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Extended ERISA Deadlines, Permitted Election Changes, and Extended Claims Periods

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Road Map

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- Modification to carryover under health flexible spending account (HFSA)

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EBSA Disaster Relief Notice 2020-01

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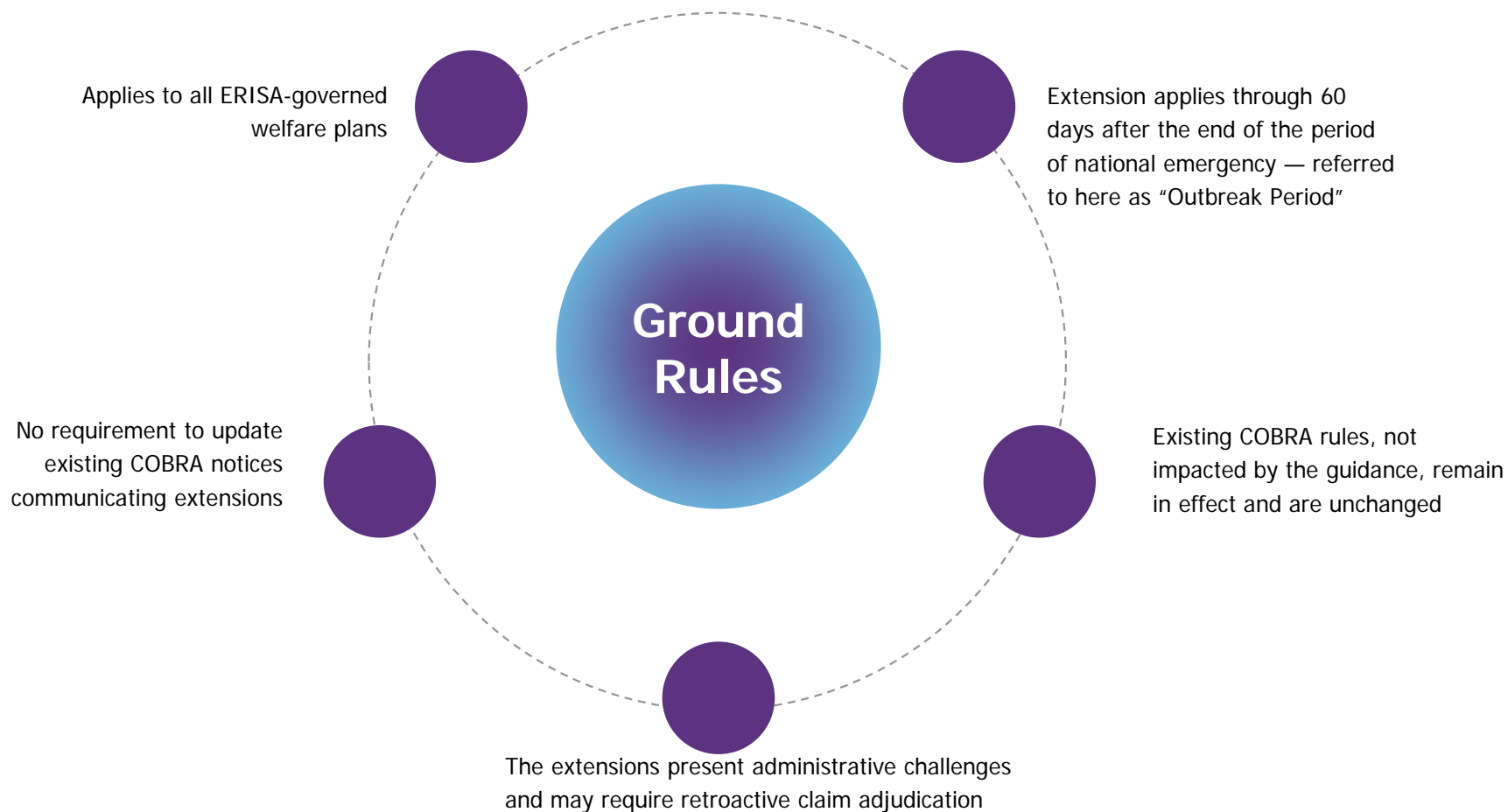
EBSA Disaster Relief Notice 2020-01

- Relates to notifications required under Title I of ERISA
 - Summary plan descriptions, summary of material modifications, summary benefits of coverage, SAR, Medicare Part D Notices, etc.
- Applies to notices required between March 1, 2020 through 60 days after the end of the period of national emergency
- Deadlines to provide notices extended
 - Act in good faith, which includes the use of electronic communications
 - Provide notices soon as administratively practicable under the circumstances

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Extension of Certain Time Frames Under ERISA (COBRA, HIPAA, Claim Deadlines)

