



DOL and IRS COVID-19 Guidance: Impacts and Considerations

Presented by: Barb Gerken and Jessica Waltman

June 4, 2020

This Compliance Corner is sponsored by the LPRT Committee

**The View from the Top is Great....So
are the benefits of being there!
Find out more on NAHU's website,
search "LPRT"**



Encouraging excellence in health and benefits insurance professionals since 1942

Sponsored by LPRT


What's the BIG deal?

- Profound Testimonial about YOU
- Distinguished
- Knowledgeable
- Successful
- The ELITE in your profession
- Motivation ...



QUESTIONS?

You may ask your question in the questions box at any time. Any questions that we do not answer during the webinar will be posted on the compliance corner webpage in the coming weeks.



The information herein should not be construed as legal or tax advice in any way. Regulations, guidance and legal opinions continue to change. The preparer has gathered public information and has attempted to present it in an easily readable and understandable format. Situations vary, technical corrections and future guidance may vary from what is discussed in the presentation.

This is meant for informational content only. The presenter makes no warranty of any kind concerning this information. You should seek the advice of your attorney or tax consultant for additional or specific information.

This presentation is not to be duplicated or distributed.

TODAY'S PRESENTER

Barb Gerken

- With 32 years in the group health insurance market, Barb is the Vice President | Director of Employee Benefit Compliance for First Insurance Group. She currently serves as Legislative Chair of the Ohio Association of Health Underwriters, member of the NAHU Legislative Council, member of the NAHU Compliance Corner working group, member of the NAHU Employer working group and Region III Legislative Chair effective July 1.

Jessica Waltman

- Jessica is the Principal of Forward Health Consulting, a firm that provides consultative compliance services, content creation and regulatory support to brokers and benefit-industry clients. She has 21 years of experience working with health insurance brokers and state and federal policymakers and has represented NAHU on the Nation Insurance Producer Registry's board of directors for the past 16 years. Jessica currently serves as the Legislative Chair for the Pennsylvania Association of Health Underwriters. She is a member of the Compliance Corner Committee and Chair of the NAHU Futures Advisory Group.



AGENDA

- **Employee Benefit Plan Relief**
 - **Employee Notices**
 - **Benefit Plan Time Frames**
 - **Section 125**

Employee Plan Notification Deadline Relief

- Department of Labor (DOL) issued EBSA Disaster Relief Notice 2020-01 on April 29, 2020.
- General ERISA Fiduciary Compliance Guidance:
 - COBRA notification and acceptance deadlines
 - Special enrollment periods
 - Claims for benefits/appeals of denied claims
 - Notice, disclosure or document timelines/ Use of electronic notifications

Employee Plan Notification Deadline Relief

- No plan will be treated as failing to be operated in accordance with the terms of the plan solely as a result of complying with the postponement of a deadline.
- The guiding principle for plans must be to act reasonably, prudently, and in the interest of the covered workers and their families who rely on their health, retirement, and other employee benefit plans for their physical and economic wellbeing.

Benefit Plan Time Frame Relief

- The EBSA and the IRS released joint guidance, Extension of Certain Timeframes for Employee Benefit Plans, Participants, and Beneficiaries Affected by the COVID-19 Outbreak on April 30, 2020.
- Provides flexibility for employees and dependent health plan coverage elections

Benefit Plan Time Frame Relief

“Outbreak Period”

- March 13, 2020 – announcement of National Emergency
- Relief is provided during the Outbreak Period
 - Begins on March 1, 2020
 - Ends 60 days after the announced end of the National Emergency.

Benefit Plan Time Frame Relief

- Relief applies to several areas of benefit administration:
 - Special Enrollment Rights
 - COBRA Elections
 - COBRA Payments
 - Claims Filing Limits
 - Appeals Filing Limits

Benefit Plan Time Frame Relief

Special Enrollments Rights

Current:

- Under current rules, employees and dependents are able to elect coverage under a group health plan when they lose eligibility under another qualified plan.
- The elections are effective on the date of loss of coverage as long as the application is received within 30 days (60 days for CHIP) of the loss.

