

March 18, 2021

TO: The Council

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RE: Updated Guidance on Deadline Relief during COVID-19 National Emergency

The Department of Labor (“DOL”) recently issued [Disaster Relief Notice 2021-01](#), updating its prior guidance extending certain timeframes for group health plans affected by the COVID-19 pandemic. Under the revised framework, group health plans will have to undertake a participant-by-participant/case-by-case assessment to determine the start and end dates of the applicable deadline relief. This will impose significant administrative and compliance burdens on employers, many of whom may already be seeing relief periods come to a close for plan participants.

Additional information on the original guidance and the new guidance is provided below.

Original Guidance

In May 2020, the Department of Treasury and DOL (collectively the “Agencies”) released a [joint notice](#) extending specific notice and disclosure deadlines for group health plans. The notice (and subsequent [guidance](#)) sought to provide administrative relief to participants and plan administrators by instructing them to disregard the dates/deadlines associated with

- Requests for special enrollment and notification of qualifying events;
- The election period for COBRA continuation of coverage;
- COBRA premium payments; and
- Filing benefit claims, appeals, or requests for external review of an adverse benefits determination

for the duration of the so-called “Outbreak Period” (i.e., from March 1, 2020 through 60 days after the announced end of the COVID-19 National Emergency). The statutory authority upon

which DOL and Treasury relied in putting forth this guidance, however, only allows the Agencies to toll these deadlines for up to one year.

New Guidance

Given that the COVID-19 National Emergency has continued beyond the one-year statutory maximum, DOL recently issued new guidance indicating that the relief offered must effectively be analyzed based on each participant's individual circumstances. Specifically, under the new guidance, the relief will run until the earlier of:

- One year from the date a participant was first eligible for relief; or
- Sixty days after the COVID-19 National Emergency ends (i.e., the end of the Outbreak Period).

In no case, however, can the relief offered exceed one year. The guidance offers several examples to illustrate the applicable duration of the deadline relief in a given instance. For example, if a plan was required to furnish a notice or disclosure by March 1, 2020, the relief offered would end with respect to that notice or disclosure by February 28, 2021, and the responsible plan fiduciary would be required to ensure that the notice or disclosure was furnished on or before March 1, 2021.

DOL acknowledges, however, that—given the ongoing nature of the COVID-19 pandemic—the one-year limit on its authority to grant relief may cause issues for participants and plans. In response, DOL advises that plans should make “reasonable accommodations” to prevent the “loss of or undue delay in payment of benefits and should take steps to minimize the possibility of individuals losing benefits because of a failure to comply with pre-established time frames.” For instance, the guidance suggests that where a plan administrator knows (or should reasonably know) that the end of a relief period for an individual action exposes a plan participant to a risk of losing protections, coverage, or benefits, the administrator should consider:

- Sending a notice regarding the end of the relief period;
- Reissuing or amending plan disclosures issued prior to or during the COVID-19 pandemic that failed to provide accurate information about when participants and beneficiaries were required to act; and/or
- In the case of ERISA group health plans, consider ways to ensure that participants who are losing coverage under their group health plans are made aware of other coverage options available to them (e.g., the Biden Administration's special enrollment period).

The required participant-by-participant analysis put forth in this guidance may cause significant administrative challenges for employers, particularly in scenarios where full and timely compliance with disclosure and/or claims processing requirements may be impossible (e.g., due to pandemic or natural disaster-related disruption). To address these concerns, DOL states that—provided the plan fiduciaries have acted “in good faith and with reasonable diligence”—the agency's approach to enforcement will emphasize compliance assistance (e.g., grace periods).

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