

COVID-19 Update:

Additional Guidance on Outbreak Period Deadlines



During the COVID-19 emergency, various plan-related deadlines were extended by disregarding (for a maximum of one year) the "outbreak period." The National Emergency (NE) ended April 10, 2023, nearly five weeks earlier than it was originally set to expire. Below is an FAQ the DOL, HHS, and IRS released addressing how group health plans and insurers will be impacted by the end of the NE. While the FAQ was released in March 29, 2023, the IRS and DOL have informally indicated that there is no change to the Outbreak Period and is set to end on July 10, 2023.

For a more detailed version of the FAQ please click [here](#).

The below are examples of how the impending changes will affect deadlines for those who have a COBRA account and a Health Savings Account (HSA).

COBRA

Example 1

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. **When is the deadline for Individual A to elect COBRA?** The last day for 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

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.

When is the deadline for Individual A to elect COBRA?

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

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.

When is the deadline for Individual A to elect COBRA?

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

Individual B participates in Employer Y's group health plan. Individual B has a qualifying event and receives a COBRA election notices 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?

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.



HEALTH SAVINGS ACCOUNT(HSA)

In March 2020, the Treasury Department and the IRS issued Notice 2020-15 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 Public Health Emergency (PHE), which is not set to end until May 11, 2023. 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.

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. 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.