



Major Changes to Special Enrollment & COBRA Timeframes

The DOL and the IRS (“the agencies”) exercised their authority in a final rule action to substantially alter the timeframes imposed upon, “all plan participants, beneficiaries, qualified beneficiaries, or claimants wherever located,” for the election of coverage due to a HIPAA special enrollment event, the election of COBRA coverage after a COBRA triggering event, the payment for COBRA coverage, and the dates by which claims and certain appeals must be made.

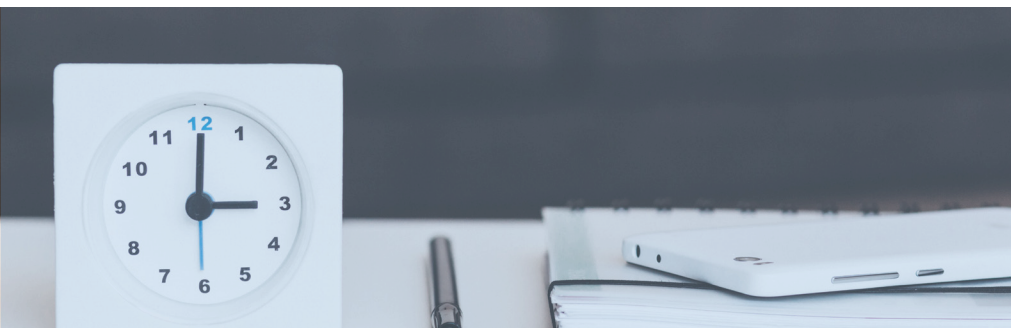
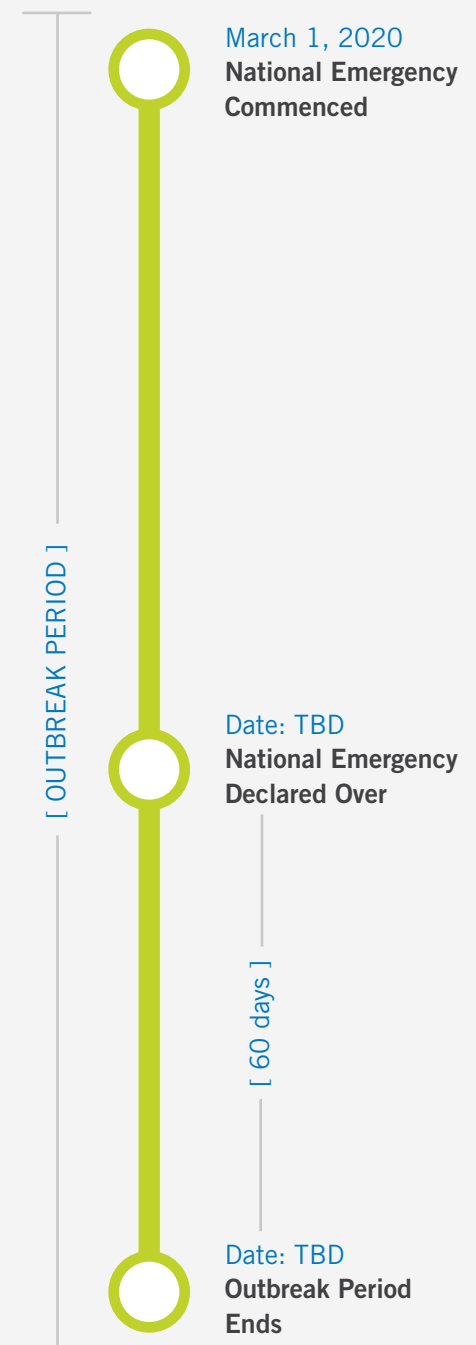
The [final rule](#) is retroactive to March 1, 2020, and applies, “until sixty (60) days after the announced end of the National Emergency or such other date announced by the Agencies in a future notice.” The agencies call the period of time between March 1, 2020, and the 60 days after the announced end of the National Emergency the “Outbreak Period.”

This means that the rule goes into effect immediately, without a comment period, the rule is retroactive, and that the end date of this guidance is a moving target and could ostensibly be in place for up to one year, at which point the legislative authority for this change to the rules will expire.

The following is a breakdown of each change:

1. HIPAA SPECIAL ENROLLMENT EXTENSIONS

Group health plans must allow eligible individuals to request special enrollment for a HIPAA special enrollment event for 30 to 60 days (depending on the special enrollment event) after the end of the Outbreak Period. Eligible individuals, including employees or dependents who have a loss of eligibility for other coverage or an employee that has an acquisition of a new dependent by marriage, birth, adoption or placement for adoption, can add coverage under the group health plan.





2. COBRA EXTENSIONS

- a. Group health plans must allow eligible individuals 60 days after the end of the Outbreak Period to elect COBRA coverage.
- b. Group health plans must allow qualified beneficiaries at least 30 days after the end of the Outbreak Period to make payment for the period of coverage not paid during the Outbreak Period.
 - i. Partial payment of the owed COBRA premiums can be applied to cover only a portion of the Outbreak Period, with the partial payment being applied to the earliest months first.
- c. Group health plans must allow individuals 60 days after the end of the Outbreak Period to notify the plan administrator of COBRA qualifying events (e.g., divorce, loss of dependent status, etc.) or of receipt of a disability determination by the SSA.

3. CLAIMS PROCESS EXTENSIONS

- a. The timeframe within which individuals may file a benefit claim under the plan's claims procedure cannot start until the end of the Outbreak Period.
- b. The timeframe within which claimants may file an appeal of an adverse benefit determination under the plan's claims procedure cannot start until the end of the Outbreak Period.
- c. The timeframe within which claimants may file a request for an external review after receipt of an adverse benefit determination or final internal adverse benefit determination cannot start until the end of the Outbreak Period.
- d. The timeframe within which a claimant may file information to perfect a request for external review upon a finding that the request was not complete cannot start until the end of the Outbreak Period.

It should be noted that the final rule also disregards the Outbreak Period when establishing the timeframe for providing a COBRA election notice to plan participants. The conservative approach is to continue sending election notices within the traditional timeframes. Employers wishing to send out election notices after the Outbreak period has expired must discuss this course of action with their legal counsel. Doing so will create a chain reaction of issues not contemplated in the final rule.

The [final rule](#) provides examples of how these timeframes are extended, starting on page 11.

The final rule indicates that the U.S. Department of Health & Human Services (HHS) agrees with these changes, but it does not appear that it will produce its own guidance requiring non-Federal governmental employers to comply. It remains unclear what responsibilities, if any, a public employer has under the rules. Ideally, HHS will issue additional guidance to provide further clarity.

These are significant changes to the way plan sponsors administer their plans and will present significant challenges for the foreseeable future.

Please be advised that any and all information, comments, analysis, and/or recommendations set forth above relative to the possible impact of COVID-19 on potential insurance coverage or other policy implications are intended solely for informational purposes and should not be relied upon as legal advice. As an insurance broker, we have no authority to make coverage decisions as that ability rests solely with the issuing carrier. Therefore, all claims should be submitted to the carrier for evaluation. The positions expressed herein are opinions only and are not to be construed as any form of guarantee or warranty. Finally, given the extremely dynamic and rapidly evolving COVID-19 situation, comments above do not take into account any applicable pending or future legislation introduced with the intent to override, alter or amend current policy language.