Update:

- The 30-day period (or 60-day for CHIP) does not begin until 60 days after the announced end of the National Emergency.

Benefit Plan Time Frame Relief

Real World Example



- A qualified employee got married on April 4, 2020 and wants to enroll his new spouse in the group plan.
- Previously he would have needed to inform the group plan of the qualifying event by May 4, 2020.
- However, due to working-from-home pandemic confusion, the employee forgot to tell the group plan administrator about his intention to enroll his spouse until May 18, 2020.
- Normally, the spouse would need to wait until the next open enrollment period to enroll in group health coverage, but since the “outbreak period” is disregarded, she must be allowed to enroll in major medical coverage as of May 18, 2020.
- The group also offers standalone vision and dental coverage. The employer and carrier may or may not allow special enrollment for this coverage.

Benefit Plan Time Frame Relief

COBRA Administration

Current:

Initial COBRA
election notice

60-day period
for COBRA
coverage
election

45-day period
for COBRA
coverage first
premium
payment

30-day grace
period for COBRA
coverage ongoing
premium
payments

Update:

- Disregard the current timeframes until 60 days after the end of the National Emergency.

Benefit Plan Time Frame Relief



Real World Example

- A person lost eligibility for group coverage due to a divorce on December 1, 2019 and he elected COBRA right away. He made his first five payments, but never made his May payment or any payment thereafter.
- The “outbreak period” ends on August 1, 2020.
- On August 15, 2020 a hospital system treating the person for COVID-19 makes all of his back payments dating back to May and continues to make his future payments through November, 2020 when all payments cease for more than 30 days.
- Since the “outbreak period” must be disregarded with regard to payment deadlines, this man would need to be covered continuously on the group plan from December 1, 2019 through November 30, 2020.

Benefit Plan Time Frame Relief

Claims/Appeals Filing Deadlines

Current:

Claim Filing Dates

Date to file an
appeal of an
adverse benefit
determination

Date to file request
for an external
review following
adverse decision

Update:

