

# END OF COVID-19 EMERGENCY DECLARATIONS: A GUIDE FOR EMPLOYERS

## NOTICE:

This publication was updated to reflect the immediate end of the National Emergency announced on April 10, 2023, and subsequent informal DOL statements that the Outbreak Period extends to July 10, 2023.

*The COVID-19 National Emergency ended on April 10, 2023, and the Public Health Emergency ends on May 11, 2023. This guide provides an overview of relevant compliance considerations and next steps for employers sponsoring group health plans.*

## INTRODUCTION

On January 30, 2023, the Biden Administration announced their intention to extend the COVID-19 National Emergency and Public Health Emergency Declarations to May 11, 2023, and then end both emergencies on that date. Following this announcement, a Congressional Resolution ended the National Emergency earlier, on April 10, 2023. The resolution does not impact the COVID-19 Public Health Emergency, which is still scheduled to end on May 11, 2023.

The Emergency Declarations, which began in early 2020, included temporary rules related to certain group health plan deadlines (effective March 1, 2020) and coverage of COVID-19 tests and vaccines without cost-sharing (effective January 1, 2021). As the Emergency Declarations come to an end, this publication provides an overview of the relevant compliance considerations and next steps for employers sponsoring group health plans. It includes a **Sample Employee Communication** (Appendix A) to relay the impact of certain group health plan deadlines to employees.

This publication also addresses what employers can expect following the decoupling of the Medicaid continuous enrollment provision from the Public Health Emergency. Note that the publication does not include information on state-specific COVID-19 leaves or workplace health and safety mandates.

## END OF THE COVID-19 NATIONAL EMERGENCY AND THE EXTENSION OF CERTAIN TIMEFRAMES

The end of the COVID-19 National Emergency means the end of the extension of certain timeframes during the COVID-19 "Outbreak Period." The Outbreak Period began on March 1, 2020, and was expected to end 60 days after the announced end of the COVID-19 National Emergency, unless otherwise extended to a later date. Though the COVID-19 National Emergency ended on April 10, 2023, since then, the DOL has consistently indicated (via statements by agency officials) that it considers the Outbreak Period to extend to July 10, 2023, as initially announced and reflected in March 29, 2023 FAQ guidance. Throughout the Outbreak Period, certain ERISA plan deadlines have been extended by the earlier of one year or until the end of the Outbreak Period. Deadlines will begin to run their normal length on July 11, 2023.

The affected deadlines include the following:

- The 30- or 60-day deadline to request a **HIPAA special enrollment** (an enrollment right that arises following certain life events such as a marriage, birth or adoption; loss of eligibility for other group health coverage, health insurance coverage, CHIP or Medicaid; or becoming eligible for state premium assistance, Medicaid or CHIP subsidies)
- The 60-day **COBRA election** deadline



- The 45-day deadline to make a first **COBRA premium payment** and the 30-day deadline for subsequent COBRA premium payments
- The 30- or 60-day deadline to notify the plan of a **COBRA qualifying event** or disability determination by the Social Security Administration
- The deadlines for participants to file a **claim for benefits or appeal an adverse benefit determination** under a plan's claims procedures; this includes all claims and appeals under ERISA group health (including health FSAs and HRAs), disability, life, AD&D and pension plans

Consider the following scenarios employers may encounter:

