



GBS Compliance

## Deadline Extensions During COVID National Emergency and “Outbreak Period” Ending Soon

### Quick Summary

Several key deadlines that affect employer-sponsored health plans were extended during an “Outbreak Period” associated with the COVID-19 National Emergency. These extensions are now coming to an end. The COVID-19 National Emergency ended April 10, 2023, and the “Outbreak Period” will end July 10, 2023.

The “Outbreak Period” gave individuals more time to make decisions about health insurance and specifically applied to:

- › Requesting special enrollment under HIPAA
- › Electing COBRA continuation coverage and paying COBRA premiums
- › Submitting claims for health plan benefits and appealing denied claims

These deadline extensions end when the “Outbreak Period” is over or, if earlier, after an individual has been eligible for a specific deadline extension for one year. After the “Outbreak Period” ends on July 10, 2023, deadlines will revert back to original, pre-pandemic deadlines. However, any days during the “Outbreak Period” must still be disregarded to properly determine the deadline that applies to a specific individual.

## Background

The COVID-19 pandemic (COVID) created a need for new temporary rules and adjustments to current rules. As a result, there were several emergency declarations, each with a different purpose, date and requirements. One of those declarations was the National Emergency announced by the President and effective March 2020.

The National Emergency did not directly impact group health plans, but the Department of Labor, Department of Health and Human Services and Department of the Treasury (Departments) soon after announced an “Outbreak Period” that would run parallel to the National Emergency and would directly impact group health plans.

The “Outbreak Period” extended certain deadlines related to employer-sponsored group health plans. The COVID-19 National Emergency ended on April 10, 2023, and the “Outbreak Period” will end on July 10, 2023.

## Deadlines Impacted by the Outbreak Period

Specific deadline extensions that apply during the “Outbreak Period” include the following:

### HIPAA special enrollment rights

- › The 30-day period (or 60-day period, if applicable) to request special enrollment

### COBRA notice and premium payment deadlines

- › The 60-day period to elect COBRA coverage
- › The date for making COBRA premium payments (generally at least 45 days after the day of the initial COBRA election, with a grace period of at least 30 days for subsequent premium payments)
- › The date for individuals to notify the plan of a qualifying event or disability determination (generally 60 days from the date of the event, loss of coverage or disability determination)

### Claims and appeals deadlines

- › The deadline to file a benefit claim
- › The deadline to file an appeal of an adverse benefit determination or the deadline to request an external review of a claim under the plan’s claims and appeals procedures

## Outbreak Period Application

Application of the deadline extensions vary per individual, depending on dates the rules are triggered. After the “Outbreak Period” ends, the extensions revert back to the original, nonextended deadlines.

Generally, the extended deadlines end the EARLIER of: 1) one year from the date the participant (or beneficiary, or plan) was first eligible for relief, or 2) the end of the “Outbreak Period” (on July 10, 2023) plus the normal pre-COVID timeframe in which the individual has to act. For example, if situation #2 applies, and normally an employee has 30 days to meet the deadline, an employee would have 30 days after July 10, 2023 to take action.

Specific examples were provided by the Departments in a set of FAQs and are included for convenience in the following section.

## Examples

The Departments' [FAQs](#) provide specific examples to illustrate how health plans and issuers should apply the deadline extensions as the “Outbreak Period” comes to an end. These examples assume that the outbreak period will end July 10, 2023 and that the group health plan is using the minimum time frame that the law permits for individuals to complete certain elections or other actions. However, federal law does not prohibit a group health plan from allowing for longer timeframes for employees, participants or beneficiaries to complete these actions, and the Departments encourage group health plans to do so.

### Example 1 (Electing COBRA)

#### **Facts:**

Individual A works for Employer X and participates in Employer X’s group health plan. Individual A experiences a qualifying event for COBRA purposes and loses coverage on April 1, 2023. Individual A is eligible to elect COBRA coverage under Employer X’s plan and is provided a COBRA election notice on May 1, 2023. What is the deadline for Individual A to elect COBRA?

#### **Conclusion:**

The last day of Individual A’s COBRA election period is 60 days after July 10, 2023 (the end of the outbreak period), which is Sept. 8, 2023.

### Example 2 (Electing COBRA)

#### **Facts:**

Same facts as Example 1, except the qualifying event and loss of coverage occur on May 12, 2023, and Individual A is eligible to elect COBRA coverage under Employer X’s plan and is provided a COBRA election notice on May 15, 2023. What is the deadline for Individual A to elect COBRA?