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COBRA Election Notice Extension

- Extends the deadline to provide COBRA election notices through the end of the Outbreak Period
- Only plan administrator relief

Practical implications

Delaying notice will delay COBRA election

Greater potential for requiring retroactive coverage

COBRA election notices are automatically generated and distributed

COBRA Participant Election Extension

- Extends period to make a COBRA election through the end of the Outbreak Period

Practical implications

Will result in retroactive coverage for many more months

Rational QBs will wait even longer to see if they incur claims

No coverage required until a COBRA election is made
And paid for... (see next slide)

COBRA Premium Payment Extension

- The initial COBRA premium payment and ongoing premium payment obligations are extended through the end of the Outbreak Period

Practical implications

QB not required to make COBRA premium payments by ordinary deadlines

Will require retroactive adjudication and coverage of premium payments if payments are eventually made

Long-standing COBRA regulations indicate that coverage can be terminated at the start of an initial election period or subsequent month and then retroactively reinstated if payment is made by the end of the grace period for the initial period or an ongoing month

COBRA Qualifying Event and Disability Extensions

- The 60-day deadline for a QB to notify events such as divorce, legal separation, loss of dependent child status, or disability determinations are extended through the end of the Outbreak Period

Practical implications

Retroactive adjudication of additional COBRA rights and QB status

Requiring extension of COBRA for 11 months

Retroactive increase in COBRA premiums for disabled QB

HIPAA Special Enrollment Period

- The timeline to request enrollment in a group health plan following a HIPAA special enrollment event is extended through the end of the Outbreak Period

Practical implications

Retroactive coverage when participant reports special HIPAA enrollment event and makes any retroactive premium payment

New dependent, etc.

Benefit Claims and Appeals

- Deadlines to file a benefit claim and to appeal a claim are extended through the end of the Outbreak Period
- Includes external claim procedures

Practical implications

Third-party administrator/plan administrator still must comply with notice requirements

Does not apply to dependent care flexible spending account (DCFSA) (not an ERISA-governed plan)

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IRS Notice 2020-29 Cafeteria Plans & High- Deductible Health Plans

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Elections Under Cafeteria Plans

- Permits **prospective** mid-year election changes for employer-sponsored health coverage, HFSA's and DCFSA's
- Practically, a mid-year open-enrollment opportunity
 - Make a new election
 - Revoke an existing election for other employer coverage or different coverage (with attestation)
 - Stop an HFSA or a DCFSA, make a new election, decrease or increase an existing election
- Doesn't require any event or other criteria
- Permissible to offer—but not required

Elections Under Cafeteria Plans

- Not required to provide unlimited election changes
- Can provide a limited time frame to take advantage of relief
- HFSA election to reduce contributions can be limited to the amount already reimbursed
- Amend plan documents to reflect changes by December 31, 2021

Practical implications

All changes are prospective; this means no refunds from spending accounts permitted

Gives eligible employees who declined coverage a second chance to elect employer group health plan coverage

Extended Claims Periods for HFSA and DCFSA

- Permits unused amounts remaining in a calendar-year HFSA and DCFSA as of the end of a 2019 grace period (or 2019 HFSA \$550 carryover) or a plan year ending in 2020 to extend the time frame to incur claims through December 31, 2020
- Must amend plan document by December 31, 2021

Extended Claims Periods for HFSA and DCFSAs

- **Practical implications**

- Clearest advantage for fiscal-year plans to take advantage of the extended time frame to incur claims
- Only available to calendar-year plans that already extended the time frame to incur claims into 2020
- So, does not apply to calendar-year plans that ended December 31, 2019 without a grace period (or \$550 carryover for HFSA)
- If used for a fiscal-year plan where there was not a grace period or \$550 carryover, beware of the impact on HSA eligibility for the new plan year—this is a critical problem

High-Deductible Health Plans (HDHPs)

- HDHPs can offer medical care services related to testing and treatment of COVID-19 prior to satisfaction of deductible at no cost-sharing or reduced cost-sharing back to January 1, 2020 without jeopardizing HSA eligibility
- HDHPs can offer telehealth services related to testing and treatment of COVID-19 at no cost-sharing or reduced cost-sharing prior to satisfaction of deductible back to January 1, 2020 without jeopardizing HSA eligibility

Practical implications

Solve problems created by vendors who jumped the gun

Could potentially rejudge claims back to January 1, 2020

Remains to be seen whether this becomes permanent

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IRS Notice 2020-33 HFSA Carryover

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HFSA Carryover

- Increases carryover feature in an HFSA to \$550
- Amendment must be adopted by December 31, 2021
- Notice also allows HRAs, etc. to reimburse in year No. 2 insurance premiums paid at the end of year No. 1

Practical implications

HFSAs that do not have a carryover feature may decide to adopt one — be careful in an HDHP/HSA environment

Does not apply to DCFSAs

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What's Next?

