

DOL and IRS Guidance Regarding COBRA and Health Plan Deadlines Amid COVID-19

Frequently Asked Questions

General

In response to the COVID-19 Pandemic, the IRS and DOL have come out with various guidance intended to address specific and unprecedented challenges that employers and participants are facing regarding deadlines. This FAQ sheet will seek to provide additional clarity regarding the following:

- **Guidance and Relief for Employer Benefits plans Due to COVID-19:**
 - Department of Labor, IRS and Treasury Joint Notice as published in the Federal Register – Vol. 85, No. 86 / May 4, 2020 / Rules and Regulations:
<https://www.govinfo.gov/content/pkg/FR-2020-05-04/pdf/2020-09399.pdf>
 - EBSA Disaster Relief Notice 2020-01
<https://www.dol.gov/sites/dolgov/files/ebsa/employers-and-advisers/plan-administration-and-compliance/disaster-relief/ebsa-disaster-relief-notice-2020-01.pdf>
 - COVID-19 FAQs for Participants and Beneficiaries – Department of Labor April 28, 2020:
<https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/covid-19.pdf>

- **Guidance and relief regarding Section 125 – Cafeteria Plans**
 - Notice 2020-29 (May 12, 2020): <https://www.irs.gov/pub/irs-drop/n-20-29.pdf>
 - Notice 2020-33 (May 12, 2020): <https://www.irs.gov/pub/irs-drop/n-20-33.pdf>

Overview of Guidance and Relief for Employer Benefit Plans Due to COVID-19

What is the main purpose of the Joint Notice from DOL, IRS and Treasury?

The guidance disregards election, payment and submission requirement timeframes for the Outbreak Period and allows for extensions of:

- Time a participant has to enroll in coverage
- Time a participant has to pay for COBRA
- Dispute denials of claims
- Amount of time to submit claims for coverage
- Special health plan enrollment period extensions
- Time a participant has to notify a health plan of a qualifying event or disability
- Time a group health plan sponsor or administrator has to provide a COBRA election notice

What is the Outbreak Period?

The notice provides certain extensions and relief during the “Outbreak Period”. The beginning of the pandemic and the “Outbreak Period” is considered March 1, 2020. The “Outbreak Period” will end 60 days after the pandemic ends. Since the “Outbreak Period” is still ongoing, the end date is still a moving target.

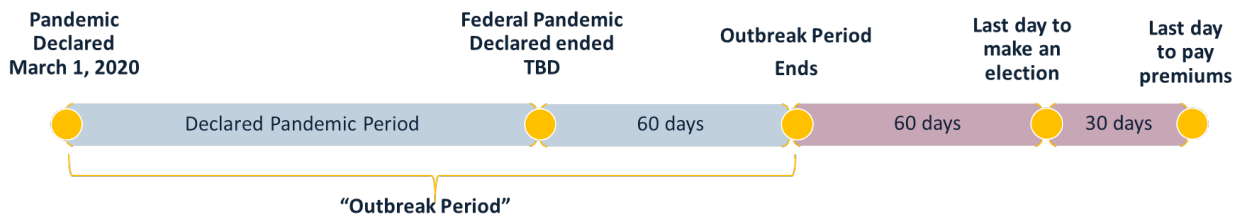
How will the dates be determined once the National Emergency has ended & the Outbreak Period has ended within different states?

The end of the Outbreak Period will be determined when a Federal Declaration is made indicating the pandemic has ended. Unless additional guidance is provided, this will not vary by state and doesn’t directly tie to individual states plans to reopen. Since the end of the outbreak period has not yet been determined, we only know which plans this affects from a starting point perspective. Plans whose run out period ended 3/1 or after are currently affected.

COBRA Administration Implications

How does the guidance specifically affect COBRA administration?

Qualified Beneficiaries (QBs) typically have 60 days to enroll following a qualifying event notice, Due to the Outbreak Period, participants will have 60 days following the end of the Outbreak period to make their election. Plus, they will have an additional 30 days to make applicable premium payments



Are employers required to notify existing qualified beneficiaries (QBs) of the extension?

