



Secretary Eugene Scalia
Department of Labor
200 Constitution Ave NW
Washington, DC 20210

Secretary Steven Mnuchin
Department of Treasury
1500 Pennsylvania Ave NW
Washington, DC 20220

Secretary Alex Azar
Department of Health and Human Service
200 Independence Ave SW
Washington, DC 20201

Administrator Seema Verma
Centers for Medicare and Medicaid Services
200 Independence Ave SW
Washington, DC 20201

April 7, 2020

Dear Secretaries Scalia, Mnuchin Azar and Administrator Verma,

I am writing on behalf of the National Association of Health Underwriters (NAHU), a professional association representing more than 100,000 licensed health insurance agents, brokers, general agents, consultants, and employee benefits specialists. The members of NAHU work daily to help millions of individuals and employers purchase, administer and utilize health insurance coverage. During this unprecedented time, our members are working with employers and individuals to provide assistance in maintaining health insurance coverage.

We appreciate the work Congress and the Administration have done to provide relief to the impact of the COVID-19 pandemic. In addition to the legislation, guidance, and emergency regulations that have already been released, we believe the Administration can easily provide additional relief by taking further actions through guidance and regulation.

We are including a list of suggestions for agency action that we believe will allow more Americans to maintain or obtain health insurance coverage both in the group and individual market, as well as allow for employers to continue to stay in business and maintain employment. In many cases, the issues raised are administrative barriers for employers to continue to provide health insurance coverage while remaining in compliance with current regulations. Employers are concerned that non-compliance could lead to the loss of coverage or government financial penalties at a time in which many of those same employers are applying for Paycheck Protection Program loans to maintain operations.

Our suggestions are organized by agency. We recognize that in some cases more than one agency will need to take action, or will have to coordinate with state and local policymakers in order to provide relief. NAHU and our members stand at the ready to provide any assistance possible to provide the suggested relief to American healthcare consumers.

Department of Labor



Issue: Form 5500 filings/Summary Annual Report – this is due the 7th month after the plan year ends, for many with 1/1 – 12/31 plan years this is July 31, 2020 (SAR is Sept 30, 2020). However, this is an issue now with employers not set up to work from home facing challenges to access information from the client and having them sign electronically.

Solution: For plan years ending August 31, 2019 allow a 90 or 120 day automatic extension from the date the national, state, or local emergency ends.

Issue: Varying definitions between employers, carriers, and regulations for “furlough”, “leave of absence”, “layoff”, and others.

Solution: Guidance on how these terms are to be defined, confirmation that employers can continue to pay employees under these terms, confirmation that employers can continue to offer health benefits under these terms, and clarification as to which of these terms may receive unemployment benefits and whether that will effect whether the employee may continue to access employer health benefits

Issue: Treatment of variable hour employees and how employee counting should be treated with many variable hour employees working less hours at this time with the exception of some essential workers like grocery store hourly employees that may be working more hours than expected.

Solution: Guidance on how to treat vast changes to variable hour employees that will not result in penalizing the employer. Guidance on how to calculate variable hour and furloughed employees into full time equivalency equation given the circumstances. Suspend enforcement for the months around the national, state, or local emergencies.

Issue: For employers that administer their own COBRA, and are non-essential, disruption in employers accessing their mail may affect time for receipt of elections and payments.

Solution: For COBRA administrative letters distributed on or after March 1, 2020 an automatic extension of 90 or 120 days from end the date of the national, state, or local emergencies.

Issue: Wellness plans may need to adjust criteria used to determine participation. With shelter in place, the closure of fitness centers, and changes in access to food, employees may not be able to meet criteria for wellness plans that depend on employees having access to these resources.

Solution: Guidance for some form of extension or suspension of participation, depending upon criteria used, for the length of time “social distancing” was enforced. Suspend requirements during the national, state, and local emergencies.

Issue: Differing terms used to determine when an employee may access paid sick leave or FMLA and what entity must approve those terms.

Solution: Guidance to determine the definitions for “quarantine”, “self-isolation”, “shelter in place”, and others as well as whether this is determined by a government entity, healthcare professional, or if it can be self-determined based on symptoms or exposure to a sick person.



Issue: 90-day notice period for ICHRAs. Some businesses may need to use ICHRAs as an option to either maintain certain classes of workers or to be able to continue to offer coverage for those businesses that shut down and slowly need to enter back in to the marketplace.

Solution: Allow more flexibility for the 90-day notice period so that employers can act swiftly to utilize this option and decrease the amount of time it would take to offer ICHRAs to their employees.

Agency: DOL

Issue: Qualified Medical Child Support Orders may be affected if company mail is being held and picked up on an inconsistent basis. Companies may not know they have one of those letters in the mail and with all else happening, may not see it until upon the response deadline or even after the deadline.

Solution: For QMCSO letters distributed on or after March 1, 2020 an automatic extension of 90 or 120 days from end the date of the national, state, or local emergencies.

Internal Revenue Service

Issue: Participants with Flexible Spending Account plans, may have issues with being able to spend down their funds as providers are not seeing patients except on emergency basis for much of the country.

Solution: One time additional extension on grace period dates of service for those not using the roll-over provision, or raising the roll-over amount for those using that provision.

Issue: Participants with funds being deducted pre-tax under Section 125 that are furloughed, where the employer has agreed to wait until the employee gets back from the furlough before beginning deductions again. This doesn't clearly fall under reasons why a Section 125 deduction can stop for premiums only plan.

Solution: Allow special allowable status change due to COVID-19 employees for furloughed employees.

