



HAYS COMPANIES

## COVID-19 Relief: The End of the Statutory Authority Establishing the Outbreak Period

Last year, in response to COVID-19, the Departments of Labor (DOL) and Treasury provided relief extending certain deadlines due to the pandemic. This relief expires on February 28, 2021, and will immediately impact COBRA, HIPAA, and claims filing deadlines. Below is an overview of the relief, effective dates, and examples.

### Overview of The Relief & Effective Dates:

- Under the relief, group health care plans must disregard the “outbreak period” (defined as the period of time ending 60 days following the end of the National Emergency) when determining deadlines for COBRA elections, COBRA premium payments, HIPAA special enrollment, and the filing of claims and appeals. This relief meant that if an individual was in a COBRA election or premium payment period, experienced a HIPAA Special Enrollment, or was filing a claim, the timeframe by which these events must be reported or filed was disregarded (tolled) until the end of the outbreak period.
- The relief was effective March 1, 2020.
- The law authorizes the agencies to extend deadlines due to national emergencies for up to one year. It is unclear how the one-year limit on the extensions applies to the extensions provided by the DOL and Treasury due to the COVID-19 national emergency. There are two possibilities:
  1. The authority for this relief expires on February 28, 2021, and the tolling of time periods ends on that date.
  2. The application of the one-year limit is determined on a case by case basis depending on when the particular time period (e.g., COBRA election period, HIPAA special enrollment period, etc.) would have begun for a particular individual.

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### EXAMPLE 1

Abbott is covered under the group health care plan on July 1, 2020, and then terminates employment July 15, 2020. He receives a COBRA election notice on August 1, 2020. Abbott would normally have a 60-day COBRA election period starting August 1st. However, the qualifying event has occurred during the “outbreak period” covered by the relief, which means Abbott can still elect COBRA as of today (February 19, 2021).

### ISSUE

1. Will Abbott’s 60-day election period begin to run on March 1, 2021 (meaning he will need to elect by April 29, 2021), or
2. Does his 60-day election period begin to run on August 1, 2021 (assuming the outbreak period does not end before that date)?

### EXAMPLE 2

Same as Example 1 except Abbott’s original qualifying event date occurred January 15, 2020, and his COBRA Election Notice was received on February 1, 2020, *before* the declaration of the National Emergency.

### ISSUE

1. Abbott has exhausted 29 days of his 60-day election period (leap year). Therefore, under the temporary rule he still has 31 days remaining to elect, and this period is on hold until the end of the outbreak period.
2. The *remainder* of Abbott’s 60-day election period should begin to run on March 1, 2021 (meaning he will need to elect by April 1, 2021).

**Note:** In this case the one-year limit on the extension would start running March 1, 2020, because Abbott’s COBRA election period began prior to that date.

**Currently, neither the DOL nor Treasury have provided any guidance on this issue.**

We see these as two possible interpretations of the law. **Plan Sponsors will need to decide how the temporary extended timeframes will apply and then check with carriers or stop-loss carriers to confirm these entities will honor the Plan Sponsor’s application of the requirements.**

### WHILE WE ARE AWAITING GUIDANCE:

- If the Plan Sponsor intends to run election and notification timeframes beginning on March 1, the employer will need to be ready to change this approach if agency guidance provides the timeframes begin to run from the occurrence of the event, rather than all time frames beginning to run as of March 1, 2021.
- If the Plan Sponsor intends to run the timeframes from the one-year anniversary of the original date of the occurrence, note that COBRA and claims timeframes apply to other group health plans (dental, vision, etc.), and carriers and stop-loss carriers need to agree to this approach.

The Hays Research and Compliance team will continue to monitor the situation and provide updates as they are received.

## Contact

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