

- (2) the 60-day election period for COBRA continuation coverage,<sup>28</sup>
- (3) the date for making COBRA premium payments,<sup>29</sup>
- (4) the date for individuals to notify the plan of a qualifying event or determination of disability,<sup>30</sup>
- (5) the date within which individuals may file a benefit claim under the plan’s claims procedure,<sup>31</sup>
- (6) the date within which claimants may file an appeal of an adverse benefit determination under the plan’s claims procedure,<sup>32</sup>
- (7) the date within which claimants may file a request for an external review after receipt of an adverse benefit determination or final internal adverse benefit determination,<sup>33</sup>
- (8) the date within which a claimant may file information to perfect a request for external review upon a finding that the request was not complete,<sup>34</sup> and
- (9) the date for providing a COBRA election notice.<sup>35</sup>

The anticipated end of the COVID-19 National Emergency is May 11, 2023. Consistent with previous guidance, DOL, the Treasury Department, and the IRS are also announcing that the disregarded periods under the emergency relief notices will end 60 days after the end of the COVID-19 National Emergency. DOL, the Treasury Department, and the IRS are issuing this FAQ to clarify how the requirements under the emergency relief notices related to disregarded periods for individual actions will change after the COVID-19 National Emergency ends.

**Q5. Following the anticipated end of the COVID-19 National Emergency, on what date does the Outbreak Period end?**

DOL, the Treasury Department, and the IRS anticipate that the Outbreak Period will end July 10, 2023 (60 days after the anticipated end of the COVID-19 National Emergency). As of the last

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<sup>28</sup> ERISA section 605 and Code section 4980B(f)(5). The term “election period” is defined as “...the period which—(A) begins not later than the date on which coverage terminates under the plan by reason of a qualifying event, (B) is of at least 60 days’ duration, and (C) ends not earlier than 60 days after the later of—(i) the date described in subparagraph (A), or (ii) in the case of any qualified beneficiary who receives notice under section 606(4) of this title, the date of such notice.” ERISA section 605(a)(1). See also Code section 4980B(f)(5).

<sup>29</sup> ERISA section 602(2)(C) and (3) and Code section 4980B(f)(2)(B)(iii) and (C). Under this provision, the group health plan must treat the COBRA premium payments as timely paid if paid in accordance with the periods and dates set forth in this document. Regarding coverage during the election period and before an election is made, see 26 CFR 54.4980B-6, Q&A 3; during the period between the election and payment of the premium, see 26 CFR 54.4980B-8, Q&A 5(c).

<sup>30</sup> ERISA section 606(a)(3) and Code section 4980B(f)(6)(C).

<sup>31</sup> 29 CFR 2560.503-1.

<sup>32</sup> 29 CFR 2560.503-1(h).

<sup>33</sup> 29 CFR 2590.715-2719(d)(2)(i) and 26 CFR 54.9815-2719(d)(2)(i).

<sup>34</sup> 29 CFR 2590.715-2719(d)(2)(ii) and 26 CFR 54.9815-2719(d)(2)(ii).

<sup>35</sup> ERISA section 606(c) and Code section 4980B(f)(6)(D).

day of the Outbreak Period, the extensions under the emergency relief notices for timeframes that began during the COVID-19 National Emergency no longer apply. The following examples show how these rules work. These examples assume that the Outbreak Period will end July 10, 2023, as anticipated, and that the group health plan is using the minimum timeframe that the statute permits for individuals to complete certain elections or other actions. **However, nothing in the Code or ERISA prevents a group health plan from allowing for longer timeframes for employees, participants, or beneficiaries to complete these actions, and group health plans are encouraged 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 September 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 but during the Outbreak Period, the extensions under the emergency relief notices 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 September 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 and the Outbreak Period, the extensions under the emergency relief notices do not apply. The last day of Individual A's COBRA election period is 60 days after July 15, 2023, which is September 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 October 1, 2022. Individual B elects COBRA continuation coverage on October 15, 2022, retroactive to October 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 August 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 August 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 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 November 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 August 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 but during the Outbreak Period, the extensions under the emergency relief notices 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 August 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 and the Outbreak Period, the extensions under the emergency relief notices do not apply. Individual C may exercise her special enrollment rights for herself and her child until 30 days after July 12, 2023, which is August 11, 2023, as long as she pays the premiums for the period of coverage after the birth.

