

EMPLOYEE BENEFITS

Impact of the End of the National Emergency and Public Health Emergency on Employee Benefit Plans

As part of the federal response to the COVID-19 pandemic, multiple temporary rules were implemented for employer-sponsored group health plans. The duration of the temporary rules was, in many cases, tied to the federal government's declarations of a Public Health Emergency and a National Emergency. These temporary federal rules include mandates related to group health plan coverage for COVID-19 testing and vaccines and the tolling, or extension, of certain timeframes applicable under HIPAA, COBRA and ERISA.

On January 30, 2023, the White House issued a [Statement of Administrative Policy](#) declaring its intent to end both the Public Health Emergency and the National Emergency on May 11, 2023. The end of the Public Health Emergency and National Emergency will have consequences for group health plans and ERISA health and welfare plans, as summarized below.

Public Health Emergency – End to Certain Coverage Requirements for COVID-19 Testing and Vaccines

The Public Health Emergency, first declared by the Department of Health and Human Services in January 2020 (and extended several times after that), will end on **May 11, 2023**, per the Biden Administration's announcement.

Relevant to group health plans, the end of the Public Health Emergency affects coverage requirements related to COVID-19 testing and vaccines. Once the Public Health Emergency expires, such plans will no longer be required to cover COVID-19 testing (including certain over-the-counter (OTC) testing) and related services without cost-sharing, as was required by the FFCRA and CARES Act during the Public Health Emergency.

Additionally, the end of the Public Health Emergency means that group health plans no longer have to cover COVID-19 vaccines obtained from out-of-network providers without cost-sharing. Note, however, that coverage for COVID-19 vaccinations from in-network providers without cost-sharing will still be required under the Public Health Services Act preventive care mandate.

In light of these expiring coverage mandates, plan sponsors should consider whether their plans will continue to cover COVID-19 testing and out-of-network vaccines without cost-sharing for covered individuals. If an employer continues to provide vaccines/testing without cost-sharing beyond the Public Health Emergency declaration, the plan sponsor should consult with legal counsel regarding the ramifications under other laws of continuing to provide such coverage, including, for example, any parity concerns under the Mental Health Parity and Addiction Equity Act.

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If a plan sponsor decides to apply cost-sharing to COVID-19 testing and/or out-of-network vaccines, it should review its plan document, Summary Plan Description, and other plan-related documentation and communications and make any necessary changes to ensure that the documents accurately reflect the coverage provided by the plan. Employers should work with their legal counsel to determine what plan amendments, Summary of Material Modifications (SMMs), notices, modifications to Summaries of Benefits and Coverage (SBCs), etc., are needed, and the required timing of the amendments and disclosures.

End of the National Emergency (and Corresponding Outbreak Period) – End of Extended Timeline Relief:

Like the Public Health Emergency, the National Emergency will end on May 11, 2023, per the Biden Administration's announcement. Sixty (60) days following the end of the National Emergency (**May 11, 2023**), the Outbreak Period will also end. Therefore, the expected end date of the Outbreak Period is **July 10, 2023**.

Under a final rule issued by the DOL and IRS, plan participants were granted relief from many of the deadlines associated with their rights to request HIPAA special enrollment, rights related to COBRA elections/payments and rights related to ERISA plan claims and appeals. Plan administrators were also granted relief from the deadline for distributing COBRA election notices. During the Outbreak Period, the timeframes for taking these actions were tolled (i.e., did not run). On an individual basis, the tolling ends at the earlier of a) the expiration of one year from the date the individual was first eligible for the relief; or b) the end of the Outbreak Period (see our earlier discussion related to the timeline relief [here](#)).

Therefore, assuming the National Emergency expires on May 11, 2023, the tolling of these timeframes will cease on July 10, 2023, or, if earlier, one year from the date the individual was first eligible for the relief, and the applicable timelines that typically apply for taking these actions will recommence.

The affected timelines include the following:

- The applicable 30 or 60-day period to request mid-year enrollment based upon a HIPAA special enrollment event;
- The applicable COBRA notice periods, election periods and premium grace periods for qualified beneficiaries;
- The applicable period for plan administrators to deliver COBRA election notices to qualified beneficiaries; and
- The applicable periods under ERISA health and welfare plans to file claims, appeal adverse benefit determinations and request external reviews.

Example

Jane Smith terminates employment and loses coverage under her employer's group health plan on November 15, 2022. Her employer's COBRA administrator delivered her COBRA election notice on November 30, 2022, during the Outbreak Period. Jane's 60-day COBRA election period does not begin to run at that time. Rather, assuming the Outbreak Period ends on July 10, 2023, Jane will have 60 days from July 10, 2023, to make her election of COBRA coverage.

Plan sponsors should review their plan documentation and related participant communications, including notices, to ensure they accurately reflect the appropriate timeframes following the end of the Outbreak Period. Plans may need amendments to their plan documents and/or SPDs to reflect the reinstatement of the applicable plan-related deadlines following the end of the National Emergency and Outbreak Period. Employers should work with their legal counsel to determine what plan amendments, SMMs, notices, etc., are needed, and the required timing of the amendments and disclosures.



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