

Updating Health Plans for COVID-19 Changes

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Today's Agenda

- Overview
- Benefit Changes
- Eligibility and Enrollment Changes
- Coverage During Paid Leave
- Extended Plan Deadlines

Overview 

New Laws for Health Plans

FFCRA	CARES Act
<ul style="list-style-type: none">• Families First Coronavirus Response Act (FFCRA)• Signed into law on March 18, 2020• Covered employers must provide paid leave related to COVID-19 pandemic• Health plan coverage must continue during paid leave• Health plans must cover COVID-19 testing without cost-sharing	<ul style="list-style-type: none">• Coronavirus Aid, Relief and Economic Security Act (CARES Act)• Signed into law on March 27, 2020• Expands health plan coverage for COVID-19 testing• Allows HDHPs to cover telehealth services• Accelerates the deadline for health plans to cover COVID-19 vaccine• Treats OTC medicines and menstrual care items as qualifying medical expenses for HSAs, HRAs and health FSAs

➤ New Regulatory Guidance

- IRS guidance for HDHPs (Notices 2020-15 and 2020-29)
- Extended plan deadlines:
 - Form 5500 (IRS Notice 2020-23)
 - ERISA notices and disclosures (DOL Disaster Relief Notice 2020-21)
- Extended deadlines for participants (final rule)
- IRS relief for Section 125 plans, health FSAs and DCAPs (IRS Notices 2020-29 and 2020-33)
- Agency FAQs on COVID-19 testing coverage and paid sick leave

Many states are implementing their own health insurance protections (for example, COVID-19 treatment without cost-sharing, telehealth coverage requirements and premium grace periods)

Benefit Changes >

➤ COVID-19 Diagnostic Testing

During the public health emergency, health plans must cover COVID-19 testing without cost-

- Effective March 18, 2020, this mandate applies to **all employer-sponsored health plans** and health insurance issuers
- This coverage cannot be subject to:
 - Deductibles, copayments or coinsurance
 - Prior authorization or other medical management requirements
- Must include items and services provided during a healthcare visit (including telehealth) that relate to COVID-19 diagnostic testing

➤ New Rules for HDHPs

- **General Rule:** To be HSA-compatible, HDHPs cannot pay benefits (except for preventive care) until deductible is met
- **Special Rules**
 - HDHPs can pay for **COVID-19 testing and treatment** before deductibles have been met (IRS Notice 2020-15)
 - The CARES Act allows HDHPs to cover **telehealth services without a deductible** (effective for plan years beginning before Jan. 1, 2022)
 - These changes can be retroactive to **Jan. 1, 2020** (IRS Notice 2020-29)

COVID-19 Vaccines

Health plans must cover COVID-19 preventive services and vaccines shortly after they are available and approved

- Non-grandfathered plans must cover recommended preventive health services without cost-sharing (ACA mandate)
- Health plans usually have at least one year after a new preventive care service is recommended to cover it
- The CARES Act **shortens this deadline** Plans must cover COVID-19 preventive services and vaccines (without cost-sharing) within **15 days** after recommendation

➤ New Eligible Expenses for HSAs, HRAs and Health FSAs

New Eligible Expenses

- Over-the-counter (OTC) medicines
- Menstrual care products
- CARES Act changes
- Removes the ACA's prescription requirement for OTC medicines
- Effective for expenses incurred on or after **Jan. 1, 2020**
- Optional change for HRAs and health FSAs – *Employers should consult with benefit administrators regarding implementation*

➤ Health FSA Changes

- **Extended claims period** IRS Notice 2020-29
 - May permit employees to use funds remaining at the end of plan year (or grace period) ending in 2020 for **expenses incurred through Dec. 31, 2020**
 - Discretionary change
 - Applies to all health FSAs, even those that permit carryovers
- **Increased carryover amount** IRS Notice 2020-33
 - Amount increases from \$500 to \$550 for plan years beginning in 2020
 - Inflation adjustment

ERISA Reminders >

➤ Plan Documents and SPDs

- Every ERISA plan must have a written plan document
- A summary plan description (SPD) must be provided to plan participants
- **Action Steps for COVID-19 Changes**
 - ✓ Update plan documentation
 - ✓ Provide a summary of the changes (SMM) to plan participants
 - ✓ Insurance carriers/TPAs may have updated benefit descriptions

In connection with the COVID-19 pandemic, the DOL has extended the deadline for providing SMMs to plan participants

