

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
Center for Consumer Information & Insurance Oversight
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Title: Insurance Standards Bulletin Series – INFORMATION

Subject: Temporary Period of Relaxed Enforcement of Certain Timeframes Related to Group Market Requirements under the Public Health Service Act in Response to the COVID-19 Outbreak

Markets: Group

I. Background

On March 13, 2020, President Donald J. Trump signed the Proclamation on Declaring a National Emergency Concerning the Coronavirus Disease 2019 (COVID-19) Outbreak (COVID-19 National Emergency).¹ On April 28, 2020, the Department of Labor (DOL), the Department of the Treasury (Treasury Department), and the Internal Revenue Service (IRS) issued the following guidance so plan participants, beneficiaries, and employers have additional time to make critical health coverage and other decisions affecting benefits and to send certain required notices during the COVID-19 outbreak:

- **Joint Notice Issued by DOL, Treasury Department, and IRS (Joint Federal Register Notice).** The Joint Federal Register Notice provides group health plans subject to the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code (the Code) and plan participants and beneficiaries additional time to comply with certain deadlines affecting COBRA continuation coverage, special enrollment periods, claims for benefits, appeals of denied claims, and external review of certain claims. The Joint Federal Register Notice is available at <https://www.govinfo.gov/content/pkg/FR-2020-05-04/pdf/2020-09399.pdf>.

¹ Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak, issued March 13, 2020, available at <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>.

- **EBSA Disaster Relief Notice 2020-01 (EBSA Notice 2020-01).** EBSA Notice 2020-01 extends the deadlines under which other notices, disclosures and other documents required under the provisions of Title I of ERISA over which DOL has interpretive and regulatory authority must be furnished to participants and beneficiaries if the plan administrator acts in good faith and furnishes such notice, disclosure, or document as soon as administratively practicable under the circumstances. EBSA Notice 2020-01 is available at: <https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/disaster-relief/ebsa-disaster-relief-notice-2020-01>.

II. Guidance

The Centers for Medicare & Medicaid Services (CMS) concurs with the relief specified by DOL, the Treasury Department, and IRS in the Joint Federal Register Notice, as well as in EBSA Notice 2020-01 issued by DOL. Between March 1, 2020 and 60 days after the end of the COVID-19 National Emergency, or such other date announced by DOL or jointly by DOL and the Treasury Department/IRS in future guidance, CMS will adopt a temporary policy of relaxed enforcement to extend similar time frames otherwise applicable to non-Federal governmental group health plans and health insurance issuers offering coverage in connection with a group health plan, and their participants and beneficiaries, under applicable provisions of title XXVII of the Public Health Service Act (PHS Act). Under this temporary policy, CMS also will not consider a Small Business Health Options Program (SHOP), a SHOP issuer offering a qualified health plan (QHP) through a SHOP, or small business participating in a SHOP to be out of compliance with rules applicable to the SHOP, to the extent the SHOP, issuer, or small business operates in a manner consistent with this relief. To the extent there are different outbreak period end dates for different parts of the country, the relief provided by this Bulletin will apply in a manner consistent with any additional guidance announced by DOL or jointly by DOL and the Treasury Department/IRS regarding the application of the relief to those different areas.

While the extension of time frames is not mandatory for non-Federal governmental plans, CMS encourages plan sponsors of non-Federal governmental plans to provide relief to participants and beneficiaries similar to that specified in the Joint Federal Register Notice, and encourages, but does not require, states, SHOPS, and health insurance issuers offering coverage in connection with a group health plan to enforce and operate, respectively, in a manner consistent with the relief provided in the Joint Federal Register Notice and EBSA Notice 2020-01. CMS will not consider a state to have failed to substantially enforce the applicable provisions of title XXVII of the PHS Act if the state takes such an approach.

The relief provided by this Bulletin does not apply to health insurance issuers offering individual health insurance coverage. For other COVID-19 related guidance applicable to individual health insurance coverage, visit <https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs#COVID-19>.

We believe this guidance is a statement of agency policy not subject to the notice and comment requirements of the Administrative Procedure Act (APA).² CMS additionally finds that, even if this guidance were subject to the public participation provisions of the APA, in light of the COVID-19 public health emergency, prior notice and comment for this guidance is impracticable and contrary to the public interest, and there is good cause to issue this guidance without prior public participation and without a delayed effective date.³

Where to get more information: If you have any questions regarding this Bulletin, please email the CCHIO mailbox Marketreform@cms.hhs.gov (use “COVID-19” as the subject of the email).

² 5 U.S.C. § 553(b)(3)(A).

³ 5 U.S.C. § 553(b)(3)(B) and (d)(3).