

Experts answer questions on extended COBRA deadlines, telehealth amid pandemic

During the recent webinar, *Addressing COVID-19 Health Benefit Compliance Issues*, Kathryn Bakich, senior vice president at Segal and national director of health care compliance, and Joanne Husted, senior vice president at Segal and deputy director of health care compliance, examined health plan compliance issues due to new COVID-19-related laws and regulations. They discussed employer questions about the extended COBRA deadlines and allowable HIPAA exemptions for telehealth throughout the national emergency.

COBRA deadlines. In May 2020, the Department of Labor and the IRS issued a final rule that extends certain time frames affecting participants' rights to continuation of group health plan coverage under COBRA. The extension of the various timeframes apply with respect to the period from March 1, 2020, until 60 days after the announced end of the national emergency (known as the "outbreak period").

The final rule extends several COBRA-related deadlines. Under COBRA, employees and dependents who lose coverage as a result of a qualifying event have 60 days to elect COBRA coverage. The final rule extends the 60-day COBRA election period by disregarding the outbreak period. In addition, qualified COBRA beneficiaries have 45 days from the COBRA election to make the first premium payment, and monthly payments must be made by the end of the 30-day grace period that starts at the beginning of each coverage month. Under the final rule, the 45-day initial premium payment and 30-day grace period for subsequent premium payment timeframes are disregarded during the outbreak period.

Finally, employers must provide a COBRA election notice to individuals who experience a qualifying event within 44 days from the loss of coverage. The final rule also extends this deadline by disregarding the outbreak period.

"At this point in time, there is no scheduled end date for the national emergency, so we can't know exactly how long these deadlines could be extended," commented Husted. "We do know they won't be extended for more than a year. However, at this point, given that the outbreak period must last at least 60 days after the end of the emergency, we are talking about a period that is at least six months. Even if the emergency would end today, the 60-day period would take us to the end of August."

Paying claims. According to Husted, employers are concerned about paying claims during the period where they are waiting for the individual to elect COBRA, pay the initial premium, or catch up on an overdue payment.

"The final rule only extends the deadline," she noted. "Under existing COBRA rules, plan administrators are allowed to terminate coverage upon the loss of coverage, subject to a retroactive reinstatement if COBRA is elected and the premium is paid. Similarly, under existing rules, plan administrators have the ability to suspend the payment of claims during the 30-day grace period, subject to individuals paying them, if in fact, the individual catches up on the premium."

Husted said companies should examine their regular COBRA procedures in the governing plan documents, COBRA notices, or COBRA administrative procedures manual. "If you already take advantage of these options to essentially either terminate coverage subject to retroactive reinstatement upon election of COBRA or if you suspend coverage pending payment of premium at the end of the grace period, you continue to have that flexibility and those rights," she said.

Election notices. While the DOL and IRS have extended the deadline for companies to send out COBRA election notices, Husted recommends, if possible, that companies do not take advantage of this extension and continue to send COBRA election notices to qualified beneficiaries, “so that they are aware that they have a right to continuation coverage.”

However, instead of modifying the COBRA notices to inform beneficiaries about the outbreak period delay, she recommends using “inserts for plans to send out with their COBRA election notices, essentially explaining the outbreak period delay. So instead of actually amending the COBRA election notice, and putting different dates in, we are recommending some sort of insert and that is much easier to do, since at this point, we don’t even know when the outbreak period will end, so it is hard to put a finite date in your election notice.”

Telehealth. In April 2020, the Department of Health and Human Service’s Office of Civil Rights said that it will not impose potential penalties against covered health care providers or their business associates for possible violations of certain provisions of the HIPAA privacy rule related to uses and disclosures of protected health information during the national emergency.

Bakich noted that at some point, the HHS will have to revisit this policy, but for right now, health care providers are allowed to provide telehealth services through a smartphone, through Zoom health, or another platform that is not fully compliant with the HIPAA privacy rules. “As a health plan sponsor it is important to work with your health care providers to make sure that you understand how telehealth services are going to be covered,” she advised. “You should know if telehealth will be provided in or out of network, if any doctors or health care provider is allowed to provide telehealth services, or if you are providing services through an existing telehealth network that you contract with either directly or through your administrative services provider or insurer.”

Since most of the guidance on this is short-term, “it is important to keep an eye on this, to monitor how your providers are providing telehealth, how you communicated that to your participants, and what the government will do in the future,” Bakich concluded.

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