### **Special Enrollment in Group Health Plan and Group or Individual Health Insurance Coverage after Loss of Eligibility for Medicaid or Children's Health Insurance Program (CHIP) Coverage or after Becoming Eligible for Premium Assistance under Medicaid or CHIP**

Group health plans and health insurance issuers providing group health insurance coverage are required to provide an opportunity to enroll under the terms of the plan (regardless of any open enrollment period) in certain circumstances (referred to as special enrollment). This opportunity must be provided to current employees and dependents who previously declined health coverage when it was offered due to having certain other types of coverage, and who then lose eligibility for that other coverage. Accordingly, a special enrollment period must be offered for circumstances in which an employee or their dependents lose eligibility for state Medicaid or CHIP coverage. A special enrollment period must also be offered when an employee or their dependents become eligible for state premium assistance under Medicaid or CHIP for group health plan coverage.<sup>36</sup>

In addition, health insurance issuers offering non-grandfathered individual health insurance coverage must provide a special enrollment period for individuals to enroll in individual health insurance through or outside the Health Insurance Marketplace<sup>®37</sup> or their state's Marketplace in certain circumstances, such as when an individual loses minimum essential coverage, including Medicaid or CHIP coverage.<sup>38</sup>

Since the onset of the PHE, with limited exceptions, state Medicaid agencies generally have not terminated the enrollment of any Medicaid beneficiary who was enrolled on or after March 18, 2020, through March 31, 2023 (referred to as the continuous enrollment condition). As state Medicaid and CHIP agencies resume regular eligibility and enrollment practices and after the continuous enrollment condition ends on March 31, 2023, many consumers may no longer be eligible for Medicaid or CHIP coverage and will therefore need to transition to other coverage,

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<sup>36</sup> Code section 9801(f)(3); ERISA section 701(f)(3); PHS Act section 2704(f)(3).

<sup>37</sup> Health Insurance Marketplace<sup>®</sup> is a registered service mark of the U.S. Department of Health & Human Services.

<sup>38</sup> PHS Act section 2702(b); Affordable Care Act section 1311(c)(6); 45 CFR 147.104 and 155.420.

such as coverage through a Marketplace<sup>39</sup> or coverage through an employer-sponsored group health plan. Nationwide, tens of millions of people will have their Medicaid or CHIP eligibility redetermined in the coming months.

The Departments are issuing the following FAQs to ensure that plans and issuers are aware of their obligation to provide special enrollment periods to impacted individuals who otherwise meet the applicable requirements and to encourage plans and issuers to make sure that impacted individuals are aware of opportunities to enroll into other forms of health coverage.

**Q6: Following the expiration of the continuous enrollment condition, if an individual loses Medicaid or CHIP coverage due to a loss of eligibility for such coverage, is the individual entitled to a special enrollment period to enroll in an employer-sponsored group health plan for which they are otherwise eligible and had previously declined to enroll, or a special enrollment period in the individual market?**

Yes. Employees and their dependents are eligible for special enrollment in a group health plan and group health insurance, if:

- they are otherwise eligible to enroll in the plan,
- the employee or dependent was enrolled in Medicaid or CHIP coverage, and
- the Medicaid or CHIP coverage was terminated as a result of loss of eligibility for that coverage.

Under these circumstances, the employee typically must request coverage under the group health plan (or health insurance coverage) within 60 days after termination of Medicaid or CHIP coverage. However, under the emergency relief notices issued by DOL, the Treasury Department, and the IRS, individuals who lose Medicaid or CHIP coverage from March 31, 2023 (the end of the continuous enrollment condition) until July 10, 2023 (the anticipated end of the Outbreak Period) are eligible for relief and can request special enrollment in a group health plan governed by ERISA and the Code until the date that is 60 days after the end of the Outbreak Period.<sup>40</sup> **Nothing in the Code or ERISA prevents a group health plan from allowing for a longer special enrollment period (i.e., a period that extends beyond the minimum 60-day statutory requirement) for employees, participants, or beneficiaries to complete these actions, and employers and group health plans are encouraged to do so.**

Additionally, individuals who lose Medicaid or CHIP coverage are eligible for a special enrollment period for coverage offered through the Health Insurance Marketplace<sup>®</sup> or their state's Marketplace, as well as for individual health insurance coverage outside the

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<sup>39</sup> Centers for Medicare & Medicaid Services, Center for Consumer Information and Insurance Oversight, Temporary Special Enrollment Period (SEP) for Consumers Losing Medicaid or the Children's Health Insurance Program (CHIP) Coverage Due to Unwinding of the Medicaid Continuous Enrollment Condition— Frequently Asked Questions (FAQ) (Jan. 27, 2023), available at <https://www.cms.gov/technical-assistance-resources/temp-sep-unwinding-faq.pdf>.

<sup>40</sup> See 85 FR 26351 (May 4, 2020); EBSA Disaster Relief Notice 2021- 01: Guidance on Continuation of Relief for Employee Benefit Plans and Plan Participants and Beneficiaries Due to the COVID-19 (Novel Coronavirus) Outbreak, available at <https://www.dol.gov/sites/dolgov/files/ebsa/employers-and-advisers/plan-administration-and-compliance/disaster-relief/ebsa-disaster-relief-notice-2021-01.pdf>; IRS Notice 2021-58, available at <https://www.irs.gov/pub/irs-drop/n-21-58.pdf> and Q4 above.

