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New COVID-19 Relief for Employee Welfare Benefit Plans

During the last few months, the Department of Labor (DOL), Treasury Department, and Department of Health and Human Services (DHHS) have jointly issued multiple pieces of guidance intended to provide much needed relief to those suffering economic hardships from the coronavirus (COVID-19) pandemic. In this article, we'll explain how the most recent relief affects employee welfare benefit plans.

Overview of New Relief

To help overcome the financial hardships facing millions of Americans, the DOL and the Treasury Department published a final rule on May 4, 2020. The final rule extends and suspends various employee welfare benefit plan and COBRA deadlines that fall between March 1, 2020, and the end of a 60-day period following the close of the COVID-19 National Emergency (known as the Outbreak Period), which has yet to be announced.

The DOL and Treasury Department also worked with the DHHS to create EBSA Disaster Relief Notice 2020-01.This guidance extends deadlines for providing notices, disclosures, and documents that are due to plan participants and beneficiaries between March 1, 2020, and the end of the Outbreak Period. The relief applies to plan fiduciaries that act in good faith to provide this information as soon as administratively practicable. The EBSA notice also confirms that Form 5500 filing deadlines that occur between April 1, 2020, and July 14, 2020, must now be filed by July 15, 2020 (calendar-year plans are not affected).

On May 12, 2020, the IRS issued Notice 2020-29 and Notice 2020-33. Notice 2020-29 allows employees to make election changes relating to employer-sponsored group health coverage, health flexible savings accounts (FSAs), and dependent care FSAs mid-year with no special enrollment events. The notice also allows for health FSA and dependent care FSA participants to submit new claims for reimbursement up to December 31, 2020, from amounts that remained in accounts as of a plan year end or the end of the grace period that occurred at any time in 2020.

Notice 2020-33 increases the maximum $500 health FSA carryover amount to an amount that is equal to 20 percent of the maximum salary reduction contribution for the plan year. The increase takes effect immediately, making the maximum amount that can be carried forward for the 2020 plan year $550 (20 percent of $2,750).

How the Final Rule Affects Employee Welfare Benefit Plans

The most significant impact of the final rule involves providing certain individuals extended deadlines for performing certain acts. When calculating the new extended deadlines, the final rule disregards the Outbreak Period.

- **Filing a benefit claim:** The final rule extends the deadline for filing claims for benefits under welfare benefit plans. Importantly, this relief will also include calendar-year health FSAs and health reimbursement accounts

(HRAs) that had a runout period ending on March 1, 2020 or later. Although this provision will help individuals with existing claims, it does not allow them to incur new claims applicable to an old plan year.

Example: An employee terminated employment and lost health coverage on May 1, 2020. Because the plan has a 90 day-runout period for terminated participants, the employee would normally have until July 30, 2020, to submit claims for reimbursement of eligible expenses incurred before the employee terminated employment. The period between the date of termination and the end of the Outbreak Period is now disregarded. If March 2, 2021 is the end of the Outbreak Period, the 90-day runout period will start on March 3, 2021, and end on May 31, 2021.

- **Filing an appeal and requesting a review:** The final rule extends the period to file an appeal of an adverse benefit determination. This period must be at least 60 days (for welfare benefit plans) or 180 days (for group health plans) following notification of the adverse benefit determination. The final rule also extends the four-month period for filing a request for external or internal review.
- **Special Enrollment Periods:** Employees and their eligible dependents now have more time to enroll in a group health plan following a special enrollment event. Usually individuals must elect coverage during a 30-day period (or a 60-day period, depending on plan provisions) following a special enrollment event.

  Example: An employee had a child on March 20, 2020. The employee would normally have 30 days to elect coverage for the child. The period between the birth and the end of the Outbreak Period is now disregarded. If October 10, 2020, is the end of the Outbreak Period, the 30-day period would start on October 11, 2020, and end on November 9, 2020.

How Notice 2020-29 Affects Employee Welfare Benefit Plans

IRS Notice 2020-29 gives plans additional deadline flexibility and eases restrictions associated with various plan requirements found in the Internal Revenue Code and associated Treasury Regulations. The extensions provided by the Notice are described below.

- **Modified rules on irrevocable elections:** Notice 2020-29 eliminates certain restrictions that limit the ability of participants to revoke and make new plan elections after the start of the plan year. During the 2020 plan year, elections pertaining to employer health coverage, health FSAs, and dependent care FSAs can now be made at any time on a prospective basis. This relief is not automatic. An employer will be required to amend its plan to allow participants to take advantage of this relief.

  Example: A participant elected to defer $1,200 into an FSA during open enrollment for a plan year that began on January 1, 2020. The participant is now permitted to change her election at any time and defer a different amount (e.g., $2,200) if she so chooses.