There is no requirement to notify QBs of the extension. However, BRI has the ability to distribute retroactive to qualifying dates of 1/2/20 or later, supplemental communications to QBs upon request and at a cost of \$5 per notice. All newly eligible QBs will automatically receive a communication with their qualifying event notice.

How are existing COBRA Notices affected by the extension?

During this period, BRI will include an insert to all standard notices including the General Rights Notice and the Specific Rights Notice.

What is the effect on coverage?

Coverage is reinstated retroactively upon receipt of the first months premium payment. Delaying elections or premium payments may make COBRA unaffordable as premium payments would accrue for the entire coverage period and would be due with the first payment.

Are QBs encouraged to wait to pay premiums?

No, QBs should be paying premiums on a timely basis whenever possible. When premiums are paid retroactively, it increases the likelihood of a poor experience, improper billing and insurance disputes. This can be avoided by continuing to pay premiums as scheduled.

What are the implications for employers with open enrollment periods?

COBRA participants have the same rights to open enrollment as similarly situated employees and would be eligible to change plans during an open enrollment period.

Example: EE has HMO single coverage when they term in May. They elect COBRA in August but the plan had OE for a 7/1 renewal date. The EE could elect an alternative plan and even enroll in family coverage.

What is the impact on termination rules?

Continuation coverage will terminate in our system and be submitted to carriers based upon existing grace period values and last acceptable postmark dates as they are handled today. If payment is received at a later date and is permitted under the guidance, coverage would be reinstated at that time.

Rules and handling of retroactive terminations are not clear and may vary by carrier.

What is BRI doing to administer these extended grace periods for COBRA?

1. BRI will be supporting the extended grace periods and timelines to elect COBRA coverage as requested by qualified beneficiaries.
2. Upon request, BRI will retroactively notify all QBs
3. During the pandemic period, we will include: a custom letter attachment to address the new COBRA extensions in Special Rights Notice, Plan Terminations Notice, Open Enrollment Packets. Additionally, Announcements will be posted on the member portal to provide notice and awareness to QBs.

What happens to individuals who have been making premium payments but cease doing so during the Outbreak Period?

By default, BRI will terminate continuation coverage in our system and submit to carriers based upon existing grace period values and last acceptable postmark dates as they are handled today. However, if the COBRA participant requests an extension, BRI will honor the extension and the participant would not be terminated for non-payment until after the Outbreak Period deadlines are met. Additionally, an individual that was terminated and later pays their premiums in full, will be retroactively reinstated with coverage.

FSA / HRA Administration

How does the guidance specifically affect FSA/HRA administration?

The guidance disregards run-out expirations for the Outbreak period. Participants with a runout period that expired on, or after, March 1, 2020 will have an extended period to claim reimbursements for eligible expenses.

What plans are impacted?

All runout periods that end 3/1 and beyond are potentially affected. Since there is no end date, plans on nearly any plan year have the potential to be impacted.

How will \$500 rollover and 2.5 extensions be handled?

The \$500 Medical FSA rollover will occur in accordance with your current run out period as outlined on your plan highlights. If funds need to be moved back to the prior plan year to reimburse claim submissions, we will handle those as individual adjustments. The two and a half month extended grace period (EGP) to incur additional expenses is not affected by this temporary waive of the plan run out period.

Is imputed income reporting affected by this extension?

Imputed income reporting will continue to be provided per your plan rules.

How will plan reconciliation affected?

If your plan is affected by the outbreak period, your plan reconciliation will be delayed until after all plan activity is complete and denial periods have occurred.

Participant Communication and Claims

Are participants being notified of the change?

Yes. All FSA and HRA participants administered by Benefit Resource will receive a communication the week of May 18, 2020 outlining the extensions and potential impacts, unless otherwise notified.

Will you be actively communicating to participants who have had claims appeals denied since 3/1?

Participants that had claims denied due to run-out expiration between March 1st and April 3rd will need to resubmit their claims in order to have them reviewed and reimbursed, if approved. Claims received after April 3 were automatically reviewed for eligible submission dates and reprocessed accordingly.

