



Group Health Plans and a “Return to Normal” – The End of the Public Health Emergency

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WEBINAR SERIES

Solutions for the 21st Century

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As **Vice President, Legislative & Regulatory Affairs** at Keenan, Amy serves as the primary source for state and federal legislative and regulatory analysis, writing briefings, blog posts, and white papers explaining new laws that have an impact on the firm and its clients—whether they be physician groups, manufacturing firms, or public-school districts.

Practice Areas

Employee Benefits, Employment Law, Conflict of Interest, State Sunshine Laws, Public Pensions, Litigation

Admitted to Practice

- States: NJ and CA
- Federal Courts: District of NJ, Southern District of California

Education

- Seton Hall University School of Law, J.D.
- Smith College, B.A. with Honors

COVID-19 Federal Emergency Declarations



In response to COVID-19, federal government enacted two emergency declarations that impacted group health plans:

- **National Emergency** – Effective March 1, 2020, through May 11, 2023
 - Established “Outbreak Period” which will end on July 10, 2023.
 - Impacts COBRA, HIPAA special enrollment rights, and group health plan claims and appeals timelines.
- **Public Health Emergency** – Effective from January of 2020 until May 11, 2023
 - Mandated coverage of COVID-19 testing and vaccines without cost-sharing, suspended enforcement of MHPAEA related to coverage of COVID-related services.



Outbreak Period – Definition

Originally, a period of time from March 1, 2020, until 60 days after the declared end of the COVID-19 national emergency during which certain timeframes and deadlines applying to group health plans were to be disregarded.

In February of 2021, EBSA and IRS [clarified](#) that the disregarded period for each individual would run until the **earlier** of:

- 1 year from the date they were first eligible for relief, or
- 60 days after the announced end of the National Emergency (AKA, the end of the Outbreak Period)

On the applicable date, the timeframes for individuals and plans with periods that were previously disregarded under the Notices would resume.

In no case would a disregarded period exceed 1 year.

Outbreak Period – Plan Timeframes and Deadlines



Group health plans were instructed to disregard the Outbreak Period for purposes of:

- The **30-day period** to request a special enrollment in a group health plan
- The **60-day period** to request enrollment into a group health plan upon losing eligibility for CHIP coverage becoming eligible for the CHIP subsidy
- The date within which individuals may file a benefit claim under a plan's claims procedures
- The date within which a claimant may file an appeal of an adverse benefit determination under a plan's claims procedures
- The date within which a claimant may file a request for an external review after receipt of an adverse benefit determination or final internal adverse benefit determination
- 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

Outbreak Period – Plan Timeframes and Deadlines



Important Note:

- Disregarded period applies to HIPAA Life Events (birth, adoption, placement for adoption, marriage, divorce, death of an employee, etc.)
- **It does not apply** to the other (optional) Section 125 mid-year election change reasons (e.g., significant cost changes, the spouse's Open Enrollment, etc.)



Outbreak Period – COBRA Timeframes and Deadlines



Group health plans were also instructed to disregard the Outbreak Period for purposes of:

- The **60-day election period** for COBRA continuation coverage
- The date for making COBRA premium payments
- The date for a group health plan, sponsor, or administrator to provide a COBRA election notice*

Example 1: The One With the Mid-Year Election Change

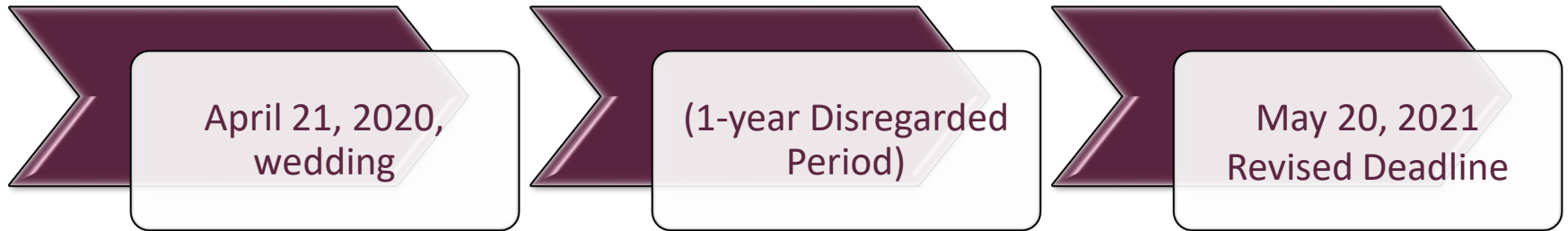


Chandler Bing married Monica Geller on April 21, 2020.

- While nobody actually knows what Chandler does for a living, he has employer-provided health insurance, and is allowed under HIPAA to enroll Monica as his spouse under the plan in a mid-year election change.
- Normally, the plan allows an employee 30 days after a Qualifying Life Event to enroll a new spouse. However, due to the National Emergency, he had one year and 30 days to enroll Monica.



Example 1: Mid-Year Election Change



Example 2: The One with the COBRA Election



Rachel Green lost her job at Ralph Lauren after her boss discovered she'd been interviewing with Gucci. She was provided a COBRA notice for continuation coverage on August 15, 2021.

Normally, Rachel would have had 60 days from the date she was furnished the COBRA notice to elect COBRA. But due to the National Emergency, she had one year and 60 days from the date she was furnished the notice to elect COBRA.

