*March 16, 2022*

**GUIDANCE ISSUED BY THE UNITED STATES DEPARTMENT OF LABOR WITH RESPECT TO EXTENDED DEADLINES FOR 1) COBRA, 2) SPECIAL ENROLLMENT, AND 3) HEALTHCARE CLAIM FILINGS AND APPEALS**

At the end of February 2021, the United States Department of Labor ("DOL") issued Disaster Relief Notice 2021-01 ("Guidance"), giving guidance as to how to administer the extension of certain plan participant deadlines under group health plans that were set to expire by law on February 28, 2021. The Guidance states the deadline extensions should be administered on an individual-by-individual basis and will continue to be suspended during the COVID-19 National Emergency.

By way of background, the DOL and Internal Revenue Service ("IRS") issued a joint rule ("Rule") in the spring of 2020, providing relief from certain pre-established deadlines for both group health plans and their plan members. The Rule was issued in response to the President declaring a national emergency with respect to the COVID-19 outbreak ("National Emergency"). The Rule defined the period starting March 1, 2020 and ending 60 days after the announced end of the National Emergency as the "Outbreak Period." The Rule required that all group health plans subject to ERISA or the Internal Revenue Code to disregard the Outbreak Period in determining various deadlines applicable to the benefit plan or plan members. While the end of the National Emergency Period has not been announced, Federal law explicitly limited the time period that may be disregarded with respect to these deadlines to one year.

The Guidance states that the one year deadline referenced above is applied on an individual-by-individual basis. To that end, each deadline will be disregarded on an individual-by-individual basis until the earlier of (i) the end of the 12-month period starting on the date the plan member was first eligible for relief or (ii) the end of the Outbreak Period. (The first date upon which a plan member could be eligible for relief was March 1, 2020, the first day of the National Emergency. Therefore, the earliest date upon which a disregarded period could begin to resume was also March 1, 2021.)

As a reminder, the following deadlines were previously suspended. Also included are examples as to application of the one year deadline.

* **The 30 and 60 day HIPAA special enrollment periods**. The thirty-day special enrollment period is triggered when eligible employees or dependents lose eligibility for other health plan coverage in which they were previously enrolled, and when an eligible employee acquires a dependent through birth, marriage, adoption, or placement for adoption. Sixty-day special enrollment periods may be triggered by changes in eligibility for state premium assistance under the Children's Health Insurance Program.

**Example:**An employee receives health coverage under a group health plan sponsored by her spouse's employer. However, the spouse's employment is terminated, and the employee's coverage ends March 31, 2021. The employee's employer also sponsors a group health plan and requires notice of special enrollment within thirty days of the loss of coverage (here by April 30, 2021). Under the Guidance, the employee has until the earlier of (1) April 30, 2022, or (2) 30 days after the end of the Outbreak Period to enroll in coverage under her employer's plan.

* **COBRA**. Multiple COBRA deadlines were suspended, including (1) the deadline to notify the plan of a qualifying event; (2) the deadline for individuals to notify the plan of a determination of disability; (3) the 14 day deadline for plan administrators to furnish COBRA election notices; (4) the 60 day deadline for participants to elect COBRA; and (5) the 45 day deadline in which to make a first premium payment and 30 day deadline for subsequent premium payments.

**Example:** If a qualified beneficiary's COBRA election period started April 1, 2020, the qualified beneficiary's disregarded period would end March 31, 2021, and the qualified beneficiary's 60-day period to make a COBRA election would begin April 1, 2021. The COBRA election notice need not be provided until the earlier of (1) May 30, 2021, or (2) 60 days after the end of the Outbreak Period.

* **Claims Procedures**.The deadlines were suspended for plan members 1) to file claims for benefits, and 2) to appeal adverse benefit determinations. (Group health plans must normally allow at least 180 days in which to appeal.)

**Example:** A group health plan requires initial claims to be submitted within 365 days after the date the claim is incurred. An employee incurs a claim on April 1, 2020. Absent the deadline extension, the claim must be submitted by April 1, 2021. However, under the Guidance, the claim must be submitted by the earlier of (1) April 1, 2022, or (2) 365 days after the end of the Outbreak Period.

* **External Review Process***.*Non-grandfathered group health plan deadlines were suspended with respect to requests for external review. (Group health plans must allow four months after the receipt of a notice of a final adverse benefit determination in which to request an external review.) Other deadlines that apply for perfecting an incomplete request for review were also extended.

**Example:** The employee receives a notice of a final adverse benefit determination on September 1, 2020. The employee may submit a request for external review until the earlier of (1) January 1, 2022, or (2) 4 months after the end of the Outbreak Period.