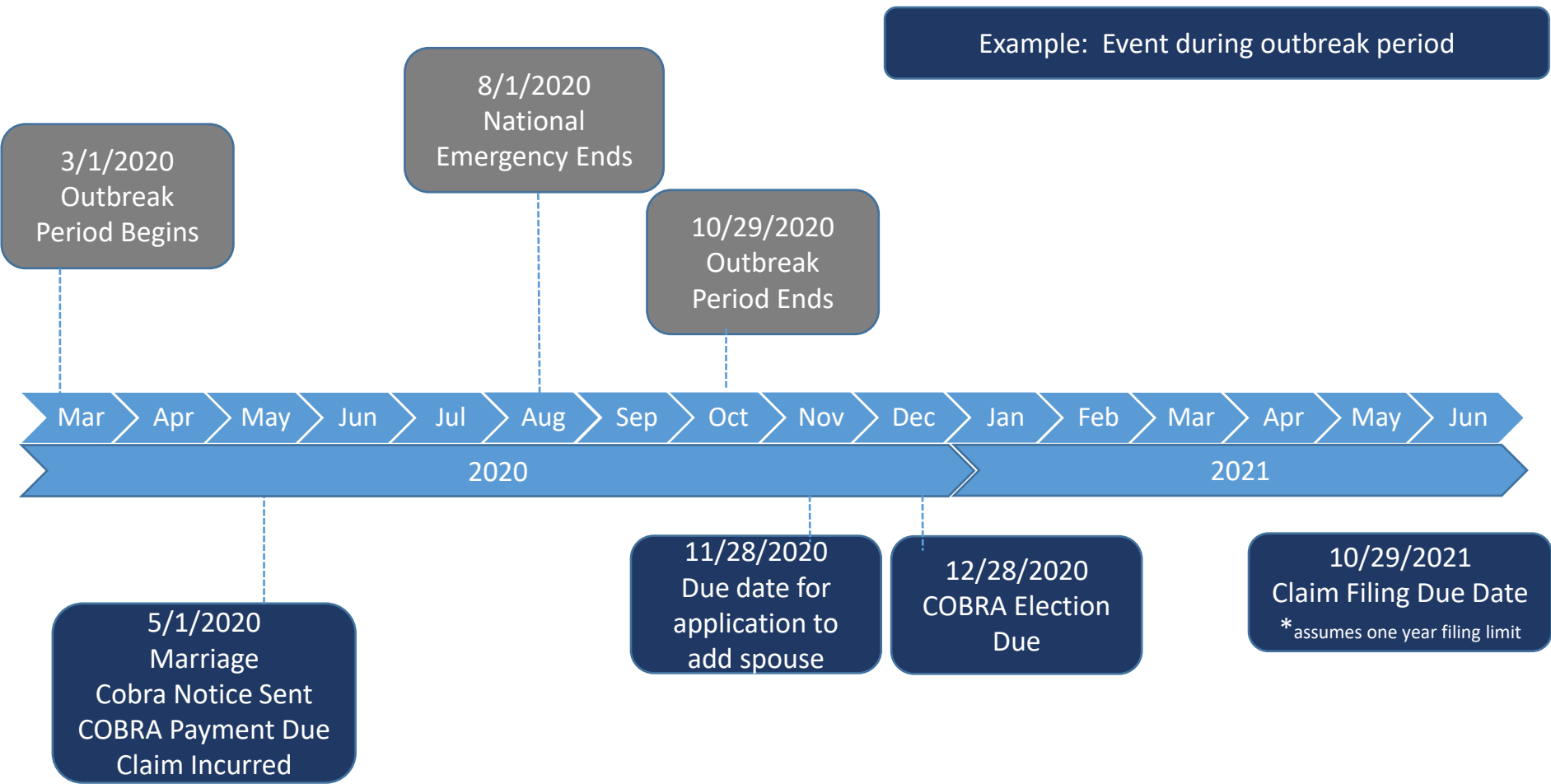
- Disregard the current timeframes until 60 days after the end of the National Emergency.