Eligibility and Enrollment Changes

➤ Expanding Eligibility

- Most health plans include an hours of service (or similar requirement) for eligibility
- Employees who do not meet these requirements are ineligible for coverage
- If no longer eligible, COBRA or state continuation may apply
- Some employers are **expanding their eligibility rules** to maintain coverage for employees who have been furloughed or had their hours reduced due to the COVID-19 outbreak

➤ Expanding Eligibility

Action Steps for Eligibility Changes:

- ✓ Obtain prior written approval from issuer (or stop-loss carrier for self-insured plans)
- ✓ Revise plan documents
- ✓ For unpaid furloughs, consider how premiums will be paid

Compliance Reminder: Employers that are subject to the ACA's employer shared responsibility rules and use the look-back measurement method should continue to follow those rules for determining eligibility

➤ Look-back Measurement Method

- No special guidance has been issued regarding the employer shared responsibility rules and COVID-19
- General rules for determining employees' full-time status continue to apply
- "Hours of service" must be counted during measurement period
 - Time an employee is paid for time working or not working
 - Special rules for periods of unpaid FMLA
- Full-time employees who are in a stability period must continue to be treated as full-time as long as they are employed

➤ Additional Enrollment Period

- Most health plans do not allow mid-year enrollments unless:
 - Newly eligible
 - HIPAA special enrollment
- Due to the COVID-19 health crisis, some issuers and plans are offering a **special mid-year enrollment window** to allow uninsured individuals to sign up for coverage

Many state-run health insurance exchanges are offering special enrollment windows for uninsured individuals


➤ Additional Enrollment Period

Action Steps for Special Mid-year Enrollment Period:

- ✓ Obtain prior written approval from issuer (or stop-loss carrier for self-insured plans)
- ✓ Revise plan documents (if necessary)
- ✓ Consider whether employee premiums will be pre-tax (Section 125 rules)

Section 125 Rules In response to the COVID-19 outbreak, IRS Notice 2020-29 provides more flexibility for mid-year election changes under the Section 125 rules

Mid-year Election Changes



➤ New Rules for Mid-year Changes

- **General Rule:** Elections for pre-tax benefits are irrevocable during a plan year with limited exceptions
- **New Rules** IRS Notice 2020-29
 - Apply to prospective elections for health plan coverage, health FSAs and DCAPs
 - May allow employees to make mid-year changes regardless of the general irrevocability rule
 - New rules are temporary (only apply for 2020)
 - Must communicate changes to participants
 - Must amend Section 125 plans by Dec. 31, 2021

➤ Permitted Mid-year Changes

- **Health plan coverage**
 - Make a new election (if previously declined coverage)
 - Switch from one employer-sponsored health plan to another
 - Revoke an election to participate (if employee is or will be enrolled in other health coverage)
- **Health FSA and DCAP**
 - Make a new election
 - Decrease or increase existing election
 - Revoke an election

Employers may determine the extent to which these mid-year election changes are permitted, subject to the nondiscrimination rules for Section 125 plans

Form 5500 Extension >

➤ Form 5500 Extension

The IRS extended the deadline for any Form 5500 that is due between April 1, 2020 and July 15, 2020

- The Form 5500 is due by the last day of the 7th month of the plan year
- The due date for Forms 5500 due between April 1, 2020 and July 15, 2020 is extended to **July 15, 2020** (IRS Notice 2020-23)
- This relief also applies to the Form M-1 for multiple employer welfare arrangements (MEWAs)
- Form 5500 deadline for calendar year plans (July 31, 2020) has NOT been extended

Updated COBRA
Forms



➤ New Model COBRA Forms

- The DOL issued new model COBRA forms
- Updated model COBRA forms:
 - General notice
 - Election notice
- Updated to include information about Medicare and COBRA

Use of the updated models is considered good-faith compliance with COBRA's content requirements for the general notice and election

Employers that use the DOL's model notices to administer COBRA should **update their notices**

Coverage Changes:
New Paid Leave Laws



New Paid Leave Laws

- Employers with fewer than 500 employees and government employers are subject to new paid leave laws
- Effective April 1 – Dec. 31, 2020
- **Expanded FMLA:** Provides up to 12 weeks of partially paid FMLA leave to care for a child whose school or place of care is closed for COVID-19 reasons
- **Paid Sick Leave:** Up to 80 hours of paid sick time for certain reasons, including child care, symptoms of COVID-19 or medically advised quarantine

➤ Health Coverage During Leave

- Coverage must be maintained as if the employee had continued to work
 - The same benefits and coverage must be maintained
 - Any plan changes would apply
 - Employee must make normal contribution
- Employee may choose to drop coverage during leave
 - Coverage must be reinstated when employee returns to work
- Coverage may end if employee does not return to work after FMLA leave

