

Publications

End of COVID-19 Emergencies: Impact on Employee Benefit Plans

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In January, President Biden announced his intent to end the COVID-19 National Emergency (National Emergency) and the COVID-19 Public Health Emergency (Public Health Emergency) on May 11, 2023. The Departments of Labor, Treasury, and Health and Human Services (Tri-Agencies) subsequently issued Frequently Asked Questions (FAQs) about the impact of the end of these emergencies on employee benefit plans.

The end of the emergencies impacts several COVID-19 group health plan coverage requirements and benefit plan extensions. Plan sponsors need to be aware of these impacts and have a plan in place to address them.

Public Health Emergency

The Families First Coronavirus Response Act and the CARES Act require certain group health plans to expand coverage for COVID-19 tests (including over-the-counter tests) and related diagnostic services. This coverage was required to be provided, both in and out of network, without cost sharing, prior authorization, or other medical management requirements. This enhanced coverage is only required during the Public Health Emergency. Thus, when the Public Health Emergency ends on May 11, 2023, this expanded COVID-19 testing coverage is no longer mandatory.

The CARES Act also required non-grandfathered plans to cover COVID-19 vaccines, in and out of network, without cost sharing for the duration of the Public Health Emergency. The FAQs clarify that group health plans must continue to cover in-network vaccines without cost sharing after the end of the Public Health Emergency. However, the requirement to cover out-of-network vaccines without cost sharing will end after May 11, 2023.

Additionally, the Tri-Agencies previously issued guidance that allowed applicable large employers to offer standalone telehealth benefits for COVID-19 services to employees who were ineligible for the employer's group health plan. This relief is limited to any plan years beginning

before the end of the Public Health Emergency. Thus, this relief will end at the end of the plan year that begins on or before May 11, 2023.

National Emergency

In 2020, the Departments of Labor and the Treasury issued a Joint Notice that extended the time frames for several benefit-related events. Specifically, during the National Emergency, certain deadlines do not begin to run until the earlier of (i) one year from the applicable deadline or (ii) 60 days after the end of the National Emergency (this is referred to as the “outbreak period”). These extended deadlines are generally related to COBRA notices, elections and premiums payments; HIPAA special enrollment; and claims and appeals.^[1]

The FAQs state that the National Emergency will end on May 11, 2023 which means that the outbreak period will end 60 days later on July 10, 2023. The FAQs provide helpful examples of the impact of the end of the National Emergency on these deadlines. As an example the FAQs provided the following scenario: Individual A works for Employer X and participates in Employer X’s group health plan. Individual A experiences a qualifying event under COBRA and loses coverage on April 1, 2023. Individual A is eligible to elect COBRA coverage under the group health plan and is provided a COBRA election notice on May 1, 2023. Based on these facts, the last day of Individual A’s COBRA election period is September 8, 2023, which is the day that is 60 days after July 10, 2023. The FAQs provide additional examples of common scenarios a plan sponsor may face in administering the end of the emergencies.

Plan sponsors should note that on April 10, 2023, President Biden signed a law that immediately ended the COVID-19 national emergency under the National Emergencies Act. Although this ended a “national emergency” earlier than May 11, the Tri-Agencies have not issued guidance to indicate that the outbreak period would end earlier than July 10. Thus, unless the Tri-Agencies issue guidance ending the outbreak period on an earlier date, plan sponsors should continue to treat May 11 as the end of the National Emergency and July 10 as the end of the outbreak period.

Next Steps for Plan Sponsors

- **Plan Design Decision:** Plan sponsors will need to decide whether to continue covering COVID-19 tests and vaccines at the enhanced level, or whether to revert to normal cost sharing after May 11. Please note that the FAQs clarify that high deductible health plans (HDHPs) can continue to cover pre-deductible COVID-19 testing and treatment without affecting eligibility for a health savings account. However, the FAQs note that this relief will only last until the IRS issues further guidance. Thus, plan sponsors of a HDHP should take this into consideration and continue to monitor this relief.

Plan sponsors should coordinate any coverage decisions with their third party administrator and pharmacy benefits manager.

- **Communications:** Plan sponsors should review any communications and plan materials regarding coverage of COVID-19 tests and vaccines and determine whether they need to issue a summary of material modifications (SMM) or amend their plan if they make a design change after May 11. Further, plan sponsors should consider communicating the end of National Emergency and the impact on deadline extensions. Finally, if an applicable large employer implemented a standalone telehealth plan,

they should consider how to communicate the termination of this benefit to participants.

- **Summary of Benefits and Coverage:** If a plan sponsor materially modifies coverage of COVID-19 tests or vaccines mid-year, and the change impacts information on the Summary of Benefits and Coverage (SBC), the plan sponsor generally must provide notice to participants 60 days in advance of the change. However, the FAQs clarify that the notice requirement will be deemed satisfied if (1) the most recent SBC explained that the coverage would only apply during the Public Health Emergency, or (2) the plan provides advance notice “within a reasonable timeframe” before the change. Plan sponsors should review the SBC for the current plan year and determine whether advanced notice of any changes must be sent to participants.

^[1] For more information on these extensions, see our prior client alerts linked [here](#) and [here](#).