Issue: 1095 forms will be more complicated with layoffs, furloughs, and other issues for employers. In addition, other codes may be needed (depending on how these terms are defined) for employees laid off, furloughed or otherwise working fewer hours but still covered on the employers health plan.

Solution: Suspend enforcement for the months around the national, state, or local emergencies, and relax "affordability" as reduction of hours could be an issue and possibly subject many employers to fines regardless of offering what would traditionally be coverage that met the affordability test.

Issue: Response to 226J letters may be affected if company mail is being held and picked up on an inconsistent basis. Companies may not know they have one of those letters in the mail and with all else happening, may not see it until upon the response deadline or even after the deadline. In addition, some employers have reported that they have contacted the IRS, but are not receiving responses yet still receiving late notices.

Solution: For 226J letters distributed on or after March 1, 2020 allow an additional 60-90 days for a response following the date of the end of the national, state, and local emergencies.



Issue: Some smaller companies may have an issue with discrimination testing on Section 125 plans in cases where the workforce has reduced hours, but they were allowed to maintain coverage.

Solution: An adjustment as some companies may need to shut down operations for all but a few key employees for a limited time. Establish a safe harbor to not “count” the time between March 2020 and July 2020, or until 30-60 days following national, state, or local emergencies, or until the end of the year to align with FMLA.

Issue: Section 125 plans are not able to take advantage of some carrier’s special enrollment periods being allowed now because they do not meet the Section 125 rules for a “change in status”. Some carriers are opening up groups to those employees that had not elected previously and most don’t have plan documents. Any change would be in violation of Section 125.

Solution: Suspend change of status rules for those businesses impacted COVID-19 until the end of the national, state, or local emergencies.

Issue: Carriers changing plans to improve benefits are not able to change the plan design quickly because of restrictions complying with providing the Summary of Benefits and Coverage to beneficiaries.

Solution: Allow for a shorter notice time if improving benefits, or allow employees to waive the SBC notice to as soon as practically possible.

Internal Revenue Service and Department of Health and Human Services

Issue: Individuals may seek coverage and tax credits in the exchanges during this time, but many individuals are experiencing unexpected changes in employment and income. When applying for an APTC, the individual may not have the needed pay stubs to prove income and may not be able to attest to an anticipated income for the coming year. Varying incomes throughout this crisis could lead some individuals, through no fault of their own, to inaccurately report their income and become subject to large tax penalties once their 2020 taxes are reconciled.

Solution: Provide guidance for individuals on how to report unexpected income, and provide a safe harbor for the following tax year.

Department of Health and Human Services

Issue: Plans currently in their open enrollment period may experience difficulties completing enrollment within 30 days while also facing barriers to apply for additional time to obtain traditional enrollment waivers or extensions. Companies not set up for telecommuting or electronic enrollment will be especially affected.

Solution: Instead of 30 days response time for open enrollment, allow extensions from 60-90 days. Provide guidance that carriers may accept printouts from electronic enrollment systems, versus their own forms as those may not be possible to obtain in a timely manner. We recognize this will be an issue state departments of insurance will also need to address, but we would suggest this being encouraged at the federal level.

Issue: Employers may be struggling financially to maintain premium payments.



Solution: Allow employers to defer payment of group premiums for 60-90 days, or in the alternative instruct carriers not to terminate coverage until an employer has a lapsed payment beyond 90 days.

Issue: Individuals may be struggling financially to maintain premium payments.

Solution: Allow individuals to defer payment of premiums for 60-90 days, or in the alternative instruct carriers not to terminate coverage until an individual has a lapsed payment beyond 90 days. We recognize this will be an issue state departments of insurance will also need to address, but we would suggest this being encouraged at the federal level.

Issue: As employers layoff employees, individuals may chose to go on COBRA not realizing that this will prevent the individual from qualifying for a SEP to provide coverage, and a possible subsidy, through the marketplace. Individuals must exhaust COBRA or wait until the marketplace OEP this fall to qualify for enrollment in the exchanges.

Solution: Allow a onetime SEP to allow individuals on COBRA to enroll in marketplace coverage.

Centers for Medicare and Medicaid Services

Issue: Due to COVID-19 and severe health consequences for seniors, agents have likely not met with seniors since March 7th making enrollments difficult without a face-to-face.

Solution: Allow carriers to accept temporary attestations while we are in this public health crisis which will require agents to collect the information when the crisis passes. This would allow seniors to use agents during this period.

Issue: Due to COVID-19 and severe health consequences for seniors, some Medicare Advantage beneficiaries may not be able to meet with their agent to take advantage of the 2020 open enrollment period.

Solution: Extend Medicare Advantage OEP until June 30th.

Issue: Medicare Part B enrollment has been complicated by COVID-19 with businesses closing or cutting back hours. Employers have to sign off on health coverage for workers aged 65+ who want to move to Medicare coverage or are retiring. Social Security offices are closed but staffed. In some local areas, forms are allowed to be faxed, but this cannot ensure enrollment and is varies depending on location.

Solution: Develop uniform guidance for flexibility to transmit forms with an effective date of coverage for the first day of the month following month. Otherwise the seniors may be left waiting months for the next enrollment. We recognize this will also need oversight from the Social Security Administration.

We sincerely appreciate the opportunity to share these issues and suggestions with you. If you have any questions about our concerns, or if NAHU can be of assistance as you move forward, please do not hesitate to contact me at either (202) 595-0639 or jtrautwein@nahu.org.

Sincerely,



A handwritten signature in black ink, reading "Janet Stokes Trautwein". The signature is fluid and cursive, with a large loop at the beginning of the first name.

Janet Stokes Trautwein
CEO
National Association of Health Underwriters