

# THE BEACON

Exclusive Compliance Alerts from MZQ Consulting

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## THE NEWEST “OUTBREAK PERIOD” CONUNDRUM: THE VERDICT IS IN

In our last update on the DOL and IRS’s “Outbreak Period” rules, we addressed the dilemma posed by the 1-year statutory limitation on the regulatory authority to delay deadlines. We now have an answer, albeit one that will pose an extraordinary set of administrative challenges.

You will recall that effective March 1, 2020, the agencies “stopped the clock” for purposes of many of the rules governing employer-sponsored health plans. The effected deadlines included those for: (1) COBRA notices, elections and payment, (2) HIPAA special enrollment (i.e., the ability to enroll in a health plan after a marriage or birth of a baby), (3) claims and appeals procedures, and (4) external review. The legal authority for creating the DOL and IRS’s guidance is found in Section 518 of ERISA. That provision, in turn states that the agencies can delay otherwise applicable deadlines by “a period of up to 1 year.”

We have now hit the 1-year anniversary of that guidance, but moments before it was set to potentially expire, the DOL issued guidance clarifying that the rules will not in fact expire on March 1, 2021—at least not for everyone. Instead, the DOL’s newest guidance clarifies that the extensions expire on a case-by-case basis as of the earlier of: (1) One (1) year from the date an individual was first eligible for relief, or (2) Sixty (60) days after the end of the National Emergency (the end of the “Outbreak Period”).

Essentially, instead of restarting the clock for everyone at once, each individual plan participant’s clock will restart after it’s been paused for 1-year (unless the Outbreak Period ends sooner). This is best understood by considering a couple of examples. For this purpose, we’ll consider COBRA deadlines (although these rules impact all of the timing rules noted above).

Example 1: Alice’s original COBRA election period ended March 1, 2020. Her last day to elect coverage is February 28, 2021.

Example 2: Bob’s COBRA election period would normally end March 1, 2021. His election period now ends the earlier of: (1) February 28, 2022, or (2) the last day of the Outbreak period.



This rolling, person-by-person application of the rules will add a new element of complexity to benefits administration for the immediate future. To that end, the DOL specifically directs plan sponsors to act in the best interest of plan participants—noting in particular, that plan fiduciaries should: (1) “make reasonable accommodations to prevent the loss of or undue delay in payment of benefits,” and (2) “take steps to minimize the possibility of individuals losing benefits because of a failure to comply with pre-established time frames.” That’s good advice, though perhaps easier said than done. In any case, your team at MZQ Consulting is up to the challenge.

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