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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Parts 2560 and 2590

Extension of Certain Timeframes for Employee Benefit Plans, Participants, and Beneficiaries Affected by the COVID-19 Outbreak

AGENCY: Employee Benefits Security Administration, Department of Labor; Internal Revenue Service, Department of the Treasury.

ACTION: Notification of relief; extension of timeframes.

SUMMARY: This document announces the extension of certain timeframes under the Employee Retirement Income Security Act and the Internal Revenue Code for group health plans, disability and other welfare plans, pension plans, and participants and beneficiaries of these plans during the COVID-19 National Emergency.

DATES: [Insert date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Department of Labor, Elizabeth Schumacher or David Sydlik, Office of Health Plan Standards and Compliance Assistance, Employee Benefits Security Administration, at 202-693-8335, and Thomas Hindmarch, Office of Regulations and Interpretations, Employee Benefits Security Administration, at 202-693-8500;

or William Fischer, Department of the Treasury, Internal Revenue Service, Office of Chief Counsel (Employee Benefits, Exempt Organizations and Employment Taxes) at 202–317–5500.

SUPPLEMENTARY INFORMATION:

I. Purpose

On March 13, 2020, President Trump issued the Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak¹ and by separate letter made a determination, under section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq., that a national emergency exists nationwide beginning March 1, 2020, as the result of the COVID-19 outbreak (the National Emergency).² As a result of that determination, the Federal Emergency Management Agency (FEMA) issued emergency declarations for every state, territory, and possession of the United States.³

As a result of the National Emergency, participants and beneficiaries covered by group health plans, disability or other employee welfare benefit plans, and employee pension benefit plans may encounter problems in exercising their health coverage portability and continuation coverage rights, or in filing or perfecting their benefit claims. Recognizing the numerous challenges participants and beneficiaries already face as a result of the National Emergency, it is important that the Employee Benefits Security Administration, Department of Labor, Internal

¹ Available at <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>.

² March 13, 2020 letter from President Trump to Secretaries of the Departments of Homeland Security, the Treasury, and Health and Human Services and the Administrator of the Federal Emergency Management Agency, available at <https://www.whitehouse.gov/briefings-statements/letter-president-donald-j-trump-emergency-determination-stafford-act/>.

³ FEMA Release Number HQ-20-017-FactSheet available at <https://www.fema.gov/news-release/2020/03/13/covid-19-emergency-declaration>.

Revenue Service, and Department of the Treasury (the Agencies) take steps to minimize the possibility of individuals losing benefits because of a failure to comply with certain pre-established timeframes. Similarly, the Agencies recognize that affected group health plans may have difficulty in complying with certain notice obligations.

Accordingly, under the authority of section 518 of the Employee Retirement Income Security Act of 1974 (ERISA) and section 7508A(b) of the Internal Revenue Code of 1986 (the Code), the Agencies are extending certain timeframes otherwise applicable to group health plans, disability and other welfare plans, pension plans, and their participants and beneficiaries under ERISA and the Code.⁴

The Agencies believe that such relief is immediately needed to preserve and protect the benefits of participants and beneficiaries in all employee benefit plans across the United States during the National Emergency. Accordingly, the Agencies have determined, pursuant to section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(A), (B) and 553(d), that there is good cause for granting the relief provided by this document effective immediately upon publication, and that notice and public participation may result in undue delay and, therefore, be contrary to the public interest.⁵

⁴ ERISA section 518 and Code section 7508A(b) generally provide that, in the case of an employee benefit plan, sponsor, administrator, participant, beneficiary, or other person with respect to such a plan affected by a Presidentially declared disaster, notwithstanding any other provision of law, the Secretaries of Labor and the Treasury may prescribe (by notice or otherwise) a period of up to one year that may be disregarded in determining the date by which any action is required or permitted to be completed. Section 518 of ERISA and section 7508A(b) of the Code further provide that no plan shall be treated as failing to be operated in accordance with the terms of the plan solely as a result of complying with the postponement of a deadline under those sections.

⁵ Good cause exists for the same reasons underlying the issuance of the March 13, 2020 Proclamation on Declaring a National Emergency Concerning the Coronavirus Disease 2019 (COVID-19) Outbreak and the determination, under section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121, *et seq.*, that a national emergency exists nationwide as a result of the COVID-19 pandemic, and the same reasons

This document has been reviewed by the Department of Health and Human Services (HHS), which has advised the Agencies that HHS concurs with the relief specified in this document.⁶ HHS has advised the Agencies that HHS will exercise enforcement discretion to adopt a temporary policy of measured enforcement to extend similar timeframes otherwise applicable to non-Federal governmental group health plans and health insurance issuers offering coverage in connection with a group health plan, and their participants, beneficiaries and enrollees under applicable provisions of the Public Health Service Act (PHS Act). HHS has advised the Agencies that HHS encourages plan sponsors of non-Federal governmental group health plans to provide relief similar to that specified in this document to participants and beneficiaries, and encourages states and health insurance issuers offering coverage in connection with a group health plan to enforce and operate, respectively, in a manner consistent with the relief provided in this document. HHS has also advised the Agencies that HHS will not consider a state to have failed to substantially enforce the applicable provisions of title XXVII of the PHS Act if the state takes such an approach.

