



Date: June 10, 2020
To: All Insurers Authorized to Write Health Insurance, Agents and Interested Parties
From: Mark V. Afable, Commissioner of Insurance
Subject: Summary of Federal Regulations Relaxing Timeframes and OCI Request of Non-ERISA Group Plans

On May 4, 2020, federal regulations were released that revised several sections of regulations related to the Employee Retirement Income Security Act (ERISA). These regulations extended certain time frames related to portability and the continuation of coverage for group health plans, disability, and other welfare plans during the COVID-19 federally declared national emergency. Due to the national emergency, participants and beneficiaries may encounter problems in exercising their health coverage portability and continuation coverage rights, or in filing or perfecting their benefit claims. The regulations are intended to minimize the possibility of individuals losing benefits due to a failure to comply with certain pre-established timeframes and notice obligations.¹

The Office of the Commissioner of Insurance (OCI) is providing a brief summary of the key provisions in the revised federal regulations and to encourage non-federal governmental group health plans and insurers to exercise flexibility in applying similar Wisconsin provisions. This summary is intended as information only, and not an interpretation of the law by OCI.

Outbreak Period Carve Out:

The federal government created a defined period of time that is to be disregarded when calculating deadlines, timeframes, or timeliness for pre-determined notices and elections under ERISA. The "Outbreak Period" is defined as the period between March 1, 2020, until 60-days after the announcement ending the national emergency. This means, for example, if an ERISA plan requires all claims to be filed within 365 days of the event, and an individual received medical care on April 1, 2020, the period between March 1, 2020, to 60-days after the end of the national emergency is not counted in the 365 day deadline. This Outbreak Period is being applied by various federal agencies to extend election, payment, and filing timeframes.

Additionally, the US Department of Health and Human Services encouraged non-federal governmental group health plans, states, and health insurers offering coverage to group health plans to provide similar relief to participants and beneficiaries as granted by the federal rules.

¹ Federal Register link <https://www.govinfo.gov/content/pkg/FR-2020-05-04/pdf/2020-09399.pdf>

The Outbreak Relief Period applied to the following deadlines:

- The 60-day COBRA continuation coverage election period under ERISA section 701 (f) and Code section 9801 (f).
- The 30-day period for a Special Enrollment Period (or 60-day period if CHIPRA applies) under ERISA section 605 and Code section 4980B(f) (5).
- The date due for COBRA premium payments under ERISA section 602 (2) (C) and (3) and Code section 4980B(f)(2)(B)(iii) and (C).
- The date for individuals to notify the plan of a qualifying event or determination of disability under ERISA section 606 (a)(3) and Code section 4980B(f)(6)(C).
- The date within which the individual may file a benefit claim under the plan's claims procedure pursuant to 29 CFR 2560.503-1.
- The date within which individuals may file an appeal of an adverse benefit determination pursuant to 29 CFR 2560.503-1(h).
- The date within which claimants may file a request for external review or final internal adverse benefit determinations pursuant to 29 CFR 2590.715-2719 (d)(2)(i) and 26 CFR 54.9815-2719(d)(2)(i).
- The date within which a claimant may file information to perfect a request for external review once identified that the request was not complete pursuant to 29 CFR 2590.715-2719 (d)(2)(ii) and 26 CFR 54.9815-2719(d)(2)(ii).

Wisconsin Continuation Law:

The Commissioner requests that Wisconsin insurers extend the same relief granted by the federal government to non-ERISA group plans and grandfathered plans under the following statutes and their respective timeframes:

- Wis. Stat. § 632.897 (3) (c) and (4) (c), State continuation payment of premium within 30 days of election and effective date applicability.
- Wis. Stat. § 632.83 (3), State Independent review timeframes including response times for requested documents.

The OCI will not find that an insurer violated these statutes if it provided flexibility to consumers consistent with the federal rule.

Any questions concerning this bulletin may be directed to Olivia Hwang, Director of Public Affairs, by email at Olivia.Hwang@wisconsin.gov.