### **HIPAA Special Enrollment Rights (SERs)**

- **Birth within one year of the Outbreak Period end date.** An employee had a baby on January 1, 2023. The plan normally allows 30 days following this type of qualifying event for the employee to request a HIPAA special enrollment. However, under the COVID-19 National Emergency relief, that deadline is extended by the earlier of one year or until the end of the Outbreak Period. The Outbreak Period expires on July 10, 2023, which is earlier than one year following the birth. This means that the period from the birth through July 10, 2023, is disregarded. Accordingly, the last day for the employee to request a HIPAA special enrollment for this type of qualifying event is 30 days following the end of the Outbreak Period (i.e., August 9, 2023).
- **Birth earlier than one year before Outbreak Period ends.** An employee has a baby on June 1, 2022. The plan normally allows 30 days following this type of qualifying event for the employee to request a HIPAA special enrollment. However, under the COVID-19 National Emergency relief, that deadline is extended by the earlier of one year or until the end of the Outbreak Period. The Outbreak Period expires on July 10, 2023, which is later than one year after the birth. This means that the earlier one-year period from the birth through June 1, 2023, is disregarded. Accordingly, the last day for the employee to request a HIPAA special enrollment for this type of qualifying event is one year and 30 days from the birth (i.e., July 1, 2023).
- **Loss of Medicaid coverage within one year of the Outbreak Period end date.** An employee lost Medicaid coverage on April 1, 2023 (the first day as of which states were permitted to resume Medicaid disenrollments as described under the End of Medicaid Continuous Enrollment Provision section below). The plan normally allows 60 days following this type of qualifying event for the employee to request a HIPAA special enrollment. However, under the COVID-19 National Emergency relief, that deadline is extended by the earlier of one year or until the end of the Outbreak Period. The Outbreak Period expires on July 10, 2023, which is earlier than one year following the loss of Medicaid coverage. This means that the period from the loss of Medicaid coverage through July 10, 2023, is disregarded. Accordingly, the last day for the employee to request a HIPAA special enrollment for this type of qualifying event is 60 days following the end of the Outbreak Period (i.e., September 8, 2023).
- **Loss of Medicaid coverage after Outbreak Period ends.** An employee loses Medicaid coverage on August 1, 2023. The plan normally allows 60 days following this type of qualifying event for the employee to request a HIPAA special enrollment. Under the COVID-19 National Emergency relief, that deadline is extended by the earlier of one year or until the end of the Outbreak Period. The Outbreak Period expires on July 10, 2023, which is prior to the loss of Medicaid coverage. This means that the COVID-19 National Emergency relief does not apply. Accordingly, the last day for the employee to request a HIPAA special enrollment for this type of qualifying event is 60 days from the loss of Medicaid coverage (i.e., September 30, 2023).

### **COBRA Elections, Premium Payments and Participant Notices**

#### • **COBRA Elections**

**Scenario:** An employee was terminated on October 1, 2022 (a COBRA qualifying event), with health coverage ending that day. The employee was a COBRA qualified beneficiary and received an election notice on October 1, 2022.

**Result:** Normally, the qualified beneficiary would have 60 days to elect COBRA. However, under the COVID-19 National Emergency relief, that deadline is extended by the earlier of one year or until the end of the Outbreak Period. The Outbreak Period expires on July 10, 2023, which is earlier than one year after the October 1, 2022, qualifying event. This means that the period from the qualifying event through July 10, 2023, is disregarded. The 60-day election period starts on July 11, 2023. Accordingly, the last day for the employee to elect COBRA is September 8, 2023 (60 days from the expiration of the Outbreak Period). Note that COBRA qualified beneficiaries cannot only elect COBRA prospectively. Rather, the election must be retroactively effective to the date coverage was lost (i.e., the qualifying event), with the initial premium payment due for the full retroactive period.

- **COBRA Premium Payments**

Normally, a qualified beneficiary would have 45 days following their COBRA election to make an initial premium payment. However, the COVID-19 National Emergency relief extended that deadline by the earlier of one year or until the end of the Outbreak Period. This means that individuals electing COBRA after the standard 60-day election period have until the earlier of one year and 105-days from the date the COBRA notice was provided; or 105 days following the Outbreak Period's expiration date (i.e., October 23, 2023) to make the initial premium payment.

Individuals electing COBRA within the standard 60-day election period have until the earlier of one year and 45 days after the date of their election; or 45 days following the Outbreak Period (i.e., August 24, 2023) to make the initial payment. Subsequent premium payment due dates (taking into account a 30-day grace period) are extended by the earlier of one year or the time between when the premium would have otherwise been due and the end of the Outbreak Period.

**Scenario:** On July 14, 2022, a covered employee experienced a COBRA qualifying event and received an election notice the same day. The employee elected COBRA on October 1, 2022, retroactive to July 14, 2022, and did not make a premium payment with their election.

**Result:** The Outbreak Period expires on July 10, 2023, which is earlier than one year after the election notice was provided on July 14, 2022. This means that the time from the date the election notice was provided until July 10, 2023, is disregarded. The standard 45-day deadline to make an initial premium payment starts on July 10, 2023. Accordingly, the last day for the employee to pay the initial COBRA premium is August 24, 2023, with all outstanding premiums (retroactive to July 14, 2022) due on that date. Subsequent premium payment due dates will resume their normal schedule.