Marketplaces, within 60 days before or 60 days after the date of the loss of coverage.<sup>41</sup> In addition, on January 27, 2023, the Centers for Medicare & Medicaid Services (CMS) announced a special enrollment period in Marketplaces served by HealthCare.gov for qualified individuals and their families who lose Medicaid or CHIP coverage due to the end of the continuous enrollment condition, also known as “unwinding.”<sup>42</sup> CMS will update HealthCare.gov so that Marketplace-eligible consumers who submit a new application or update an existing application between March 31, 2023, and July 31, 2024, and attest to a last date of Medicaid or CHIP coverage within the same time period, are eligible for an “Unwinding SEP.” Consumers who are eligible for the Unwinding SEP will have 60 days from the date they submit or update their application to select a Marketplace plan with coverage that starts the first day of the month after they select a plan.<sup>43</sup> For example, if an individual selects a plan on August 15, Marketplace coverage will start on September 1.

Information on Marketplace coverage is available at HealthCare.gov or by calling 1-800-318-2596 (TTY: 1-855-889-4325). Individuals who do not reside in a state with a Marketplace that uses the HealthCare.gov platform can learn more about their state’s Marketplace at [www.healthcare.gov/marketplace-in-your-state](http://www.healthcare.gov/marketplace-in-your-state), including whether their state’s Marketplace will offer a similar Unwinding SEP and any next steps to enroll.

**Q7: What else can employers, particularly those that employ workers who are likely benefiting from Medicaid or CHIP coverage, do to assist their employees in maintaining health coverage?**

Employers can play an important role in helping their employees maintain health coverage. As noted above, they can work with their plan or issuer to extend the special enrollment period beyond the minimum 60 days required by statute. In addition to the special enrollment opportunities required by statute, the Departments encourage plans and issuers to offer a special enrollment opportunity that matches the Unwinding SEP discussed above.

Additionally, employers are encouraged to ensure that their benefits staff are aware of the upcoming resumption of Medicaid and CHIP eligibility determinations. Employers can also encourage their employees who are enrolled in Medicaid or CHIP coverage to update their contact information with the state Medicaid or CHIP agency. They may also encourage employees to respond promptly to any communication from the state.

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<sup>41</sup> 45 CFR 147.104(b)(2) and 155.420(d)(1).

<sup>42</sup> Temporary Special Enrollment Period (SEP) for Consumers Losing Medicaid or the Children’s Health Insurance Program (CHIP) Coverage Due to Unwinding of the Medicaid Continuous Enrollment Condition– Frequently Asked Questions (FAQ) (Jan. 27, 2023), available at <https://www.cms.gov/technical-assistance-resources/temp-sep-unwinding-faq.pdf>.

<sup>43</sup> After July 31, 2024, consumers who were unable to enroll in Marketplace coverage because they did not receive a timely notice of termination of Medicaid or CHIP coverage may contact the Marketplace Call Center at 1-800-318-2596 (TTY: 1-855-889-4325) to request an SEP, which will be granted on a case-by-case basis.

## **Benefits for COVID-19 Testing and Treatment and Health Savings Accounts (HSAs)/High Deductible Health Plans (HDHPs)**

In March 2020, the Treasury Department and the IRS issued Notice 2020-15,<sup>44</sup> which provides that a health plan that otherwise satisfies the requirements to be an HDHP under section 223(c)(2)(A) of the Code will not fail to be an HDHP merely because the health plan provides medical care services and items purchased related to testing for and treatment of COVID-19 prior to the satisfaction of the applicable minimum deductible. As a result, the individuals covered by such a plan will not fail to be eligible individuals under section 223(c)(1) of the Code who may contribute to an HSA merely because of the provision of those health benefits for testing and treatment of COVID-19.

Notice 2020-15 was issued due to the PHE. The notice states that the relief provided would continue until further guidance is issued. The notice further states that it does not modify previous guidance with respect to any of the HDHP requirements, other than with respect to the relief for testing for and treatment of COVID-19. The notice also reiterates that vaccinations continue to be considered preventive care under section 223(c)(2)(C) of the Code for purposes of determining whether a health plan is an HDHP. No further guidance regarding the treatment of an HDHP providing testing for and treatment of COVID-19 prior to the satisfaction of the applicable minimum deductible has been issued.

### **Q8. May an individual covered by an HDHP that provides medical care services and items purchased related to testing for and treatment of COVID-19 prior to the satisfaction of the applicable minimum deductible contribute to an HSA?**

Yes. An individual covered by an HDHP that provides medical care services and items purchased related to testing for and treatment of COVID-19 prior to the satisfaction of the applicable minimum deductible may continue to contribute to an HSA until further guidance is issued. The Treasury Department and the IRS are reviewing the appropriateness of continuing this relief given the anticipated end of the PHE and COVID-19 National Emergency and anticipate issuing additional guidance in the near future. Any future modifications to the guidance previously provided in Notice 2020-15 will not generally require HDHPs to make changes in the middle of a plan year in order for covered individuals to remain eligible to contribute to an HSA.

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<sup>44</sup> 2020-14 IRB 559.