

The End of the COVID-19 National Emergency and the Outbreak Period

McGriff Employee Benefits Compliance Team
National Specialty Practices | Employee Benefit Solutions



Question: On April 10, 2023, President Biden signed into law legislation ending the COVID-19 National Emergency prior to the previously announced date of May 11, 2023. At the start of the pandemic, regulators instituted a separate “Outbreak Period” running concurrently with the national emergency that extended certain plan deadlines. The Outbreak Period was to end 60 days after the end of the national emergency, or at a date announced by the agencies. While the legislation signed on April 10th would have ended the Outbreak Period on June 9th, **informal comments from the Department of Labor (DOL) and the Internal Revenue Service (IRS) indicate that the tolling of benefit plan deadlines will end on July 10, 2023, as previously scheduled. Assuming this July 10th date, how will the end of the Outbreak Period affect our group health plans?**

Answer:

In the first few months of the COVID-19 pandemic, we saw a number of significant disruptions to our daily routines. Particularly relevant to group health plans, few participants were able or willing to access health services. In addition, standard administrative tasks, such as claims processing and billing, were delayed due to workforce disruption and other effects of the pandemic.

As part of the federal government’s response to these disruptions, regulators issued joint agency [Notice of Extension of Certain Timeframes for Employee Benefit Plans, Participants, and Beneficiaries Affected by the COVID-19 Outbreak and Disaster Relief Notice 2020-01](#). These notices

mandated a tolling (i.e., pausing) of certain standard ERISA timeframes during what was called an Outbreak Period. In other words, the clock on certain participant deadlines would not run during the Outbreak Period. Specifically, the rules tolled participant deadlines related to:

1. Claims and appeals procedures for ERISA plans, including medical, dental, vision, HRA and health FSA plans;
2. COBRA elections, premium payments and notices of qualifying events or disability; and
3. Employee notices of HIPAA special enrollment events.

For all HIPAA special enrollment events that occurred during the Outbreak Period prior to July 10, 2022, participants will have one additional year after the standard 30-day deadline to request mid-year enrollment for loss of coverage or acquisition of a new dependent.



The Outbreak Period was effective retroactive to March 1, 2020 and designed to end 60 days after the announced end of the national emergency. Initially, it was imagined the national emergency declaration and Outbreak Period would be in place for a short period of time, and then the clock on the deadlines would begin to run. However, it quickly became clear that the COVID-19 pandemic would last much longer than expected. Nearly one year after the Outbreak Period began, regulators issued [Disaster Relief Notice 2021-01](#) that clarified the Outbreak Period would be effective beyond one year, but any individual deadline could not be tolled for more than one year. As a result, since March 1, 2020, the deadlines described above have been tolled for one year in every case.

Examples:

Participant A's standard COBRA election deadline was January 1, 2021. Due to the Outbreak Period extension, Participant A's new COBRA election deadline was January 1, 2022.

Participant B's standard COBRA election deadline was April 1, 2021. Due to the Outbreak Period extension, Participant B's new COBRA election deadline was April 1, 2022.

Now that we know the Outbreak Period is still scheduled to end on July 10, 2023, plans can begin to wind down administration of these deadline extensions. After July 10, the clock will begin to run for deadlines that have not already been extended for one year.

HIPAA Special Enrollment Periods

Participants that declined group health plan coverage at open enrollment but experience a HIPAA special enrollment event have the right to enroll mid-year. HIPAA special enrollment events include:

1. Loss of coverage under a group health plan or other health insurance;

2. Acquisition of a new dependent by marriage, birth, adoption or placement for adoption; and
3. New eligibility for state premium assistance through Medicaid or the state children's health insurance program (CHIP).

To qualify, a participant generally must request mid-year enrollment by notifying the plan within 30 days of a loss of coverage or acquisition of a new dependent, or within 60 days of new eligibility for state premium assistance.¹ However, these deadlines were tolled during the Outbreak Period for up to one year. When the Outbreak Period ends, the clock will begin running on HIPAA special enrollment event notice deadlines that have not already tolled for one year.

For all HIPAA special enrollment events that occurred during the Outbreak Period prior to July 10, 2022, participants will have one additional year after the standard deadline to request mid-year enrollment.