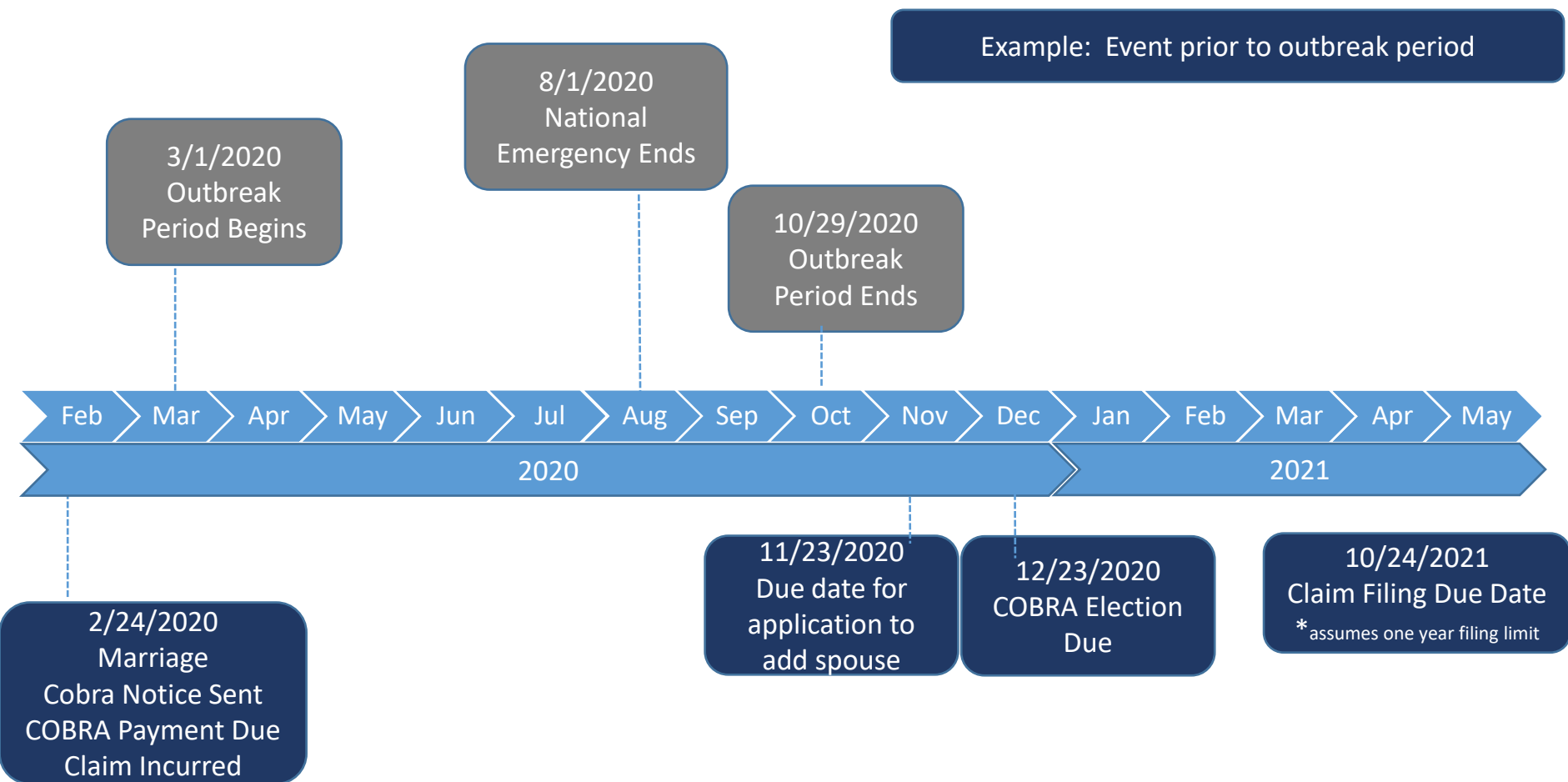
Benefit Plan Time Frame Relief



Real World Example

- An employer offers a calendar-year HRA with a 90-day claim filing grace period.
- A person typically would have until March 30, 2020 to file a 2019 claim for reimbursement.
- Now, assuming the “outbreak period” ends on August 1, 2020, the person has until August 30, 2020 to file any outstanding 2019 claims.
- This accounts for the 60 days of the claims grace period before the “outbreak period,” and 30 days after it ends.





Section 125 Flexibility

- The IRS released two notices on May 12, 2020 to address unanticipated changes in expenses due to COVID-19.
- Notice 2020-33 increases the amount of funds that can carry over at the end of the year from \$500 to \$550
- Notice 2020-29 addresses flexibility in Section 125 elections, FSA and dependent care account grace periods and HDHP relief.

Section 125 Flexibility

Notice 2020-29

- Flexibility for mid-year election changes under a Section 125 cafeteria plan:
- Applies to self-funded and fully insured employer-sponsored health coverage, health FSAs and dependent care assistance programs (DCAPs)
- DOES NOT require the employer/plan-sponsor to allow the changes
- Retroactive to January 1, 2020.

Section 125 Flexibility

Notice 2020-29

- Permitted prospective health benefit changes:
 - Make a new election if the employee previously declined coverage;
 - Revoke an existing election and enroll in different health coverage sponsored by the employer; or
 - Revoke an existing election, if the employee is or will be enrolled in other health coverage.
 - ***Written attestation required***

Section 125 Flexibility

Sample Attestation

Name: _____ (and other identifying information requested by the employer for administrative purposes).

I attest that I am enrolled in, or immediately will enroll in, one of the following types of coverage: (1) employer-sponsored health coverage through the employer of my spouse or parent; (2) individual health insurance coverage enrolled in through the Health Insurance Marketplace (also known as the Health Insurance Exchange); (3) Medicaid; (4) Medicare; (5) TRICARE; (6) Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA); or (7) other coverage that provides comprehensive health benefits (for example, health insurance purchased directly from an insurance company or health insurance provided through a student health plan).