How will you administer the extension of the appeals deadline?

This will follow our standard appeals process with extended timeframes.

What, if any impact, do these rules have on 2019 calendar year denied claims?

If a claim was previously submitted and denied, there are a few specific scenarios in which a participant may want to resubmit the claim for reprocessing.

- The claim was previously denied for late submission.
- The claim was missing documentation.
- The claim was not previously submitted.
- The claim was for an expense that is now eligible (but was not covered at the time of submission). This is likely to apply to Over-the-counter Drugs and Medicines and Menstrual Care products which became eligible as of January 1, 2020.

I missed the deadline to submit a medical FSA claim for 2019. Can I submit a claim and receive reimbursement from 2019 funds?

If your plan's run out period ended 3/1 or after, you are eligible to submit your claim for reimbursement.

I had a procedure canceled due to COVID-19 and I was unable to use my funds. Do I have additional time to incur expenses?

Please refer to your Plan Highlights to confirm the time frame in which expenses can be incurred.

Can I submit claims online or through the mobile app for a prior plan year?

Participant with an active election in the current plan year will be able to submit claims online or through the mobile app for a prior period. Participants that do not have a current election are asked to complete a manual claim form by mail or fax.

Overview of Guidance and Relief for Section 125 – Cafeteria Plans

What is the main purpose of Notice 2020-29?

Notice 2020-29 offers temporary relief for Section 125 Plans to permit:

- Mid-year election changes for employer-sponsored health coverage, health FSAs and dependent care accounts.
- Extend claims period for health and dependent care accounts until December 31, 2020 for plans ending on or after January 1, 2020.

Changes may be made at an employer's discretion and require employers to adopt a plan amendment. An amendment for the 2020 plan year must be adopted on or before December 31, 2021, and may be effective retroactively to January 1, 2020.

Additionally, it clarifies that HDHPs that cover the treatment of COVID-19, telehealth or other remote care services between January 1, 2020 and December 31, 2021 without a deductible, which otherwise qualify, still qualify as HSA-eligible plans

What is the main purpose of Notice 2020-33?

Notice 2020-33 indexes the Health FSA rollover limit (currently \$500) to 20% of the annual limit. For 2020 funds rolling into 2021, the limit would be \$550 (20% of \$2,750). This new limit may be adopted at the employers discretion.

What changes to elections are permitted?

Notice 2020-29 permits employees to make certain mid-year election changes for employer-sponsored health coverage, health FSAs and Dependent Care FSAs. Employers may amend one or more of their Section 125 plans to allow employees to:

- (1) Make a new election for an employer-sponsored health plan
- (2) Revoke an existing election for employer-sponsored health plan (provided the employee attests in writing that the employee is or will be enrolled in another employer-sponsored health plan)
- (3) Revoke an election, make a new election, or increase or decrease an existing election for a Health FSA or Limited FSA
- (4) Revoke an election, make a new election, or decrease or increase a dependent care election

What considerations should employers make when deciding to permit election changes?

Employers have the ability to set certain limits regarding if and what election changes are permitted. This may include when election changes will be accepted, what plans will be allowed to make changes, and if there will be any limits on the changes. For example, an employer may restrict minimum FSA elections based on the higher of deposits collects or claims already incurred and paid.

Additionally, employers should keep in mind that nondiscrimination rules still apply and election changes could adversely impact testing.

Employers are not required to permit election changes under this guidance and must actively amend their plan to do so.

What is BRI doing to support the relief guidance?

We are still evaluating the specific implications and operational implementation of Notice 2020-29 and Notice 2020-33. However, we are committed to supporting this relief for clients and their participants. Additional communications will be provided to help aid in employer's adoption of these changes.

What should employers do if they are interested in adopting any of these changes?

Clients can reach out to their assigned client specialists to communicate their intent to adopt these changes.

Can someone who previously opted out for FSA for 2020 now opt in without a life event?

If employer's amend their FSA to allow election changes, it could allow employees to increase, decrease, make a new election or revoke an election.

Benefit Resource does not provide legal advice. Please be sure to consult your legal or benefits council to address your specific questions or concerns.