

End of COVID-19 National and Public Health Emergencies

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President Biden announced in January that the COVID-19 National Emergency (“NE”) and Public Health Emergency (“PHE”) would both end on May 11, 2023. Accordingly, the Departments of Labor, Health and Human Services, and the Treasury (collectively, the “Departments”) jointly prepared guidance confirming that the suspension of certain benefit plan deadlines under the NE would terminate 60 days after the end of the NE (i.e., on July 10, 2023), and the group health plan coverage requirements pertaining to COVID-19 prevention and treatment that were imposed under the PHE would terminate upon the end of the PHE (i.e., on May 11, 2023). While there has been some confusion regarding these dates and the Departments’ resulting guidance, it seems that the Departments are maintaining the originally expected date of July 10, 2023 for ending the suspension of benefit plan deadlines, perhaps in order to avoid confusion.

End of the National Emergency

As explained in our client advisory of [March 3, 2021](#), the DOL, IRS, and Treasury announced on February 11, 2021 that employee benefit plans would be required to toll participant deadlines for exercising HIPAA special enrollment rights, electing and paying premiums for COBRA continuation coverage, filing claims for benefits, and appealing benefit claim denials until the earlier of (1) one year from the date that participants were first eligible for relief or (2) 60 days after the announced end of the COVID-19 National Emergency (the “Outbreak Period”).

For example, if a participant in an employer group health plan experiences a qualifying event for COBRA purposes and loses coverage on April 1, 2023, and is provided a COBRA election notice on May 1, 2023, the deadline for the participant to elect COBRA coverage would be 60 days after July 10, 2023, or September 8, 2023. This is because employees who lose coverage due to a qualifying event normally have 60 days from the later of (1) the date of the qualifying event or (2) the date that they receive the COBRA election notice, to elect COBRA coverage. However, since the participant in this example lost coverage during the Outbreak Period, the 60-day clock would not have started to run until the earlier of May 1, 2024 (one year from the date of receiving the COBRA election notice) or July 10, 2023 (the end of the Outbreak Period). Since July 10, 2023 is the earlier of the two dates, the deadline would be 60 days after July 10, 2023, which is September 8, 2023.

For participants who experience a qualifying event after July 10, 2023, required tolling will cease and normal timelines will resume. Plan sponsors may want to remind such participants about this resumption, in addition to updating any plan documents, summary plan descriptions, enrollment materials, COBRA notices, etc. that had previously been amended to reflect the tolling. Plan sponsors may also wish to extend the tolling on certain deadlines, as nothing in the Internal Revenue Code or ERISA prevents them from doing so. To do this, they will need to coordinate with their insurers,

vendors, and third-party administrators (“TPAs”).

End of the Public Health Emergency

The end of the PHE means that private health insurance plans will no longer have to cover COVID-19 diagnostic testing and related services without imposing any cost sharing requirements (including deductibles, copayments, and coinsurance), prior authorization, or other medical management requirements, as they were required to during the PHE. It also means that they will no longer be required to cover COVID-19 vaccines and boosters from out-of-network providers without imposing cost sharing, prior authorization, or other medical management requirements. Plan sponsors should therefore consider how to inform plan participants of the changes, and whether plan documents and employee communications need to be updated accordingly. If a plan sponsor wants to continue to not impose cost sharing, prior authorization, or other medical management requirements, it will need to coordinate this with its insurance carrier (or TPA for a self-insured plan). A plan sponsor would also need to consider what impact continuing more favorable treatment of COVID-19-related services will have on high-deductible health plans.

Finally, if any changes constitute material modifications to the plan or coverage terms that would affect the content of the summary of benefits and coverage (SBC), that are not reflected in the most recently provided SBC, and that occur other than in connection with a renewal or reissuance of coverage, the plan sponsor must provide notice of the modification to participants not later than 60 days prior to the date on which the modification becomes effective (unless the plan sponsor previously notified participants that the additional benefits coverage or reduced cost sharing only applies during the PHE, or does so within a reasonable timeframe in advance of the reversal of these changes).