



COVID-19 Outbreak Period Deadline Relief Continues

The President has the power to declare a National Emergency pursuant to the National Emergency Act¹, which provides, in part, that a national emergency automatically ends on the one-year anniversary of the date the emergency was declared unless the President announces an extension to that period. First declared by President Donald Trump as beginning March 1, 2020, President Biden extended the national emergency on February 24, 2021 (and which was scheduled to expire March 1, 2022). On February 18, 2022, President Biden again determined in a letter to Congress that it is necessary to further extend the national emergency period concerning the COVID-19 pandemic.²

This action follows Department of Health and Human Services (HHS) Secretary Xavier Becerra's recent – but separate – declaration that the government would extend the public health emergency for COVID-19.

As previously discussed,³ the DOL, along with HHS and the Department of the Treasury, have published guidance⁴ establishing an "Outbreak Period" during which many ERISA-required deadlines are extended or effectively suspended for individuals and plans that fall within the Outbreak Period on a case-by case basis until the earlier of (1) 60 days following the declared end of the National Emergency period; or (2) one year from the date the plan or individual's deadline period would have commenced (which will vary by individual occurrence).

While this extension continues the ongoing tolling period calculations, it bears repeating that the following deadlines – on an individual-by-individual basis - will be extended for the duration of the Outbreak Period relief:

- the 14-day deadline for plan administrators to provide COBRA election notices to qualified beneficiaries;
- the 30-day period (or 60-day period, in some cases) to exercise HIPAA special enrollment rights in a group health plan following birth, adoption, or placement for adoption of a child; marriage, loss of other health coverage; or eligibility for a state premium assistance subsidy;
- the 60-day deadline by which a participant or qualified beneficiary must provide notice of divorce or legal separation, a dependent child that ceases to be an eligible dependent under the terms of the plan), or a Social Security disability determination used to extend COBRA coverage;
- the 60-day deadline in which to elect COBRA coverage;

¹ 50 USCA § 1622

² <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/02/18/notice-on-the-continuation-of-the-national-emergency-concerning-the-coronavirus-disease-2019-covid-19-pandemic-2/>

³ See our original publication [here](#).

⁴ See the "Extension of Certain Timeframes for Employee Benefit Plans, Participants, and Beneficiaries Affected by the COVID-19 Outbreak" (available [here](#)); EBSA Disaster Relief Notice 2020-01 (available [here](#)); EBSA Disaster Relief Notice 2021-01 (available [here](#))

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- Individuals electing COBRA outside of the initial 60-day election period (as referenced above) generally have one year and 105 days after the election notice is provided to make the initial premium payment; and individuals electing COBRA within the generally applicable 60-day election period have one year and 45 days after the date of their election to make the initial payment;⁵
- the date by which monthly COBRA premium payments are due; and
- the deadline under the plan by which participants may file a benefit claim (under the terms of the plan) and the deadlines for appealing an adverse benefit determination or requesting an external review.

HealthEquity will continue to monitor agency guidance on this matter and provide updates accordingly. As always, we strongly encourage employers and plan sponsors to consult competent legal or benefits counsel for all guidance on how the actions apply in their circumstances.

Nothing in this communication is intended as legal, tax, financial or medical advice. We assume no liability whatsoever in connection with its use, nor are these comments directed to specific situations. Always consult a professional when making life-changing decisions.

⁵ <https://www.irs.gov/pub/irs-drop/n-21-58.pdf>