Example 2: COBRA Election



Impact of End of Outbreak Period



ALL Outbreak Period relief ends as of July 10, 2023 (60 days after May 11, 2023)

This means:

- For people with events and deadlines that occurred up until July 11, 2022 – full one year “disregarded period”
- For people with events and deadlines that occurred on or after July 11, 2022 – **LESS THAN** one year “disregarded period”



Example 3: COBRA Election



Rachel Green lost her job at Gucci after her NEW boss discovered she'd been interviewing with Kate Spade. She was provided a COBRA notice for continuation coverage on June 1, 2022.

Normally, Rachel would have had 60 days from the date she was furnished the COBRA notice to elect COBRA. But due to the National Emergency, she had one year and 60 days from the date she was furnished the notice to elect COBRA.

Example 3: COBRA Election



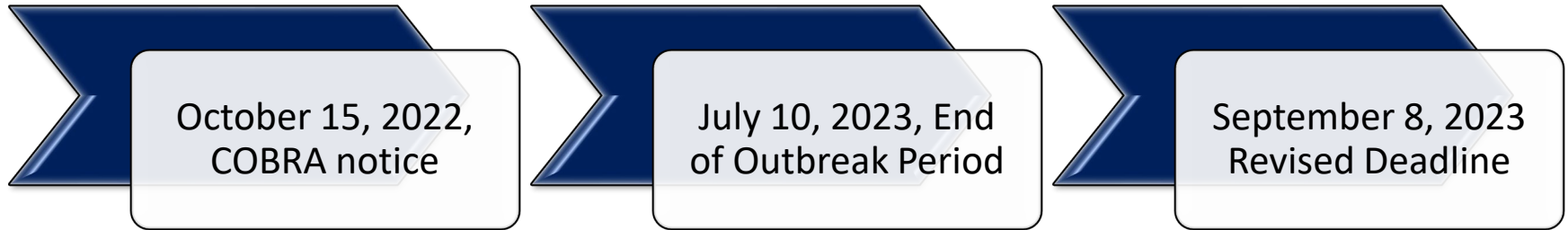
Example 4: COBRA Election



Rachel Green lost her job at Kate Spade after her boss discovered she'd been moonlighting at Central Perk. She was provided a COBRA notice for continuation coverage on October 15, 2022.

Normally, Rachel would have had 60 days from the date she was furnished the COBRA notice to elect COBRA. But due to the National Emergency, she had one year and 60 days from the date she was furnished the notice to elect COBRA.

Example 4: COBRA Election



Post-July 10, 2023 Important Dates



- August 9, 2023 – the 30th day after July 10, 2023
- August 24, 2023 – the 45th day after July 10, 2023
- September 8, 2023 – the 60th day after July 10, 2023



Special Rule – Initial COBRA Payments



- If individual elects COBRA during “normal” 60-day election window, the first premium payment is due 45 days from the last day of Disregarded Period
- If individual elects COBRA outside of 60-day COBRA window but before end of Disregarded Period, the have 105 days from the later of the date coverage was lost or the date of their COBRA Election Notice

End of Outbreak Period Action Items

- ✓ **Check plan documents**
 - Make sure any amendments made to reflect outbreak period were time-limited to end when it did
- ✓ **Check in with TPA/COBRA Administrator**
 - Ensure that they are prepared to administer as the Outbreak period ends
 - Ask about notices
- ✓ **Check COBRA letters and HIPAA Notice**
 - Update language if necessary of Special Enrollment Rights
- ✓ **Send notice to employees and COBRA enrollees**



End of Public Health Emergency

The following federal requirements for group health plans expire on May 11, 2023*:

- Coverage of COVID-19 diagnostic testing and related services (including tests administered by providers and over-the-counter tests) without cost-sharing, prior authorization, or other medical management requirements
- Coverage of COVID-19 vaccines—including booster doses—from out-of-network providers without cost-sharing, prior authorization, or other medical management requirements
 - **In-network COVID-19 vaccinations remain free as preventive services under the ACA as well as other federal laws**

** When each carrier or claims-paying TPA chooses to implement that change is TBD*

End of Public Health Emergency

The following federal requirements for group health plans expire on May 11, 2023:

- The ability to offer stand-alone telehealth benefits and other remote care services to participants who are not eligible for major medical coverage
- The suspension of enforcement actions under the Mental Health Parity and Addiction Equity Act (MHPAEA) related to the coverage of COVID-19 testing items and services without cost-sharing, prior authorization, or other medical management requirements

End of Public Health Emergency Action Items

- ✓ **Check telehealth benefits to ensure they are in compliance**
- ✓ **Good time to look at NQTLs under MHPAEA**
 - If you continue to offer COVID-19 testing items and services without cost-sharing, prior authorization, or other medical management requirements, ensure that you have analyzed this in relation to comparable MH/SUD benefits under the plan

Resources



- [End of Public Health Emergency - Impact on Employer Sponsored Health Plans](#)
- [White House Statement](#)
- [EBSA Disaster Relief Notice 2021-01](#)
- [News Release](#)
- [Extension of Certain Timeframes for Employee Benefit Plans, Participants, and Beneficiaries Affected by the COVID-19 Pandemic](#)
- [EBSA Disaster Relief Notice 2020-01](#)
- [COVID-19 FAQs for Participants and Beneficiaries](#)



QUESTIONS?

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**Thank you for
your participation!**

Keenan