**Scenario:** On July 14, 2022, a covered employee experienced a COBRA qualifying event and received an election notice the same day. The employee did not elect COBRA prior to the end of the Outbreak Period.

**Result:** The Outbreak Period expires on July 10, 2023, which is earlier than one year after the election notice was provided on July 14, 2022. This means that the time from the date the election notice was provided until July 10, 2023, is disregarded. The employee has 60 days following the end of the Outbreak Period to elect COBRA (i.e., September 8, 2023). The standard 45-day deadline to make an initial premium payment starts to run following the post-Outbreak Period election, with all outstanding premiums (retroactive to July 14, 2022) due on that date. Subsequent premium payment due dates will resume their normal schedule.

- **Employee's Notification of a Divorce COBRA Qualifying Event**

**Scenario:** An employee divorced on December 1, 2022. Under the terms of the plan, the former spouse lost coverage on the date the divorce was finalized.

**Result:** Normally, covered employees or qualified beneficiaries must notify the plan administrator of a divorce qualifying event within 60 days. However, the COVID-19 National Emergency relief extended the deadline to notify the plan by the earlier of one year or until the end of the Outbreak Period. The Outbreak Period expires on July 10, 2023, which is earlier than one year after the divorce and loss of coverage. This means that the time from the date of the divorce until July 10, 2023, is disregarded. Accordingly, the last day for the employee to notify the plan of the divorce is 60 days following the end of the Outbreak Period (i.e., September 8, 2023).

## **Claims and Appeals**

- **Health FSA Claims Submission**

**Scenario:** An employer's health FSA has a claim submission deadline of 90 days following the end of the plan year, which is March 31, 2023, for the 2022 plan year.

**Result:** The COVID-19 National Emergency relief extended the deadline to submit a claim by the earlier of one year or until the end of the Outbreak Period. The Outbreak Period expires on July 10, 2023, which is earlier than one year after the end of the plan year. Accordingly, health FSA participants have until 90 days following the end of the Outbreak Period to submit claims (i.e., October 8, 2023).

- **Health FSA Appeals**

**Scenario:** An employee received a health FSA claim denial on February 1, 2023. Normally, the employee would have 180 days to appeal that denial.

**Result:** The COVID-19 National Emergency relief extended the deadline to appeal an adverse benefit determination by the earlier of one year or until the end of the Outbreak Period. The Outbreak Period expires on July 10, 2023, which is earlier than one year after the denial. Accordingly, the employee has 180 days after the end of the Outbreak Period to submit the appeal (i.e., January 6, 2024).

### **Next Steps**

Employers should review all plan documents and employee communications to ensure that deadlines related to the expiring COVID-19 emergency periods are accurately communicated to plan participants, including COBRA participants and retirees, as applicable. Employers should confirm that their carriers and TPAs are administering the Outbreak Period to July 10, 2023, consistent with informal DOL guidance. Employers that wish to rely on an Outbreak Period expiration date based on the accelerated end of the National Emergency (i.e., June 9, 2023) should consult with legal counsel.

While not strictly required, employers should consider communicating the expiring COVID-19 National Emergency deadline relief to all plan participants with a description of which plan deadlines are impacted. (See Appendix A for a **Sample Employee Communication**, which relies on informal DOL guidance that the Outbreak period extends to July 10, 2023.) This may include former plan participants still eligible for a COBRA election during the Outbreak Period (i.e., qualified beneficiaries who lost coverage within the past year).

Specifically, employers should review their internal procedures for administering HIPAA special enrollment periods. HIPAA special enrollment requests should be handled carefully, with deadlines calculated based on the Outbreak Period rules. If this review reveals that certain participant requests or rights covered by the Outbreak Period relief were incorrectly denied as untimely, employers should consult with their legal counsel to determine an appropriate remedy.

Employers should also connect with their carriers, TPAs and COBRA administrators (and review internal COBRA administration practices, as applicable) to confirm that a process is in place for identifying individuals who may be impacted by the expiring Outbreak Period and to review appropriate administrative changes. For example, COBRA notices should be updated to reflect the expiring Outbreak Period with an explanation of how that affects applicable due dates.