ERISA Notices and Disclosures



➤ Deadline Extension

DOL Disaster Relief Notice 2020-01 extends time for furnishing ERISA notices and disclosures

- Failure to timely furnish a notice or disclosure during Outbreak Period will not be an ERISA violation
- Employers must make a good faith effort to provide the documents as soon as **administratively practicable**
- Good faith efforts include use of **electronic communication**
 - Plan sponsor must reasonably believe that the participant has effective access to electronic means of communication
 - Includes email, text messages and continuous access websites

➤ Outbreak Period

Employers have additional time to furnish ERISA-required notices and disclosures during the COVID-19 Outbreak Period

Outbreak
Period

- Period from March 1, 2020, until **60 days after the end of the National Emergency** (or other date announced by the DOL)
- Cannot extend beyond one year
- DOL will issue more guidance if there are different end dates for different parts of the country

Key ERISA Notices

Notice/Disclosure	Regular Deadline
Summary plan description (SPD)	<ul style="list-style-type: none">• Within 90 days of enrollment for new participants• Within 30 days of a request
Summary of material modifications (SMM)	<ul style="list-style-type: none">• Within 210 days after end of plan year• For material benefit reductions, within 60 days after change is adopted• For changes that affect content of summary of benefits and coverage (SBC), 60 days' advance notice is required
SBC	<ul style="list-style-type: none">• At initial enrollment time and each year at open enrollment• Within 7 business days of a request

Key ERISA Notices

Notice/Disclosure	Regular Deadline
CHIP notice	<ul style="list-style-type: none">• Annual notice
Women's Health and Cancer Rights Act (WHCRA) notice	<ul style="list-style-type: none">• Annual notice
Summary annual report (SAR)	<ul style="list-style-type: none">• Within nine months after end of plan year (or, if Form 5500 deadline is extended, within two months of close of extension period)

These deadline extensions do NOT apply to the Form 5500. The Form 5500 deadline for calendar year plans remains July 31, 2020

Extended Plan Deadlines



➤ Extended Deadlines

- DOL and IRS issued a joint rule that **provides employees with more time** to take certain actions related to:
 - ✓ COBRA continuation coverage
 - ✓ HIPAA special enrollment rights
 - ✓ Benefit claims and appeals
- Plans must disregard the Outbreak Period in determining whether employees meet certain deadlines
- Deadlines resume after end of Outbreak Period

➤ COBRA Deadlines

- **The following COBRA deadlines are extended during the Outbreak Period**
 - ✓ 60-day election period
 - ✓ 45-day initial premium payment period
 - ✓ 30-day grace period for subsequent premiums
 - ✓ 60-day deadline for providing notice of a qualifying event or disability determination
- The joint rule also extends the deadline for employers to provide a COBRA election notice

➤ COBRA Election Example

Facts: Individual B works for Employer X and participates in X's group health plan. Due to the National Emergency, Individual B, who has no other coverage, experiences a reduction of hours below the hours necessary to meet the group health plan's eligibility requirements (a COBRA qualifying event). Individual B is provided a COBRA election notice on April 1, 2020. What is the deadline for Individual B to elect COBRA?

Conclusion: Disregarding the Outbreak Period, the last day of Individual B's COBRA election period is 60 days after June 29, 2020, which is August 28, 2020.

**These examples assume that the National Emergency ends on April 30, 2020, with the Outbreak Period ending June 29, 2020*

➤ COBRA Premium Example

Facts: On March 1, 2020, Individual C was receiving COBRA continuation coverage. More than 45 days had passed since she elected it. Monthly premium payments are due by the first of the month. The plan does not permit longer than the statutory 30-day grace period for making premium payments. Individual C made a timely February payment, but did not make the March payment or any subsequent payments during the Outbreak Period. As of July 1, Individual C has made no premium payments for March, April, May or June. Does Individual C lose COBRA coverage, and if so for which months?

Conclusion: Because the Outbreak Period is disregarded, premium payments for all four months are due 30 days after June 29, 2020. Thus, as long as Individual C makes all of the premium payments by July 29, 2020, she is eligible to receive COBRA continuation coverage during March, April, May and June.

➤ Other Deadlines

- **The following deadlines are also extended during the Outbreak Period**
 - ✓ 30-day (or 60-day) period for requesting special enrollment under HIPAA
 - ✓ The deadline for filing a benefit claims under the plan
 - ✓ The deadline for appealing an adverse benefit determination under the plan
 - ✓ The deadline for requesting external review of an adverse benefit determination

Questions? >

Thank You!

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