

ALERT

**Employee Benefits &
Employment Law**

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**NOT SO FAST!
NEW REGULATION SUSPENDS MANY DEADLINES
FOR WELFARE BENEFIT PLANS**

Many of the deadlines that normally apply to employer-sponsored group health plans and other types of welfare benefit plans have effectively been suspended as a result of a newly issued regulation from the Department of Labor (“DOL”) and Internal Revenue Service (“IRS”).

The new regulation draws on the agencies’ authority to suspend certain deadlines that would otherwise apply to individuals during the COVID-19 pandemic. In particular, the regulation puts deadlines for the following events on hold during what is being called the “Outbreak Period”:

- (1) Exercising HIPAA special enrollment rights, such as for a new spouse or a newborn child;
- (2) Notifying a plan of a COBRA qualifying event, such as a divorce;
- (3) Electing COBRA continuation coverage;
- (4) Making COBRA premium payments;
- (5) Filing a benefit claim, appealing an adverse benefit determination, and/or requesting an external review of a claim that has been denied; and
- (6) “Perfecting” a request for external review if the original request was determined not to be complete.

Additionally, the normal deadline for a group health plan to provide a COBRA election notice is also being suspended during the Outbreak Period.

The new regulation does not, however, suspend or extend any other deadlines. This means, among other things, that it does not allow an employer to delay offering coverage to a newly

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eligible employee and it does not give a newly eligible employee who has been offered coverage extra time to enroll.

The Outbreak Period began on March 1, 2020. Unless the IRS and DOL announce a different ending date, the Outbreak Period will end sixty days after the announced end of the current “National Emergency.” We obviously have no way of knowing exactly when that will be.

The suspension by this new regulation of the deadlines that are listed above represents both a big change and a big challenge administratively. Among other things:

- (1) It will allow a qualified beneficiary to elect COBRA continuation coverage months (perhaps many months) after the pre-regulation deadline for electing COBRA had already expired;
- (2) It will require COBRA continuation coverage to be reinstated (at least on a provisional basis) if COBRA had previously been elected, but the pre-regulation deadline for paying the required COBRA premiums had been missed;
- (3) It will allow qualified beneficiaries to take a “wait and see” approach before they decide to elect COBRA and/or before they pay the premiums for coverage;
- (4) It will also allow eligible employees to take a “wait and see” approach before they decide to request HIPAA special enrollment for themselves and/or their eligible dependents; and
- (5) It will open the door to the possibility that both claims and appeals of claims that have been denied might be submitted well beyond the usual deadlines.

We know that this has already generated many questions and we would not be surprised if additional guidance is issued to address these questions. For example, COBRA notices and forms and the Explanation of Benefits (EOBs) used by group health plans all contain references to the deadlines that normally apply. The final regulation says nothing about whether these forms will need to be revised or whether they can continue to be used as long as the deadlines on them are not enforced. We will continue to watch for any additional guidance.

In the meantime, if you have any questions, please do not hesitate to contact the Employee Benefits & Employment Law Team at Hinkle Law Firm at (316) 267-2000.

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