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What's Next?

Additional relief related to contributions already made to HFSA/DCFSA?

COBRA subsidy?

Additional rules offering greater flexibility to cafeteria plan rules?

Transportation plans?

Updated electronic notification rules for welfare plans?

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QUESTIONS?

Biography



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Leader of Morgan Lewis's health and welfare task force, Andy R. Anderson is often recognized for his work in counseling clients on employer, individual, and insurer issues created by the Affordable Care Act, and regulatory compliance issues in relation to the Internal Revenue Code, ERISA, COBRA, HIPAA, and Mental Health Parity. Tax-exempt organizations and Fortune 500 companies turn to Andy for handling their benefit plans, and legal review surrounding welfare benefit plans, government self-correction programs, cafeteria plans, and VEBAs.



Biography



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Saghi (Sage) Fattahian counsels clients on all aspects of health and welfare plans. She works with clients to comply with the complicated, shifting requirements under the US Internal Revenue Code, ERISA, ACA, COBRA, HIPAA, MHPAEA, GINA, and state and local laws. She assists health and welfare plans and their sponsors with daily operations and plan administration, including preparing and maintaining plan documents and related materials; reviewing and negotiating services agreements with third parties; consulting on operational issues; and assisting with claims and appeals.

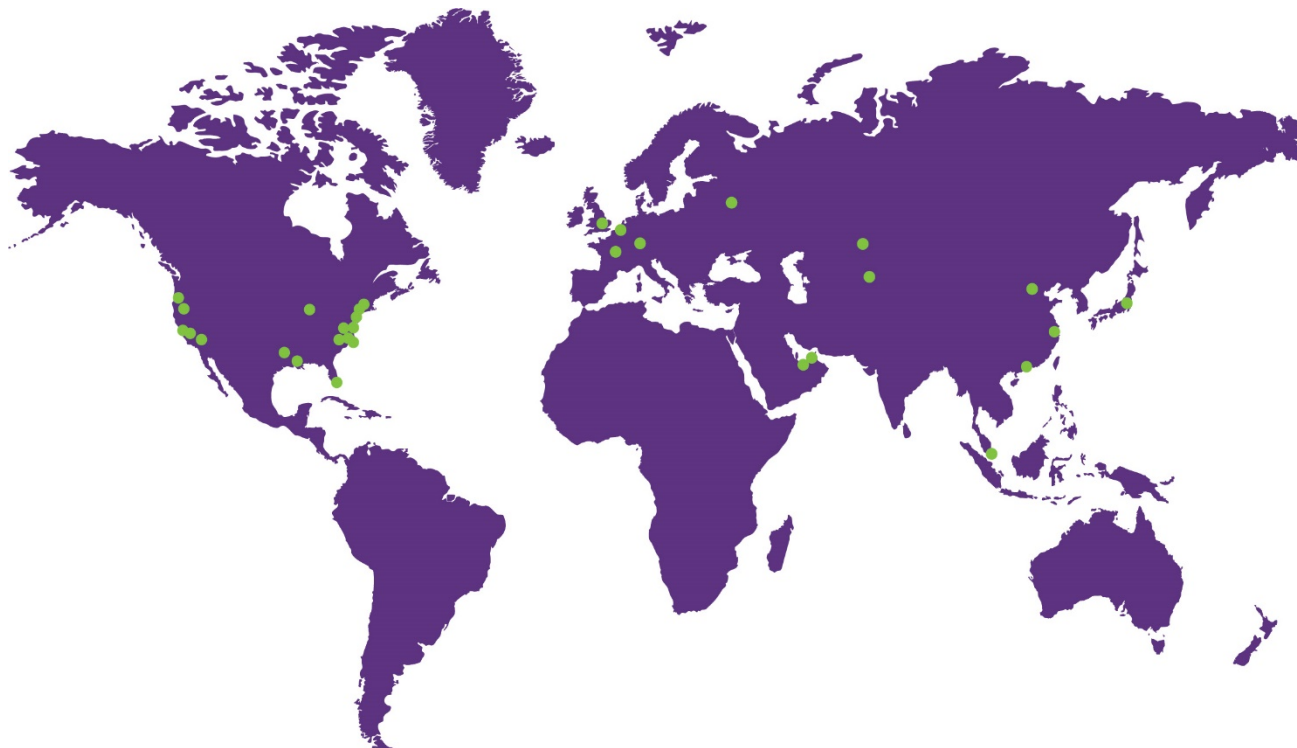


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