Example:

Employee gave birth to a child on May 1, 2022. While the employee normally has 30 days to request to add the child to the group health plan, this employee's deadline is May 31, 2023 (one year from the standard deadline). This participant's deadline is tolled for the maximum of one year before the Outbreak Period ends.

For all HIPAA special enrollment events that occur **between July 10, 2022 and July 10, 2023**, participants will have until August 9, 2023 (30 days after the end of the Outbreak Period) to request mid-year enrollment for loss of coverage or acquisition of a new dependent. And they'll have until September 8, 2022 (60 days after the end of the Outbreak Period) to request mid-year enrollment for new eligibility for state premium assistance.²

Example:

Employee gave birth to a child on October 1, 2022. While the employee normally has 30 days to request to add the child to the group health plan, this employee’s deadline is August 9, 2023 (30 days after the end of the Outbreak Period).

For all HIPAA special enrollment events that occur **after July 10, 2023**, the standard notice deadlines will apply to request mid-year enrollment.

Example:

Employee gave birth to a child on July 15, 2023. The employee will have until August 14, 2023, to request mid-year enrollment of the child (30-day standard deadline).

These deadlines are illustrated in the following chart.³

Loss of Coverage or Acquisition of Dependent Date	Deadline to Request Mid-Year Enrollment
Mar. 1, 2020 - July 9, 2022	1 year + 30 days after event date
July 10, 2022 - July 10, 2023	Aug. 9, 2023
July 11, 2023 and beyond	30 days after event date

Date of Eligibility for State Premium Assistance	Deadline to Request Mid-Year Enrollment
Mar. 1, 2020 - July 9, 2022	1 year + 60 days after event date
July 10, 2022 - July 10, 2023	Sep. 8, 2023
July 11, 2023 and beyond	60 days after event date

COBRA

COBRA is the federal law that requires employers to offer continuation of group health plan coverage when a qualified beneficiary experiences a loss of coverage as a result of certain qualifying events. To remain covered under the plan, a beneficiary generally must:

1. Elect coverage within 60 days of the loss of coverage, or if later, the date the election notice is provided to the qualified beneficiary from the plan administrator;
2. Make an initial premium payment within 45 days of making an election; and
3. Make monthly premium payments within a 30-day grace period after the first of each month.

These deadlines, along with the 30-day timeframe for notifying the plan about a COBRA qualifying event and 60-day timeframe for notifying the plan of a disability determination,⁴ were tolled during the Outbreak Period. When the Outbreak period ends, the clock will begin running on these deadlines that have not already tolled for 1 year.

For all qualifying events and missed payment deadlines that



began tolling during the Outbreak Period **prior to July 10, 2022**, the deadlines to elect and pay for coverage will be exactly one year from the standard deadline.

Example:

Employee terminates employment on March 1, 2022 and loses group health plan coverage. While beneficiaries generally have 60 days to elect coverage, this beneficiary’s election deadline is April 30, 2023 (one year from the standard deadline). This participant’s deadline is tolled for the maximum of one year before the Outbreak Period ends.

For all qualifying events that occur **between July 10, 2022 and July 10, 2023**, there is a universal election deadline of September 8, 2023 (60 days after the end of the Outbreak Period).

Example:

Employee terminates employment on October 1, 2022 and loses group health plan coverage. While beneficiaries generally have 60 days to elect coverage, this beneficiary’s election deadline is September 8, 2023 (60 days after the end of the Outbreak Period).

For all missed initial payment deadlines that began tolling **between July 10, 2022 and July 10, 2023**, there is a universal payment deadline of August 24, 2023 (45 days after the end of the Outbreak Period.)

Example:

Beneficiary elects COBRA coverage on December 1, 2022. While beneficiaries generally have 45 days after electing coverage to make an initial COBRA payment, this beneficiary’s initial payment deadline is August 24, 2023 (45 days after the end of the Outbreak Period).

For all missed monthly payment deadlines that began tolling **between July 10, 2022 and July 10, 2023**, there is a universal payment deadline of August 9, 2023 (30 days after the end of the Outbreak Period).