#### **Conclusion:**

Because the qualifying event occurred on May 12, 2023, after the end of the COVID-19 national emergency period but during the outbreak period, the deadline extensions still apply. The last day of Individual A’s COBRA election period is 60 days after July 10, 2023 (the end of the outbreak period), which is Sept. 8, 2023.

### Example 3 (Electing COBRA)

#### **Facts:**

Same facts as Example 1, except the qualifying event and loss of coverage occur on July 12, 2023, and Individual A is eligible to elect COBRA coverage under Employer X’s plan and is provided a COBRA election notice on July 15, 2023. What is the deadline for Individual A to elect COBRA?

**Conclusion:**

Because the qualifying event occurred on July 12, 2023, after the end of both the COVID-19 national emergency period and the outbreak period, the deadline extensions do not apply. The last day of Individual A's COBRA election period is 60 days after July 15, 2023, which is Sept. 13, 2023.

**Example 4 (Paying COBRA Premiums)****Facts:**

Individual B participates in Employer Y's group health plan. Individual B has a qualifying event and receives a COBRA election notice on Oct. 1, 2022. Individual B elects COBRA continuation coverage on Oct. 15, 2022, retroactive to Oct. 1, 2022. When must Individual B make the initial COBRA premium payment and subsequent monthly COBRA premium payments?

**Conclusion:**

Individual B has until 45 days after July 10, 2023 (the end of the outbreak period), which is Aug. 24, 2023, to make the initial COBRA premium payment. The initial COBRA premium payment would include the monthly premium payments for October 2022 through July 2023. The premium payment for August 2023 must be paid by Aug. 30, 2023 (the last day of the 30-day grace period for the August 2023 premium payment). Subsequent monthly COBRA premium payments would be due on the first of each month, subject to a 30-day grace period.

**Example 5 (Special Enrollment Period)****Facts:**

Individual C works for Employer Z. Individual C is eligible for Employer Z's group health plan but previously declined participation. On April 1, 2023, Individual C gave birth and would like to enroll herself and the child in Employer Z's plan. However, open enrollment does not begin until Nov. 15, 2023. When may Individual C exercise her special enrollment rights?

**Conclusion:**

Individual C and her child qualify for special enrollment in Employer Z's plan as early as the date of the child's birth, April 1, 2023. Individual C may exercise her special enrollment rights for herself and her child until 30 days after July 10, 2023 (the end of the outbreak period), which is Aug. 9, 2023, as long as she pays the premiums for the period of coverage after the birth.

**Example 6 (Special Enrollment Period)****Facts:**

Same facts as Example 5, except that Individual C gave birth on May 12, 2023. When may Individual C exercise her special enrollment rights?

### **Conclusion:**

Individual C and her child qualify for special enrollment in Employer Z's plan as of the date of the child's birth, May 12, 2023. Because Individual C became eligible for special enrollment on May 12, 2023, after the end of the COVID-19 national emergency period but during the outbreak period, the deadline extensions still apply. Individual C may exercise her special enrollment rights for herself and her child until 30 days after July 10, 2023 (the end of the outbreak period), which is Aug. 9, 2023, as long as she pays the premiums for the period of coverage after the birth.

### **Example 7 (Special Enrollment Period)**

#### **Facts:**

Same facts as Example 5, except that Individual C gave birth on July 12, 2023. When may Individual C exercise her special enrollment rights?

#### **Conclusion:**

Individual C and her child qualify for special enrollment in Employer Z's plan as of the date of the child's birth, July 12, 2023. Because Individual C became eligible for special enrollment on July 12, 2023, after the end of both the COVID-19 national emergency period and the outbreak period, the deadline extensions do not apply. Individual C may exercise their special enrollment rights for herself and her child until 30 days after July 12, 2023, which is Aug. 11, 2023, as long as she pays the premiums for the period of coverage after the birth.

### **Action Plan for Employers**

Employers that sponsor group health plans should be aware of these deadlines and take action consistent with the above. Employers should review ERISA plan and notice rules and ensure all plan documents and participant communications accurately reflect coverage, exclusions, and limitations with any changes to coverage or deadlines. In addition, employers may also find it valuable to:

- › Determine in advance individuals impacted by the end of "Outbreak Period"
- › Consider extending deadlines for an additional 30 days to provide extra time and notice
- › Send advance/additional notices to impacted individuals to help them prevent missing crucial deadlines.

*June 2023*

*The following information is not intended to be exhaustive, nor should any information be construed as tax or legal advice. Readers should contact a tax professional or attorney if legal advice is needed.*

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