



# Disaster Relief Notice 2020-01: Guidance and Relief for Employee Benefit Plans Due to the COVID-19 Outbreak

## [Disaster Relief Notice 2020-01](#)

On April 28, 2020, the EBSA issued Disaster Relief Notice 2020-01: Guidance and Relief for Employee Benefit Plans Due to the COVID-19 (Novel Coronavirus) Outbreak. This notice, among other things:

1. Extended the deadline for certain plans to file Form 5500
2. Acknowledged fiduciary difficulties arising due to COVID-19 (including, but not limited to, difficulties “achiev[ing] full and timely compliance with claims processing and other ERISA requirements[;]”) and recognized a relaxed enforcement approach during this unprecedented time
3. Announced “[f]or group health plans[] subject to ERISA or the Internal Revenue Code” “an extension of a number of deadlines so plan participants, beneficiaries, and employers have additional time to make critical health coverage and other decisions affecting benefits during the COVID-19 outbreak.”

This Extension of Certain Timeframes for Employee Benefit Plans, Participants, and Beneficiaries Affected by the COVID-19 Outbreak (the “Final Rule”, available [HERE](#)) was jointly issued by the EBSA, the DOL, the IRS, and the Department of the Treasury May 4, 2020, but retroactively effective March 1, 2020; nearly two (2) weeks before President Trump declared the COVID-19 National Emergency. Generally, the Final Rule applies to employee plans subject to ERISA or the Internal Revenue Code from March 1, 2020, until 60 days after the announcement of the end of the COVID-19 National Emergency OR such other date announced by the Department in a future notice. For a good summary of the Final Rule, visit this link [HERE](#).

At this time, we are unaware of any guidance indicating how Plans are to account for its retroactivity (or the open questions addressed [HERE](#), but we anticipate capturing a number as part of appeals and will address others with each Group as they arise.

### ERISA Clients

In response, Healthgram has made adjustments (excluding those for HIPAA special enrollment, discussed below) for all its ERISA clients, including adding a line-item to the EOB to inform members of the Final Rule, manually tracking extended deadlines with our COVID Calculator (attached), etc. We believe the retroactivity complications will most greatly impact COBRA, and will be in touch with each Group as issues arise.

# Disaster Relief Notice 2020-01: Guidance and Relief for Employee Benefit Plans Due to the COVID-19 Outbreak cont'd.

## **Non-ERISA Clients**

Non-ERISA clients should consult their corporate counsel before letting their Account Representative know whether they are required to comply with the Final Rule. For non-ERISA non-federal Governments, the Final Rules state:

This document has been reviewed by the Department of Health and Human Services (HHS), which has advised the Agencies that HHS concurs with the relief specified in this document. HHS has advised the Agencies that HHS will exercise enforcement discretion to adopt a temporary policy of measured enforcement to extend similar timeframes 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, beneficiaries and enrollees under applicable provisions of the Public Health Service Act (PHS Act). HHS has advised the Agencies that HHS encourages plan sponsors of non-Federal governmental group health plans to provide relief similar to that specified in this document to participants and beneficiaries, and encourages states 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 this document. HHS has also advised the Agencies that HHS 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.

Section 104 of the Title I of Health Insurance Portability and Accountability Act of 1996 (HIPAA) requires that the Secretaries of Labor, the Treasury, and Health and Human Services (the Departments) ensure through an interagency Memorandum of Understanding (MOU) that regulations, rulings, and interpretations issued by each of the Departments relating to the same matter over which two or more departments have jurisdiction, are administered so as to have the same effect at all times. Under section 104, the Departments, through the MOU, are to provide for coordination of policies relating to enforcement of the same requirements in order to have a coordinated enforcement strategy that avoids duplication of enforcement efforts and assigns priorities in enforcement. See section 104 of HIPAA and Memorandum of Understanding applicable to Title XXVII of the PHS Act, Part 7 of ERISA, and Chapter 100 of the Code, published at 64 FR 70164, December 15, 1999.

Upon confirmation, coordination with Stop-Loss (to ensure they agree with corporate counsel's position) would be strongly encouraged.

## **HIPAA special enrollment:**

It is an Employer's responsibility to administer HIPAA special enrollment and determine eligibility. Employers subject to this regulation should be allowing 30 or 60 days from special enrollment events, depending on the event, and passing those enrollments to Healthgram in accordance with the publication.

**Please see the [COVID Calculator](#) [HERE](#).**

**\*\*NOTE:** The above information is subject to change in accordance with any regulation changes.