Signature: _____

Section 125 Flexibility



Real World Example

An employer group with a calendar-year plan has several employees who declined group coverage during the open enrollment period in November 2019.

- The employer is concerned that people may not have health coverage during a global pandemic and decides to allow anyone who did not enroll during open enrollment to elect to participate in the group health plan options between June 1-15, 2020 only
- The same employer has some employees that want to change their past plan elections and upgrade their coverage. However, neither the employer nor the health insurance carrier underwriting the plan are keen on that idea.
- The employer chooses to limit the mid-year enrollment window to new enrollees only.

Section 125 Flexibility

Notice 2020-29

- Permitted prospective FSA or DCAP changes:
 - Revoke an election;
 - Make a new election;
 - Increase or decrease and existing elections;

Section 125 Flexibility

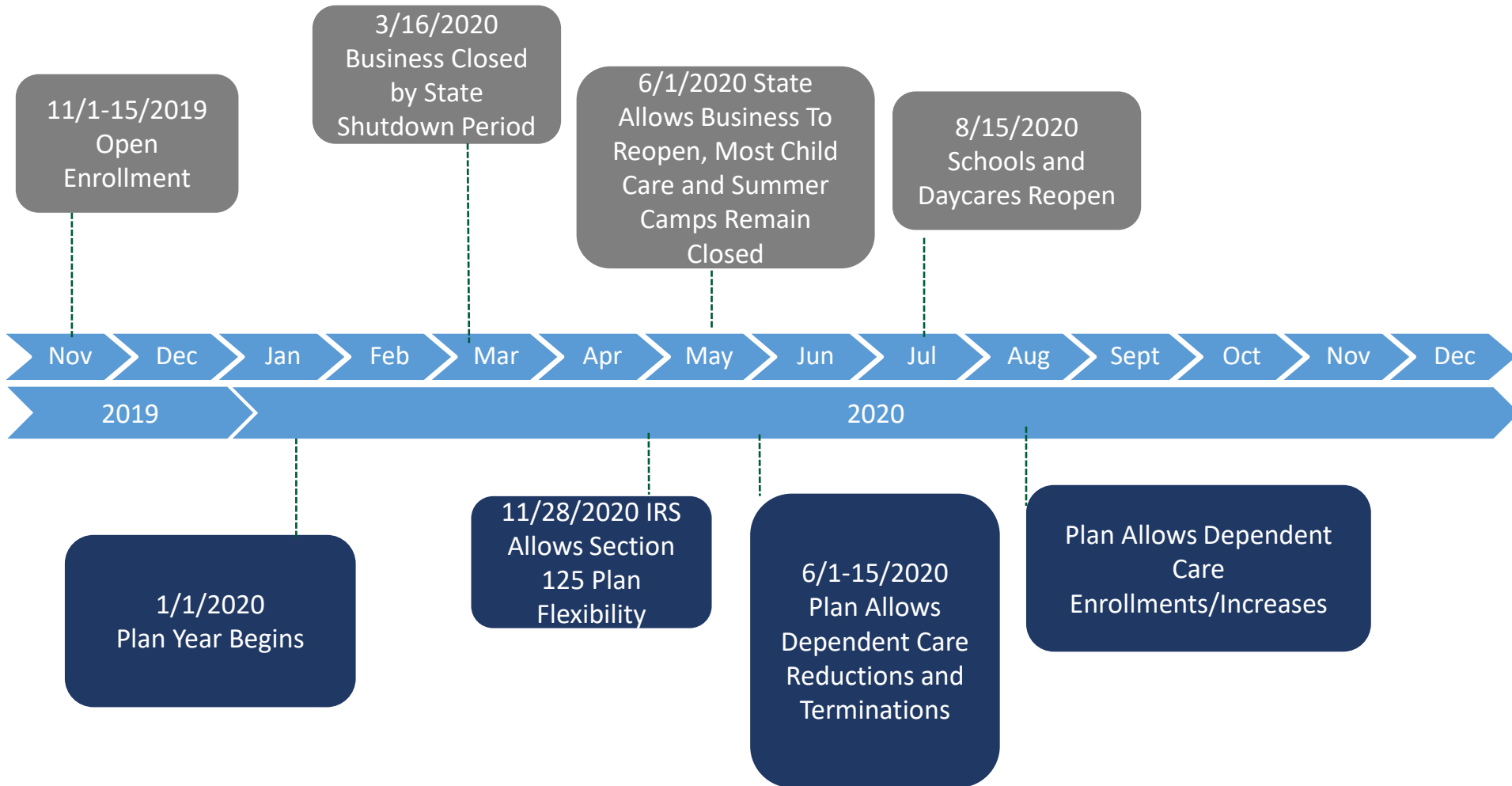


Real World Example

An employer group with a calendar-year plan offers qualified employees the opportunity to contribute to a dependent care assistance account.

- The program has almost complete participation amongst eligible employees, so even though the employer could allow new dependent care elections mid-year during 2020, the plan sponsor decides not to do so.
- However, that same company has many employees grumbling that daycare and camps are closed, and they cannot spend all of the money they planned to set aside during the year. So, the employer decides to allow all employees to elect to reduce or stop dependent care payroll tax deductions for the year between June 1-June 15, 2020.
- In September of 2020, daycares and schools reopen. The employer decides to allow all employees the chance to resume or increase dependent care payroll tax deductions for the remainder of the year between September 1-September 15, 2020.

Example: Mid-Year Section 125 Plan Changes



Section 125 Flexibility

Notice 2020-29

- Options for unused FSA or DCAP funds:
 - Allows employer to permit employees to apply unused amounts remaining in a health FSA or a DCAP at the end of a grace period or plan year ending in 2020 to ***pay or reimburse expenses incurred through December 31, 2020.***