## **END OF THE COVID-19 PUBLIC HEALTH EMERGENCY**

### **COVID-19 Testing and Vaccine Coverage**

During the COVID-19 Public Health Emergency, group health plans and insurers must pay for COVID-19 tests and related services without cost-sharing, prior authorization or other medical management requirements. This coverage requirement includes over-the-counter (OTC) COVID-19 tests authorized, cleared or approved by the FDA. Specifically, health plans must cover up to eight free OTC at-home tests per covered individual per month, and no physician's order or prescription is required. Additionally, non-grandfathered group health plans and insurers must cover COVID-19 vaccines without cost-sharing, even when received from out-of-network providers.

When the Public Health Emergency ends on May 11, 2023, plans can cover COVID-19 testing, whether OTC or ordered by a physician, like any other diagnostic test. Under the ACA and the CARES Act, most group health plans must continue to provide coverage for COVID-19 vaccines at no cost — but only from in-network providers. This means federal laws would no longer prohibit cost-sharing for out-of-network COVID-19 vaccines, including boosters. Some states may impose separate coverage requirements on fully insured plans.

### **Stand-Alone Telehealth Relief**

The Public Health Emergency Declaration made it easier for employers to offer telehealth services to employees and dependents who are not eligible for any other group health plan offered by the employer. Specifically, during the COVID-19 Public Health Emergency, large employers (defined as employing an average of at least 51 employees during the prior calendar year) can offer stand-alone telehealth services to those ineligible individuals without violating certain otherwise applicable group market reforms, such as the ACA prohibition on annual and lifetime limits, maximum out-of-pocket limits, and the preventative services mandate. Other group health plan requirements still apply, including the ACA's prohibitions on pre-existing condition exclusions, discrimination based on health status and rescission; MHPAEA; COBRA; ERISA; and HIPAA. This relief will no longer be available for plan years beginning after May 11, 2023.

Importantly, the expiring Public Health Emergency stand-alone telehealth relief is NOT tied to the HSA first-dollar telehealth relief. The Consolidated Appropriations Act, 2023 (CAA 2023) provided a two-year extension of relief that allows high deductible health plans (HDHPs) to provide first-dollar telehealth coverage without negatively impacting HSA eligibility. This optional HSA telehealth relief applies to plan years beginning after December 31, 2022, and before January 1, 2025.

### **Next Steps**

Employers should consult with their carriers and TPAs regarding potential administrative and coverage changes in the post-COVID-19 Public Health Emergency period. Self-insured plan sponsors should decide whether to impose cost-sharing or medical management criteria on COVID-19 tests (either OTC or ordered by a physician) and out-of-network COVID-19 vaccines in consultation with their TPAs and stop-loss insurers.

Even employers that intend to keep full coverage of COVID-19 testing in place following the end of the Public Health Emergency (which the DOL, HHS and Treasury (collectively, the Departments) encourage plan sponsors to do) must closely consider the impact of this decision on several aspects of plan administration and employee communications. One important consideration relates to when continued coverage for COVID-19 testing jeopardizes HSA eligibility. Currently, under specific relief announced in IRS Notice 2020-15, an HDHP may cover COVID-19 testing and treatment without impacting HSA eligibility. Although the expiration of this relief was not tied to the end of the Public Health Emergency (it extends “until further guidance is issued”), plan sponsors should be prepared for the IRS to announce a relief termination date. The Departments have indicated that an end to this relief will likely not require a mid-year change to HDHP coverage.

Note that this HSA relief is not tied to the classification of COVID-19 OTC tests or personal protective equipment (masks, hand sanitizer, sanitizing wipes) as eligible medical expenses that can be reimbursed under an HSA, health FSA or HRA. For further information about expenses that are eligible for reimbursement under a tax-privileged account, see the PPI publication [Qualified Medical Expenses](#).

In addition, the COVID-19 Public Health Emergency included very narrow Mental Health Parity and Addiction Equity Act (MHPAEA) enforcement relief that allows plans to disregard mandated coverage for COVID-19 testing and related services when assessing parity under MHPAEA. This narrow relief will end when the Public Health Emergency ends on May 11, 2023. Therefore, plans should consider whether coverage of COVID-19 testing and related services following the Public Health Emergency affects compliance with MHPAEA.