The relief provided by this document supplements other COVID-19 guidance issued by the Agencies, which can be accessed on the Internet at:

underlying the issuance of the January 31, 2020 declaration that a public health emergency exists under section 319 of the Public Health Service Act (PHS Act).

⁶ Section 104 of the Title I of Health Insurance Portability and Accountability Act of 1996 (HIPAA) requires that the Secretaries of Labor, the Treasury, and Health and Human Services (the Departments) ensure through an interagency Memorandum of Understanding (MOU) that regulations, rulings, and interpretations issued by each of the Departments relating to the same matter over which two or more departments have jurisdiction, are administered so as to have the same effect at all times. Under section 104, the Departments, through the MOU, are to provide for coordination of policies relating to enforcement of the same requirements in order to have a coordinated enforcement strategy that avoids duplication of enforcement efforts and assigns priorities in enforcement. See section 104 of HIPAA and Memorandum of Understanding applicable to Title XXVII of the PHS Act, Part 7 of ERISA, and Chapter 100 of the Code, published at 64 FR 70164, December 15, 1999.

<https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/disaster-relief> and <https://www.irs.gov/coronavirus>.

II. Background

Title I of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) provides portability of health coverage by, among other things, requiring special enrollment rights into group health plans upon the loss of eligibility of coverage. ERISA section 701, Code section 9801, 29 CFR 2590.701–6, 26 CFR 54.9801–6. Title X of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) permits qualified beneficiaries who lose coverage under a group health plan to elect continuation health coverage. ERISA section 601, Code section 4980B, 26 CFR 54.4980B–1. Section 503 of ERISA and 29 CFR 2560.503–1 require employee benefit plans subject to Title I of ERISA to establish and maintain reasonable procedures governing the determination and appeal of claims for benefits under the plan. Section 2719 of the PHS Act, incorporated into ERISA by ERISA section 715, and into the Code by Code section 9815, imposes additional rights and obligations with respect to internal claims and appeals and external review for non-grandfathered group health plans and health insurance issuers offering non-grandfathered group or individual health insurance coverage. See also 29 CFR 2590.715–2719 and 26 CFR 54.9815–2719. All of the foregoing provisions include timing requirements for certain acts in connection with employee benefit plans, some of which are being modified by this document.

A. Special Enrollment Timeframes

In general, HIPAA requires a special enrollment period 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 Insurance Program), and when a person becomes a dependent of an eligible employee by birth, marriage, adoption, or placement for adoption. ERISA section 701(f), Code section 9801(f), 29 CFR 2590.701-6, and 26 CFR 54.9801-6. 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 the special enrollment rights added by the Children's Health Insurance Program Reauthorization Act of 2009). ERISA section 701(f), Code section 9801(f), 29 CFR 2590.701-6, and 26 CFR 54.9801-6.

B. COBRA Timeframes

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. ERISA section 605 and Code section 4980B(f)(5). 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. ERISA section 602(3) and Code section 4980B(f)(2)(C). COBRA continuation coverage may be terminated for failure to pay premiums timely. ERISA section 602(2)(C) and Code section 4980B(f)(2)(B)(iii). Under the COBRA rules, a premium is considered paid timely if it is made not later than 30 days after the first day of the period for which payment is being made. ERISA section 602(2)(C), Code section 4980B(f)(2)(B)(iii), and 26 CFR 54.4980B-8 Q&A-5(a). 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. ERISA section 606, Code section 4980B(f)(6), and 29 CFR 2590.606–3.

C. Claims Procedure Timeframes

Section 503 of ERISA and 29 CFR 2560.503–1, as well as section 2719 of the PHS Act, incorporated into ERISA by ERISA section 715 and 29 CFR 2590.715–2719, and into the Code by Code section 9815 and 26 CFR 54.9815–2719, require ERISA-covered employee benefit plans and non-grandfathered group health plans and health insurance issuers offering non-grandfathered group or individual health insurance coverage to establish and maintain a procedure governing the filing and initial disposition of benefit claims, and to provide claimants 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 claimants 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). 29 CFR 2560.503–1(h)(2)(i) and (h)(3)(i), 29 CFR 2590.715–2719(b)(2)(ii)(C), and 26 CFR 54.9815–2719(b)(2)(ii)(C).