Example:

Beneficiary elects COBRA coverage on December 1, 2022 and makes an initial COBRA premium payment for December and January. While beneficiaries generally have 30 days after the first of the month to make a monthly COBRA payment, this beneficiary’s February monthly payment deadline is August 9, 2023 (30 days after the end of the Outbreak Period).

For all qualifying events and missed payment deadlines that began tolling **after July 10, 2023**, the standard election and payment deadlines will apply.

Example:

Employee terminates employment on August 1, 2023 and loses group health plan coverage. The employee will have until September 30, 2023 to elect COBRA coverage (60-day standard deadline).

These deadlines are illustrated in the following charts.

COBRA Elections	
Qualifying Event Date	Election Deadline
Mar. 1, 2020 - Jul. 9, 2022	60 days + 1 year after qualifying event date
Jul. 10, 2022 - Jul. 10, 2023	Sep. 8, 2023
Jul. 11, 2023 -	60 days after qualifying event date

Initial Premium Payments	
Election Date	Election Deadline
Mar. 1, 2020 - Jul. 9, 2022	45 days + 1 year after election date
Jul. 10, 2022 - Jul. 10, 2023	Aug. 24, 2023
Jul. 11, 2023 -	45 days after election date

Monthly Premium Payments	
Period of Coverage	Payment Deadline
Mar. 2020 - Jul. 2022	30 days + 1 year after first of the month
Aug. 2022 - Jul. 2023	Aug. 9*
Aug. 2023 -	30 days after first of the month

**The Department of Labor has informally advised that monthly payments cannot be due before an initial payment. If a participant has missed both an initial payment and subsequent monthly payments for periods of coverage between between July 10, 2022 and July 10, 2023, both the initial payment and any subsequent monthly payments would be due August 24, 2023.*

ERISA Claims and Appeals

ERISA welfare plans, including health FSAs and HRAs, must establish and maintain reasonable procedures governing the filing of benefit claims and appeals of adverse benefit determinations. Most health FSA and HRA plans generally allow participants to submit claims up to 90 days after the end of the plan year, a period known as run-out. During the Outbreak Period, the 90-day run-out period was tolled, which extended the period participants had to submit claims.

When the Outbreak Period ends, the clock on these deadlines will begin to run. For all health FSA and HRA plan years beginning **before July 10, 2022**, the claims submission deadline will be exactly one year after the standard 90-day run-out period.

Example:

Employer offers a health FSA with a plan year beginning March 1, 2021 and ending February 28, 2022. While participants generally have 90 days after the plan year to submit claims, their claims submission deadline for this plan year is May 30, 2023 (one year from the standard deadline). These participants’ deadlines are tolled for the maximum of one year before the Outbreak Period ends.

For all health FSA plan years ending **between July 10, 2022 and July 10, 2023**, there is a universal claims submission deadline of October 8, 2023 (90 days after the end of the Outbreak Period).





Example:

Employer offers a health FSA with a plan year beginning January 1, 2022 and ending December 31, 2022. While participants generally have 90 days after the plan year to submit claims, their claims submission deadline for this plan year is October 8, 2023 (90 days after the end of the Outbreak Period).

For all health FSA plan years beginning **after July 9, 2022**, the claims submission deadline will be the standard 90-day run-out period.⁵

Example:

Employer offers a health FSA with a plan year beginning September 1, 2022 and ending August 31, 2023. The claims submission deadline for these participants is November 29, 2023 (90-day standard deadline).

These deadlines are illustrated in the following chart.⁶

Plan Year Ending	Outbreak Period Deadline
Dec. 31, 2021	Mar. 31, 2023
Jan. 1, 2022	May 1, 2023
Feb. 28, 2022	May 30, 2023
Mar. 31, 2022	Jun. 29, 2023
Apr. 30, 2022	Jul. 29, 2023
May 31, 2022	Aug. 29, 2023
Jun. 30, 2022	Sep. 29, 2023
Jul. 31, 2022 - Jun. 30, 2023	Oct. 8, 2023
Jul. 31, 2023	Oct. 29, 2023
Aug. 31, 2023	Nov. 29, 2023

