

COVID-19

Tolling of Important Health and Welfare and Retirement Plan Deadlines Extended Again Due To COVID-19

ATTORNEYS & PROFESSIONALS

Kathryn Bjornstad Amin

kamin@groom.com

202-861-2604

Jon Breyfogle

jbreyfogle@groom.com

202-861-6641

Lisa Campbell

lcampbell@groom.com

202-861-6612

Patrick DiCarlo

pdicarlo@groom.com

202-861-0172

David Levine

dlevine@groom.com

202-861-5436

Malcolm Slee

mslee@groom.com

202-861-6337

PUBLISHED

02/23/2022

SOURCE

COVID-19 Resource

SERVICES

- [Health & Welfare Programs](#)
- [Retirement Programs](#)
- [Federal Insurance Regulation](#)

On February 18, 2022, President Biden again [formally extended the COVID-19 National Emergency](#), which was set to expire on March 1, 2022. As explained in detail in our previous alerts¹, this most recent extension means that the deadlines listed below continue to be tolled for one year (or, if earlier, 60 days from the end of the National Emergency).

Each National Emergency declaration generally lasts for one year unless the President announces an earlier termination. When the one-year period is over, the President can extend the declaration, generally for another one-year time period. President Trump first declared the National Emergency on March 1, 2020. On February 24, 2021, President Biden extended the National Emergency. Most recently, it was unclear whether President Biden would extend it again because, although many stakeholders requested another extension, the Biden Administration is also facing some political pressure to move the country onto an “off-ramp” from the COVID-19 pandemic (assuming COVID-19 cases, hospitalizations, and deaths continue to decline). It, therefore, is possible that President Biden could end the National Emergency in the coming months. Stay tuned for any further developments.

As [noted in our prior alert](#), DOL, IRS, and HHS take the position that the tolling period applies on a person-by-person basis. It can be challenging to track these deadlines when the tolling period applies, so plan administrators should take care that they are calculating the deadlines correctly.

For Participants:

- [COBRA Qualifying Event and Disability Extension Notices](#)– The 60-day deadline by which qualified beneficiaries must notify the plan of certain qualifying events (e.g., divorce or legal separation, a dependent child ceasing to be a dependent under the terms of the plan) or disability determination.
- [COBRA Election](#)– The 60-day deadline to elect COBRA continuation coverage.
- [COBRA Premium Payments](#)– The 45-day (for the initial payment) and 30-day (for subsequent payments) deadlines to timely pay COBRA premiums.
- [HIPAA Special Enrollment Period](#)– The 30-day deadline (in some instances, 60-day) to request enrollment in a group health plan following a special enrollment event (i.e., birth, adoption or placement for adoption of a child, marriage, loss of other health coverage, or eligibility for a state premium assistance subsidy).

- Benefit Claims and Appeals– The deadline under the plan by which participants may file a claim for benefits (under the terms of the plan) and the deadline for appealing an adverse benefit determination.
- External Review– the 4-month period (for the federal external review process; this period could be different for a state external review process) for a claimant to file a request for external review.
- Perfecting a Request for External Review– the 4-month period (or 48-hour following receipt of an incomplete request notification, if later) for a claimant to perfect an incomplete request for external review.

For Plan Administrators:

- COBRA Election Notice – the 14-day deadline (44 days where the employer is the plan administrator) for a plan administrator to provide a COBRA election notice to qualified beneficiaries.

Note that this National Emergency declaration is different from the Public Health Emergency (“PHE”) declaration made by the Secretary of Health and Human Services, which is tied to the COVID-19 testing requirements in the Families First Coronavirus Response Act and the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act. The PHE is set to expire on April 16, 2022, however, the Secretary may extend the PHE declaration for subsequent 90-day periods for as long as the PHE continues to exist and may terminate the declaration whenever the Secretary determines that the PHE has ceased to exist. In a letter to state governors in January 2021, the acting Secretary noted that HHS will provide states with 60 days’ notice prior to terminating the declaration.