D. External Review Process Timeframes

PHS Act section 2719, incorporated into ERISA by ERISA section 715 and into the Code by Code section 9815, sets out 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. 29 CFR 2590.715–2719(d)(2)(i) and 26 CFR 54.9815–2719(d)(2)(i). 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. 29 CFR 2590.715–2719(d)(2)(ii)(B) and 26 CFR 54.9815–2719(d)(2)(ii)(B).

III. Relief

A. Relief for Plan Participants, Beneficiaries, Qualified Beneficiaries, and Claimants

Subject to the statutory duration limitation in ERISA section 518 and Code section 7508A,⁷ all group health plans, disability and other employee welfare benefit plans, and employee pension benefit plans subject to ERISA or the Code must disregard the period from March 1, 2020 until sixty (60) days after the announced end of the National Emergency or such

⁷ See footnote 4, *supra*.

other date announced by the Agencies in a future notification (the “Outbreak Period”)⁸ for all plan participants, beneficiaries, qualified beneficiaries, or claimants wherever located in determining the following periods and dates—

(1) The 30-day period (or 60-day period, if applicable) to request special enrollment under ERISA section 701(f) and Code section 9801(f),

(2) The 60-day election period for COBRA continuation coverage under ERISA section 605 and Code section 4980B(f)(5),⁹

(3) The date for making COBRA premium payments pursuant to ERISA section 602(2)(C) and (3) and Code section 4980B(f)(2)(B)(iii) and (C),¹⁰

(4) The date for individuals to notify the plan of a qualifying event or determination of disability under ERISA section 606(a)(3) and Code section 4980B(f)(6)(C),

(5) The date within which individuals may file a benefit claim under the plan’s claims procedure pursuant to 29 CFR 2560.503–1,

(6) The date within which claimants may file an appeal of an adverse benefit determination under the plan’s claims procedure pursuant to 29 CFR 2560.503–1(h),

⁸ To the extent there are different Outbreak Period end dates for different parts of the country, the Agencies will issue additional guidance regarding the application of the relief in this document.

⁹ The term “election period” is defined as “the period which—(A) begins not later than the date on which coverage terminates under the plan by reason of a qualifying event, (B) is of at least 60 days’ duration, and (C) ends not earlier than 60 days after the later of—(i) the date described in subparagraph (A), or (ii) in the case of any qualified beneficiary who receives notice under section 1166(a)(4) of this title, the date of such notice.” 29 USC 1165(a)(1), ERISA section 605(a)(1). See also Code section 4980B(f)(5).

¹⁰ Under this provision, the group health plan must treat the COBRA premium payments as timely paid if paid in accordance with the periods and dates set forth in this document. Regarding coverage during the election period and before an election is made, see 26 CFR 54.4980B-6, Q&A 3; during the period between the election and payment of the premium, see 26 CFR 54.4980B-8, Q&A 5(c).

(7) The date within which claimants may file a request for an external review after receipt of an adverse benefit determination or final internal adverse benefit determination pursuant to 29 CFR 2590.715–2719(d)(2)(i) and 26 CFR 54.9815–2719(d)(2)(i), and

(8) The date within which a claimant may file information to perfect a request for external review upon a finding that the request was not complete pursuant to 29 CFR 2590.715–2719(d)(2)(ii) and 26 CFR 54.9815–2719(d)(2)(ii).

B. Relief for Group Health Plans

With respect to group health plans, and their sponsors and administrators, the Outbreak Period shall be disregarded when determining the date for providing a COBRA election notice under ERISA section 606(c) and Code section 4980B(f)(6)(D).

C. Later Extensions

The Agencies will continue to monitor the effects of the Outbreak and may provide additional relief as warranted.

IV. Examples

The following examples illustrate the timeframe for extensions required by this document. An assumed end date for the National Emergency was needed to make the examples clear and understandable. Accordingly, the Examples assume that the National Emergency ends on April 30, 2020, with the Outbreak Period ending on June 29, 2020 (the 60th day after the end of the National Emergency). To the extent there are different Outbreak Period end dates for

different parts of the country, the Agencies will issue additional guidance regarding the application of the relief in this document.

Example 1 (Electing COBRA). (i) *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?

(ii) *Conclusion.* In Example 1, 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). (i) *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?

(ii) *Conclusion.* In Example 2, 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). (i) *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 longer 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 month(s)?

(ii) *Conclusion.* In this Example 3, 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 timely makes payment. 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 (i.e., 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). (i) *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?

(ii) *Conclusion.* Individual C is entitled to COBRA continuation coverage for March and April of 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). (i) *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?

(ii) *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). (i) *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?

(ii) *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). (i) *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?

(ii) *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.

Signed at Washington, DC, this 28th day of April, 2020.

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