group health plans must allow such individuals to enroll in the group health plan if they are otherwise eligible and if enrollment is requested within 30 days of the occurrence of the event (or within 60 days, in the case of loss of Medicaid or state Children's Health Insurance Program (CHIP) coverage or eligibility for state premium assistance subsidy from Medicaid or CHIP).

Under the final rule, the outbreak period must be disregarded when determining if a participant timely requested HIPAA special enrollment (i.e., the 30-day or 60-day period will begin to run the day after the outbreak period). See the Appendix for examples.

COBRA

The COBRA continuation coverage provisions generally provide a qualified beneficiary a period of at least 60 days to elect COBRA continuation coverage under a group health plan. Plans are required to allow payment of premiums in monthly installments, and plans cannot require payment of premiums before 45 days after the day of the initial COBRA election. COBRA continuation coverage may be terminated for failure to pay premiums on time. Under the COBRA rules, a premium is considered paid on time if it is made no later than 30 days after the first day of the period for which payment is being made. 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 a determination of disability. Notice requirements also prescribe a time period for plans to notify qualified beneficiaries of their rights to elect COBRA continuation coverage.

Under the final rule, the outbreak period must be disregarded when determining the 60-day COBRA election period, the date for making COBRA premium payments, and the date for qualified beneficiaries to notify the plan of a qualifying event or determination of disability. The outbreak period must also be disregarded when determining the date by which a COBRA election notice must be provided to a qualified beneficiary. See the Appendix for examples.

Claims Procedure

ERISA-covered employee benefit plans and non-grandfathered group health plans and health insurance issuers offering non-grandfathered group or individual health insurance coverage are required to establish and maintain a procedure governing the filing and initial disposition of benefit claims, and to provide participants with a reasonable opportunity to appeal an adverse benefit determination to an appropriate named fiduciary. Plans may not have provisions that unduly inhibit or hamper the initiation or processing of claims for benefits. Further, group health plans and disability plans must provide participants at least 180 days following receipt of an adverse benefit determination to appeal (60 days in the case of pension plans and other welfare benefit plans).

Under the final rule, the outbreak period must be disregarded when determining the date for participants to file a benefit claim under the plan's claims procedures and the date by which a

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participant may file an appeal of an adverse benefit determination under the plan's claims procedure. See the Appendix for examples.

External Review Process

ERISA sets forth standards for external review that apply to non-grandfathered group health plans and health insurance issuers offering non-grandfathered group or individual health insurance coverage and provides for either a state external review process or a federal external review process. Standards for external review processes and timeframes for submitting claims to the independent reviewer for group health plans or health insurance issuers may vary depending on whether a plan uses a state or federal external review process. For plans or issuers that use the federal external review process, the process must allow at least four months after the receipt of a notice of an adverse benefit determination or final internal adverse benefit determination for a request for an external review to be filed. The federal external review process also provides for a preliminary review of a request for external review. The regulation provides that if such request is not complete, the federal external review process must provide for a notification that describes the information or materials needed to make the request complete, and the plan or issuer must allow a claimant to perfect the request for external review within the four-month filing period or within the 48-hour period following the receipt of the notification, whichever is later.

Under the final rule issued by the DOL, the outbreak period must be disregarded when determining the date by which a participant may file a request for an external review after receiving an adverse benefit determination or final internal adverse benefit determination and the date by which a participant must file a corrected request for external review upon a finding that the request was not complete. See the Appendix for examples.

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Appendix

The following examples are provided by the DOL and the Treasury to help illustrate the timeframe extensions required by the final rule. For purposes of the examples, the DOL uses a hypothetical end date for the COVID-19 National Emergency of April 30, 2020, and the Outbreak Period ending on June 29, 2020 (the 60th day after the hypothetical end of the national emergency). Note these dates are not the actual national emergency end date or outbreak period end date.

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. 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 this example, 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 more time 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 months?

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Conclusion. In this example, 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 makes payment on time. 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 (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 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?

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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

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?

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.

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