- **Extended the deadline for incurring claims:** Plan participants in health FSAs and dependent care FSAs may now incur and submit new claims for reimbursement up to December 31, 2020, based on amounts that remained in their FSA as of the end of a plan year or the end of a grace period that occurred at any time in 2020. This relief is not automatic. An employer will be required to amend its plan to allow participants to take advantage of this relief.

  Example: An employee was a participant in a 2019 calendar year FSA with a grace period that ended on March 15, 2020. He had $1,200 remaining in his account as of that date. He had not incurred any claims that he could submit for reimbursement through March 15, 2020. On June 29, 2020, the participant received medical services in excess of $1,200. He can submit his claim and be reimbursed for that amount.

How the Final Rule Affects COBRA Coverage

The Consolidated Omnibus Budget Reconciliation Act (COBRA) helps employees going through a qualifying event (such as termination of employment) maintain health coverage, often at a lower cost than they might find in the marketplace. To assist those who have lost health insurance coverage because of the pandemic, the final rule extends several COBRA-related deadlines. When calculating the new extended deadlines, the final rule disregards the Outbreak Period.

Delayed COBRA Election Deadline

To assist those who have lost health insurance coverage through termination of employment or a reduction of hours, the final rule extends the deadline to elect COBRA coverage. Normally, the election period ends 60 days following the later of 1) the qualifying event or 2) the date the plan provides the COBRA election notice to the qualified beneficiary.

> **Example:** An employee is terminated on April 10, 2020, and loses coverage on April 30, 2020. If the terminated employee receives the COBRA election notice on May 5, 2020, he would normally have until July 4, 2020, which is 60 days, to elect COBRA coverage. But the Outbreak Period is now disregarded. If November 14, 2020, is the end of the Outbreak Period, the 60-day election period would start on November 15, 2020, and end on January 13, 2021.

This provision also gives employees flexibility in determining whether to spend money to continue coverage based on the type of medical issues they have during the extended deadline. Some people may choose to not enroll in COBRA coverage unless some type of expensive medical event makes it necessary. Normally, they would have a shorter window to determine the necessity of enrollment.

While the extended deadline helps individuals, it also creates risk for insurers and employers who may see employees taking advantage of the deadlines to enroll only if they incur significant costs. Healthy employees who would normally elect coverage, pay the premiums, and incur limited costs, will not have incentive to enroll during the window and will not be able to help offset costs as they normally would.

Delayed COBRA Payments

The final rule extends the amount of time that a qualified beneficiary has to submit a COBRA premium payment before coverage under the plan will cease. To be considered timely, the payment deadline is normally 30 days after the due date (or 45 days for the initial payment). While it is possible for qualified beneficiaries to take advantage of this relief in order to minimize expenses and avoid paying their premiums during the Outbreak Period, it is important to note that once the Outbreak Period is over, qualified beneficiaries must fully pay all prior months' premiums in order to retain coverage. This could be a substantial financial burden. But if a qualified beneficiary has a major medical event, it could be cheaper to make up the costs of numerous months of premiums than to pay for the medical expenses.

Delayed COBRA Notices

- **Extended qualified event notification deadline:** The final rule extends the date by which a covered employee or qualified beneficiary must notify the plan administrator of the following qualifying events: divorce (or legal separation) or a dependent child ceasing to be a dependent child. The normal deadline is 60 days after the date of the qualifying event.

- **Extended disability notification deadline:** Covered employees and qualified beneficiaries have more time to notify the plan administrator of a disability determination. The normal deadline is 60 days after the date of being determined to be disabled.

- **Extended COBRA rights notification deadline:** Plan administrators have more time to notify qualified beneficiaries of their COBRA rights following a qualifying event. The normal deadline is 14 days following the qualifying event (or 44 days when the employer is the plan administrator). Although plan administrators are not required to provide the COBRA election notice during the Outbreak Period, they must provide COBRA coverage if a participant elects it. Plan administrators will likely want to provide timely notices to encourage qualified beneficiaries to elect and pay for COBRA coverage.

Previous Relief Affecting Employee Welfare Benefit Plans

In March 2020, the IRS released Notice 2020-18, postponing the due date for all Federal income tax returns normally due on April 15, 2020, to July 15, 2020. Although not mentioned, contribution deadlines were expected to be delayed as well. A few weeks later, these expectations were met when Notice 2020-23 officially extended multiple deadlines that fell on or after April 1, 2020, and before July 15, 2020, to July 15, 2020—including deadlines for

- making 2019 HSA contributions;
- completing a 60-day rollover;
- providing Form 5498-SA to HSA owners and to the IRS;
- forfeiting unused FSA benefits;
- receiving cash for unused vacation days; and
- electing benefits in a noncalendar-year cafeteria plan.

Watch for Future Guidance

The last few months have seen a flurry of new guidance. This trend may continue for the duration of the pandemic. In fact, at the time of this writing the House of Representatives had just introduced a fourth stimulus package. Ascensus will be closely monitoring all future guidance. Visit FuturePlan.com for future updates.