

# COBRA Regulations Update April 29 2020

The Department of Labor and Internal Revenue Service issued joint regulations on April 29, 2020, providing significant extensions of various deadlines applicable to employee benefit plans, especially group health plans. COBRA regulations are affected as well, including extending the election period for COBRA continuation coverage, the date for making COBRA premium payments, and the timeframe a plan/sponsor has to provide a COBRA election notice.

We understand that during this time of uncertainty, employers across the nation have been forced to reduce their workforce and have many questions regarding the impact of COVID-19 on COBRA compliance. We are closely monitoring the rapidly changing legislation so that we can inform our clients and participants about relevant changes. The purpose of this FAQ is to answer some of the questions regarding the changes in COBRA continuation regulations during the pandemic, specifically regarding deadline extensions.

## **Q: What is the “Outbreak Period” and how does it apply to the deadline extensions?**

A: The “Outbreak Period” runs retroactively from March 1, 2020 to 60 days after a yet-to-be announced end of the COVID-19 National Emergency (or such other date announced by the Departments in a future notice), but no longer than one year. Generally, the impact of the normal deadlines under COBRA are paused during the Outbreak Period and start-up again after the Outbreak Period ends.

## **Q: What do these deadline extensions mean for employers in regards to COBRA continuation?**

A: The extensions provide employers with additional time to provide a COBRA election notice after a qualifying event occurs. However, BASIC recommends that employers

continue to distribute required notices and disclosures according to the previous rules and timeframes, if possible. Employers should also know that they are permitted to furnish notices electronically during the Outbreak Period.

**Q: What do these deadline extensions mean for employees/participants?**

A: The extensions provide participants additional time to notify the plan of certain qualifying events (e.g., divorce or legal separation, aging out by dependent children, or disability determinations). The extensions also provide participants additional time to elect and pay for COBRA continuation coverage. Participants will still be required to pay premiums, but they will not be due until at least 60 days following the end of the Outbreak Period (which has not yet been determined). Nonpayment will likely result in an interruption of coverage; however, coverage will be reinstated retroactively to prevent a gap in coverage once payments are made.

Participants are encouraged to pay premiums under normal grace periods to lessen the impact of delayed coverage, temporarily denied claims, or avoid a balloon payment at the end of the Outbreak Period that represents multiple months of premiums due.

**Q: Are employers required to comply with the deadline extensions under the regulations?**

A: Yes, an employer must allow a COBRA participant additional time to elect COBRA and make payments. However, as explained below, coverage will likely be suspended until the payment has been made in full. This may cause a delay or denial in claims being processed for the participant by the carrier. BASIC recommends that employers check in with their group health plan carriers to understand how the carriers will handle claims and appeals in these situations.

**Q: How will BASIC administer the deadline extensions for COBRA continuation coverage?**

A: In Q&A sessions held after the regulations were issued, the Department of Labor provided clarification regarding permissible COBRA administration strategies during the Outbreak Period. Consistent with this informal guidance, BASIC will continue to process notifications under the existing timelines for COBRA continuation. COBRA coverage will continue to be terminated based on existing grace periods and postmark dates. Extensions under the regulations will be managed on an individual basis as BASIC is contacted by employees/participants.

BASIC notices have been updated to include notification to employees/participants of their right to extended election and payment deadlines. Additionally our notices for termination due to failure to make a payment were updated to inform the participant of their rights, the impact of a failure to make a payment, and instructions on next steps.

BASIC will continue to encourage participants to pay premiums under normal grace periods to lessen the impact of delayed coverage, temporarily denied claims, or avoid a balloon payment at the end of the Outbreak Period that represents multiple months of premiums due.

**Q: Can a participant extend their federal COBRA continuation period?**

A: Not at this time. There have been no updates in the regulations to allow for additional coverage periods outside of the standard Federal COBRA guidelines. Participants may have other health coverage available to them, including coverage through the Health Insurance Marketplace at [www.HealthCare.gov](http://www.HealthCare.gov) or by calling 1-800-318-2596.

**Q: What is the COBRA obligation for an employer that is going out of business?**

A: Unfortunately, if an employer is going out of business and plans will cease to exist, there is no obligation to offer COBRA to employees losing coverage. At this time, we recommend that any employees losing coverage due to a permanent closure refer to the Health Insurance Marketplace at [www.HealthCare.gov](http://www.HealthCare.gov) or call 1-800-318-2596 to find a plan that works for them.