 - Allows employer to use both the carryover and grace period features of the FSA at the same time.

Section 125 Flexibility



Real World Example

An employer has a July 1-June 30 plan year. Typically, the employees would have until June 30 to submit qualified medical expenses from July 1, 2019-June 30, 2020 for reimbursement.

- The employer decides employees need more time, due to the COVID-19 pandemic.
- Employees would have until December 31, 2020 to submit qualified medical expenses.
- Employers that offer a Health FSA with either a funds carry-over provision or a claims processing grace period can elect a claims period extension.

Example: Employer Extends Health FSA Grace Period

7/1/2020 Plan Year Begins and Plan Elects To Extend 2019 Health FSA Grace Period

9/30/2020 Normal Health FSA Reimbursement Grace Period Would Have Ended

3/1/2020 Outbreak Period Begins Giving Claims Payment Relief



5/1/2020 Marriage
Cobra Notice Sent
COBRA Payment Due
Claim Incurred

8/1/2020
Outbreak
Period Ends

1/31/2021
New 2019 Claim
Filing Due Date

Section 125 Flexibility

Notice 2020-29

- Important Note for HSA accountholders
 - The extension of the period for incurring claims that may be reimbursed by the health FSA is an extension of coverage by a health plan that is not an HDHP for purposed of determining whether an eligible individual qualifies to make contributions to an HSA.

Section 125 Flexibility

Notice 2020-29

- HDHP Plans and Expenses:
 - Exemptions for COVID-19 testing and treatment and telehealth services may be applied retroactively to January 1, 2020.

Section 125 Flexibility

Notice 2020-29

- HDHP Plans and Expenses:
 - Exemptions for COVID-19 testing and treatment and telehealth services may be applied retroactively to January 1, 2020.

Section 125 Flexibility

Notice 2020-29

- Administration Considerations:
 - Review options with carrier/spending account vendors;
 - Ability to set time limits on change requests;
 - Update plan documents
 - Must adopt a plan amendment by ***December 31, 2021.***
 - Communicate changes to employees

RESOURCES

IRS Notice 2020-29

IRS Notice 2020-33



QUESTIONS?

You may ask your question
in the questions box at any time.
Any questions that we do not answer
during the webinar will be posted on the
compliance corner webpage in the
coming weeks.