Preparing for the End of the Outbreak Period

Contact Third-Party Administrators (TPAs) – TPAs have been administering these deadline extensions for three years now, so they should be comfortable with winding down the Outbreak Period. Plan sponsors should still confirm with TPAs that there is a plan in place to ensure ERISA claims and

appeals and COBRA deadlines are administered correctly

Participant and Beneficiary Notices – In conjunction with TPAs, carriers and other vendors, plan sponsors should determine whether to provide notice of the end of the Outbreak Period to plan participants and COBRA beneficiaries. In making this determination and considering notice content, plan sponsors should consider what notice has already been provided to participants and beneficiaries about the Outbreak Period extended deadlines. At a minimum, it will likely be necessary to provide notice of the end of the Outbreak Period to all current COBRA beneficiaries and all COBRA beneficiaries who experienced a loss of coverage or missed an initial or monthly premium payment since July 10, 2022. In addition, notice will likely need to be provided to all health FSA and HRA participants. Plan sponsors should work with their TPAs to determine what notice is needed at this time and who will be responsible for providing the notice.

Plan Document Updates – Plan sponsors should work with their carriers, other vendors and benefits counsel to determine if updates are needed to ERISA and Section 125 plan documents. Many plans updated these documents to include the Outbreak Period deadline extensions and may need to be amended again due to the end of the Outbreak Period. However, plan sponsors may determine an update is not needed at this time depending on the language of the original amendment. The party that drafted the legal documents and amendment, as well as benefits counsel, is in the best position to assist with this determination.

HIPAA Special Enrollment Administration – Plan sponsors are often the first line of inquiry for mid-year enrollment requests from participants due to a HIPAA special enrollment event. It is important that plan sponsors continue to accept or deny these requests in accordance with both the HIPAA and Outbreak Period rules. At a minimum, plan sponsors should be able to recognize when a request is a potential HIPAA special enrollment event and seek guidance from a knowledgeable advisor to help determine the appropriate deadline.



Conclusion:

The end of the COVID-19 national emergency and subsequent conclusion of the Outbreak Period will significantly impact group health plans. Administration of the Outbreak Period has been burdensome, so plan sponsors and vendors will celebrate its conclusion. But before we can all say goodbye, some effort will be needed to wind down the deadline extensions. Plan sponsors should work with their vendors and advisors to ensure any necessary notice or plan document update is provided to participants and deadlines are administered in compliance with the rules.

References

- 1 - While the minimum notice deadline is 30 days for loss of coverage and acquisition of a new dependent and 60 days for Medicaid eligibility, plans are permitted to provide longer notice periods. You should check your plans' legal documents to confirm the deadlines for your plans.
- 2 - All examples assume the plan utilizes the minimum standard 30- and 60-day notice deadlines. You should check your plans' legal documents to confirm the deadlines for your plans.
- 3 - Chart assumes the plan utilizes the minimum standard 30- and 60-day notice deadlines. You should check your plans' legal documents to confirm the deadlines for your plans.
- 4 - The qualified beneficiary must notify the plan administrator of the Social Security disability determination within 60 days after the latest of (a) the date of the Social Security disability determination, (b) the date of the qualifying event; (c) the date on which the qualified beneficiary loses (or would lose) coverage under the plan as a result of the qualifying event, or (d) the date on which the qualified beneficiary is informed, through the furnishing of the plan's summary plan description (SPD) or COBRA initial notice, of both the responsibility to provide the notice of disability determination and the plan's procedures for providing such notice to the administrator.
- 5 - All examples assume the plan utilizes a 90-day run-out period. You should check your plan's legal documents to confirm the deadlines for your plan.
- 6 - Chart assumes the plan utilizes a 90-day run-out period. You should check your plan's legal documents to confirm the deadlines for your plan.



[McGriff.com](https://www.mcgriff.com)

McGriff, its affiliates and representatives do not offer legal, tax or medical advice. Please consult your legal, tax or medical professional regarding your individual circumstances.

© 2023 McGriff Insurance Services, LLC. All rights reserved. McGriff Insurance Services, LLC is a subsidiary of Truist Insurance Holdings, LLC.

REV_032223