



Compliance Services Alert

April 27, 2022

Outbreak period continues to disrupt the benefits world

As the global coronavirus pandemic continues, this is a socially distanced reminder that the outbreak period and related tolling guidance are still in effect. ERISA plans are still required to suspend certain participant "action periods" for 12 months or, if sooner, until 60 days after the declared end of the presidential national emergency.

On Feb. 18, President Biden [issued a notice](#) that renewed the COVID-19 national emergency for another year, effectively extending it from ending Feb. 28, 2022, to ending Feb. 28, 2023. Of course, as we've explained before, (see our previous alerts [here](#) and [here](#)), the tolling of these action periods will end sooner if the president rescinds the national emergency. Once the president declares the national emergency has ended, the tolling requirement (and the outbreak period) will terminate 60 days later. If someone is still within their 12-month tolling window when the outbreak period ends, the clock will begin to tick on the suspended deadline on the 61st day after the declared end of the national health emergency (e.g., a COBRA qualified beneficiary would have 60 days left to make a COBRA election).

Lockton comment: The presidential COVID-19 national emergency is different from Health and Human Services' public health emergency. The latter dictates the timeframe for the COVID-19 testing mandate, including the mandate for coverage of over-the-counter test kits, and is lengthened in 90-day increments, currently to July 15, 2022.

Time keeps on slippin', slippin', slippin' into the future

The outbreak period guidance applies to all ERISA plans including medical, dental, vision and health flexible spending accounts. The action periods affected by the outbreak period guidance relate to COBRA, HIPAA special enrollment rights and the filing of claims. In particular, the pause provides additional time regarding:

- COBRA action periods:
 - The 60-day election period for COBRA continuation coverage
 - The dates for making COBRA premium payments
 - The date for individuals to notify the plan of a qualifying event or determination of disability to trigger a COBRA notice from the employer plan

- HIPAA special enrollment action periods:
 - The 30-day deadline to add coverage due to:
 - Marriage
 - Birth
 - Adoption and placement for adoption
 - Loss of other group health plan coverage (e.g., such as through a spouse’s employer)
 - The 60-day deadline to add coverage due to:
 - Loss of eligibility for state Medicaid or Children’s Health Insurance Program (CHIP)
 - Becoming eligible for state premium assistance under Medicaid or CHIP
- Claims action periods:
 - Timelines for submitting claims and appeals
 - Timeline to request external review

Lockton comment: In addition to the tolling of the above deadlines, which will tend to result in migraines for plan sponsors, the flip side is that ERISA plans have some limited relief from the regular timeframes for furnishing ERISA-required disclosures. For any notice or disclosure otherwise required to be furnished during the outbreak period, plans and responsible plan fiduciaries will not be treated as having violated ERISA if they act in good faith and furnish the item “as soon as administratively practicable under the circumstances” (but, of course, not exceeding one year from the date the item was otherwise required to be furnished or, if earlier, the end of the outbreak period).

Suzanne Bach, J.D.
Senior ERISA Attorney
Compliance Services

Not legal advice: Nothing in this alert should be construed as legal advice. Lockton may not be considered your legal counsel, and communications with Lockton's Compliance Services group are not privileged under the attorney-client privilege.

© 2022 Lockton Companies

Lockton Benefits | 444 West 47th Street | Suite 900 | Kansas City | MO | 64112