

Informational Bulletin

DOL Releases EBSA Disaster Relief Notice 2021-01

March 2021

DOL Releases EBSA Disaster Relief Notice 2021-01

SUMMARY:

Last week, the Department of Labor (DOL) issued new guidance regarding notice and disclosure timeframe relief for employee benefit plans and plan participants due to COVID-19. [EBSA Disaster Relief Notice 2021-01](#) (The Joint Notice) clarifies that the deadline for extended timeframes, such as a COBRA election, will be based upon the date each participant's individual action would have otherwise been required, rather than on a fixed period applicable to all notices and disclosures.

The decision to extend relief periods on a case-by-case basis may be beneficial to many participants but will obviously create significant compliance and administrative challenges for employers. Also, while not clearly required, the guidance encourages employers to communicate revised deadlines for elections, payments, and losses of coverage when possible.

Background

After a National Emergency was declared as of March 1, 2020, regulatory agencies jointly issued a final rule in April extending several specific notice and disclosure deadlines under HIPAA, COBRA and ERISA. The rule effectively extended the time participants were given for things like COBRA elections, COBRA payments, HIPAA special enrollments, ERISA-required notices, and ERISA claims filing and appeals. In addition to the final rule, the DOL issued Disaster Relief Notice 2020-01, granting some leniency regarding enforcement of the timing and delivery method for plan sponsor disclosures required under ERISA.

The rules apply broadly to all employer-sponsored benefits subject to ERISA and COBRA. The Department of Health & Human Services (HHS) indicated that similar relief was available to non-federal governmental plans as well.

For the period beginning March 1, 2020, until 60 days after the National Emergency is over, all plans subject to the above-named regulations, including group health plans, disability plans, other employee welfare benefit plans, as well as employee pension plans, must disregard this period (the "Outbreak Period") when administering plans with respect to notices, disclosures and other deadlines covered by the rule.

The Problem

In the case of a National Emergency, federal law allows regulatory agencies to suspend statutory requirements for up to 12 months. As we approached the end of the 12 months from when the final rule was issued in April 2020, many questions have been raised about when impacted statutory deadlines would revert to normal timeframes.

The DOL’s Answer

In Notice 2021-1, the DOL states 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 (which remains ongoing), whichever is sooner.

This interpretation means that a participant’s deadline for a COBRA election, a HIPAA special enrollment, etc., is unique to that participant, and is based upon 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.

Examples

EXAMPLES	IMPLICATIONS
<p>If a qualified beneficiary would have been required to make a COBRA election by March 1, 2020, the Joint Notice delays that requirement until February 28, 2021, which is the earlier of 1 year from March 1, 2020 or the end of the Outbreak Period (which remains ongoing).</p>	<p>This participant’s deadline to elect COBRA coverage was Monday.</p>
<p>If a qualified beneficiary would have been required to make a COBRA election by March 1, 2021, the Joint Notice delays that election requirement until the earlier of 1 year from that date (i.e., March 1, 2022) or the end of the Outbreak Period.</p>	<p>This participant has until 2022 to elect (or the end of the Outbreak Period, if it ends sooner). This example from the DOL does not measure 1 year in the same manner as the first example for a reason that is unclear.</p>
<p>An employee gets married on January 15, 2021. The plan would normally require the employee to notify the employer of the marriage by February 14, 2021 (within 30 days) to enroll the spouse mid-plan year.</p>	<p>The employee must now notify the employer by February 14th, 2022, or the end of the Outbreak Period, whichever is earlier.</p>

Examples, continued

EXAMPLES	IMPLICATIONS
<p>A COBRA qualified beneficiary enrolls in COBRA coverage and makes payments for a number of months, but fails to make the COBRA payment for January 2021 coverage. The normal grace period would be until January 31, 2021.</p>	<p>This participant can now make that payment by January 31, 2022, or by the end of the Outbreak Period, whichever is sooner.</p>
<p>Assume a health plan normally has a claim filing deadline (i.e., runout period) that requires participants to submit all claims incurred during the plan year within 90 days following the end of the plan year.</p>	<p>Plan participants may now submit claims that were incurred during the plan year for up to one year after the normal claim filing deadline, or by the end of the Outbreak Period, whichever is sooner.</p>

When considering the impact on HIPAA special enrollment rights, it is important to remember that the addition of child due to birth or adoption is generally the only HIPAA special enrollment that permits retroactive addition to the plan. In the example provided above regarding marriage, the spouse would be added to the plan on a prospective basis, not back to the date of marriage.

Next Steps

Plan sponsors should consult with their COBRA vendors to ensure updated notices will be issued as necessary to comply with this guidance. In addition, notice policies applicable to HIPAA special enrollment rights, for example, should be temporarily amended to ensure compliance.

In addition, we will continue to monitor the potential COBRA subsidy passed by the U.S. House of Representatives last week. The bill has not yet been passed by the Senate, though rumor has it a vote will likely occur by mid-March. As always, your Kapnick team will keep you apprised of developments.

This legislative brief has been issued in partnership with Benefit Comply. For more information, please email us at info@kapnick.com or call at 888.263.4656.

The law under the Internal Revenue Code has many complex requirements for employers and health plans. Please contact Kapnick Insurance Group with any questions about how you can prepare for any of these health plan related requirements. This Kapnick Insurance Group Update is not intended to be exhaustive nor should any discussion or opinions be construed as legal or tax advice. The information contained in this communication is intended to provide general information regarding HSAs and related topics, and is based on general information available at the time it was prepared. Readers should contact their tax and/or legal counsel for advice that is appropriate to their specific circumstances.