

# Client Alert

June 2020

## COVID-19 Health and Welfare Benefit Plans Update

### Introduction

The Internal Revenue Service (“IRS”) and the U.S. Department of Labor (“DOL”) have issued guidance related to COVID-19 disaster relief that provides flexibility to health and welfare benefit plans. This client alert discusses temporary relief for time-sensitive events; changes to cafeteria plans; changes to high-deductible health plans; and miscellaneous health and welfare benefit plan changes.

### Temporary Relief for Time-Sensitive Events

The IRS and the DOL published guidance in a joint [document](#) (the “Joint Notice”) providing for temporary extended due dates occurring after March 1, 2020. Such deadlines are delayed until 60 days after the announcement of the end of the COVID-19 national emergency.

The Joint Notice provides relief for the following time-sensitive actions occurring after March 1, 2020:

#### *HIPPA Special Enrollment in a Group Health Insurance Plan*

- A participant in a group health insurance plan generally has 30 days (or 60 days, if applicable) to request special enrollment information in the group health plan following the occurrence of a special enrollment event (e.g., marriage, birth of a child, loss of coverage).
  - The Joint Notice extends the deadline to request special enrollment for 60 days after the end of the COVID-19 national emergency.
  - For example, assuming the COVID-19 national emergency ends on August 31, 2020, the 60-day extension would end on October 30, 2020. Therefore, an eligible participant in a group health insurance plan would have until November 29, 2020 to elect the HIPPA special enrollment, regardless of when the qualifying event occurred.

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### *COBRA Relief*

- An employee and/or eligible dependent who experiences a COBRA qualifying event has 60 days to elect COBRA continuation coverage.
  - The Joint Notice extends the deadline to elect COBRA continuation coverage for 60 days after the end of the COVID-19 national emergency.
- A qualified individual who has elected COBRA continuation coverage has 45 days to make the initial COBRA premium payment; each subsequent payment must be made within 30 days after the due date for that coverage month.
  - The Joint Notice extends the deadline to make COBRA premium payments for 60 days after the end of the COVID-19 national emergency.
- A COBRA-eligible beneficiary is required to notify the group health plan of certain COBRA qualifying events within 60 days. A COBRA-eligible beneficiary who becomes disabled generally must notify the group health plan administrator within 60 days of the determination of disability.
  - The Joint Notice extends these notification deadlines for 60 days after the end of the COVID-19 national emergency. However, the Joint Notice does not extend the deadline for employers to notify the group health plan.
- Generally, an employer must provide a COBRA-eligible beneficiary with a COBRA election notice within 14 days (44 days if the employer is the plan administrator) after notice of the individual's COBRA-qualifying event.
  - The Joint Notice extends the employer's deadline to provide the COBRA election notice for 60 days after the end of the COVID-19 national emergency.

### *Claims and Appeals*

- ERISA plans are required to establish procedures for benefit claims and the time to appeal the denial of such benefit claims.
  - The Joint Notice extends the time to appeal for 60 days after the end of the COVID-19 national emergency. This relief is plan specific.
- Where an ERISA plan participant has exhausted the plan's claims and appeals procedures, the participant may seek an external review of the denial of the claims.
  - The Joint Notice extends these dates for 60 days after the end of the COVID-19 national emergency.

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In addition to the above, the DOL published a separate [notice](#) (the "Disaster Relief Notice") that extends the deadline for plans to provide participants and dependents with certain notices and documents required by Title I of ERISA such as summary plan descriptions, summaries of material modifications, summary annual reports, QDRO notices, periodic pension benefit statements,

QDIA notices, mapping notices, notices of Adverse Benefit Determinations and Appeals, notification of Benefit Determination and annual funding notices. The Disaster Relief Notice also extends the time for employers to remit participant contributions received by the employer. Finally, the Disaster Relief Notice extends the due date for filing Form M-1 (for multiple employer welfare arrangements) that was originally due between April 1, 2020 and July 14, 2020 to July 15, 2020. However, the Disaster Relief Notice does not extend the due date to file the 2019 Form 5500 for calendar year plans, which still must be filed by July 31, 2020. For more information, please see our [Employee Benefits Update](#).

#### Cafeteria Plans

IRS [Notice 2020-29](#) provides a number of changes to cafeteria plans for calendar year 2020 by allowing an employer to amend its plan to permit participant mid-year elections, regardless of whether the individual was affected by COVID-19. This relief may be applied retroactively to periods beginning on or after January 1, 2020.

An employer may amend a plan to allow employees to:

- Make a new election for employer-sponsored health coverage on a prospective basis;
- Revoke an existing election for employer-sponsored health coverage and enroll in different employer-sponsored health coverage on a prospective basis;
- Revoke an existing election for employer-sponsored health coverage on a prospective basis, provided the employee attests in writing that he or she is enrolled (or immediately will enroll) in other health coverage not sponsored by the employer; and
- Revoke an election, make a new election, or decrease/increase an existing election regarding a health or dependent care Flexible Spending Arrangement (“FSA”) on a prospective basis.

Additionally, if an employee has unused FSA amounts at the end of a grace period or plan year ending in 2020, IRS Notice 2020-29 permits the employer to amend the plan so that the employee may apply these unused amounts to cover expenses incurred for the same qualified benefits through December 31, 2020. Along these lines, IRS [Notice 2020-33](#) increases the FSA carryover amount from \$500 to \$550, and allows health plans to reimburse individual insurance policy premium expenses incurred prior to the beginning of the plan year for coverage provided during the plan year.

Finally, any amendment implementing these changes for the 2020 plan year must be adopted on or before December 31, 2021, and may be retroactively effective to January 1, 2020.

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### High Deductible Health Plans

Generally, high-deductible health plans (“HDHP”) require a participant to pay for out-of-pocket medical costs which are not considered “preventive” until the plan’s out-of-pocket dollar amount is reached. IRS [Notice 2020-15](#) provides that an otherwise qualifying HDHP will continue to qualify if the plan provides health benefits for COVID-19 testing and treatment (including testing for the flu, norovirus, coronaviruses and respiratory syncytial virus, per IRS Notice 2020-29) prior to the applicable minimum deductible having been met. Moreover, the CARES Act provides that an otherwise qualifying HDHP will continue to qualify if the plan allows for telehealth coverage prior to the applicable minimum deductible being met. IRS [Notice 2020-29](#) makes these two HDHP provisions retroactive to January 1, 2020.

### CARES Act Changes

The CARES Act introduced two new changes. Employees can use their FSAs, health savings accounts (“HSAs”) and health reimbursement arrangements (“HRAs”) to pay for over-the-counter medications without a doctor’s note and to pay for menstrual care products. These changes are now permanent and retroactive to January 1, 2020.

### Conclusion

There have been several newly-issued pieces of IRS and DOL guidance and legislation addressing many health and welfare benefit plans associated with the COVID-19 pandemic which has given both employees and employers much-needed flexibility.

We are continuously monitoring changes and updates to health and welfare benefit programs, and we will provide updates as they become available.

Olshan lawyers from multiple practice groups are working together with clients to address COVID-19-related matters, including the CARES Act stimulus programs (i.e., the PPP and EIDL) and other corporate matters, including contractual analysis and financing, tax, restructuring, employee benefits and employment practices, insurance coverage and litigation. Click [here](#) to access additional materials addressing issues raised by COVID-19.

Please contact the Olshan attorney with whom you regularly work or the attorney listed below if you would like to discuss this client alert or have questions about its content.

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