Coverage discussions with carriers and TPAs should include any necessary changes to plan documents and participant communications to ensure these materials accurately reflect applicable plan coverage, including limitations and cost-sharing. Plan sponsors that amended their ERISA plan documents to adopt the Public Health Emergency mandates in 2020 will need to amend those documents again to reflect any changes to coverage terms, then notify participants of these changes. Any plan amendments must be accomplished through a Summary of Material Reduction (SMR) or an updated Summary Plan Description (SPD) distributed to participants within 60 days after the change. However, if the coverage change affects the content of the Summary of Benefits and Coverage (SBC) content, then an updated SBC must be distributed to participants 60 days in advance of the effective date of the coverage change. For more information on plan amendments, please see the PPI publication [ERISA Compliance Considerations for Health and Welfare Benefit Plans](#). Even if the plan was not formally amended to add COVID-19 tests and vaccines as a covered service, plan sponsors should notify plan participants of any coverage changes. (Note that the **Sample Employee Communication** in Appendix A is not intended to satisfy any required or recommended employee communication regarding changes to covered services under the plan, as those will vary and should be drafted with legal counsel.)

Employers sponsoring a stand-alone telehealth plan should review their offerings with their carrier or TPA and make the necessary changes to comply with all ACA requirements and other applicable group benefit laws (e.g., COBRA, ERISA, HIPAA, MHPAEA).

## **END OF MEDICAID CONTINUOUS ENROLLMENT PROVISION**

At the start of the pandemic, the Families First Coronavirus Response Act (FFCRA) included a requirement that state Medicaid programs keep people continuously enrolled through the end of the Public Health Emergency in exchange for increased federal funding. CAA 2023 decoupled the Medicaid continuous enrollment provision from the Public Health Emergency, effective March 31, 2023, with federal funding phasing out through the end of the year.

This means that starting April 1, 2023, states can resume Medicaid disenrollments. Many Medicaid participants will lose coverage in 2023 and may seek to enroll in employer-sponsored plans. As a result, employers should be prepared for an influx of mid-year enrollment requests. The loss of Medicaid eligibility triggers a HIPAA special enrollment period of at least 60 days. Any triggering loss of coverage that occurs prior to July 10, 2023, is subject to the Outbreak Period deadline extension relief discussed above.

## SUMMARY

Employers that sponsor group health plans should carefully review the changes that come with the end of the COVID-19 National Emergency and Public Health Emergency. The end of these COVID-19 emergency periods impacts key administrative aspects of group health plans, including applicable HIPAA special enrollment deadlines, COBRA deadlines, claim and appeal deadlines, and coverage requirements on COVID-19 testing and vaccinations. Employers should consider their current plan administration practices and coverage terms when reviewing the changes associated with the end of the COVID-19 emergency declarations. Additionally, employers should work closely with their legal counsel, carriers, TPAs and COBRA vendors to ensure their plan procedures, documents and communications are updated to reflect these changes. Employers should routinely monitor for further updates and guidance and should remain flexible to accommodate any last-minute changes.

## RESOURCES

[Statement of Administration Policy to End Emergency Declarations](#)

[FAQ About FFCRA and CARES Act, Part 58 \(March 29, 2023\)](#)

[29 CFR Parts 2560 and 2590, Extension of Certain Timeframes for Employee Benefit Plans](#)

[FAQS About FFCRA and CARES Act, Part 43 \(June 23, 2020\)](#)

[IRS Notice 2021-58, Extension of COBRA Election and Premium Payment Deadlines](#)

[IRS Notice 2020-15, HDHPs and Expenses Related to COVID-19](#)

## APPENDIX A

### Sample Employee Communication

#### ***Notice of Certain Plan Deadlines Returning to Normal Length***

On January 30, 2023, the Biden Administration announced their intention to end the COVID-19 National Emergency on May 11, 2023. A subsequent Congressional Resolution ended the National Emergency earlier, on April 10, 2023. The end of the COVID-19 National Emergency means the end of the extension of certain timeframes during the COVID-19 "Outbreak Period." The Outbreak Period began March 1, 2020, and ends 60 days after the announced end of the COVID-19 National Emergency, unless otherwise extended to a later date. Though the COVID-19 National Emergency ended on April 10, 2023, since then, the DOL has consistently indicated (via statements by agency officials) that it considers the Outbreak Period to extend to July 10, 2023. Throughout the Outbreak Period, certain ERISA plan deadlines have been extended by the earlier of one year or until the end of the Outbreak Period. Deadlines will begin to run their normal length on July 11, 2023.

The affected deadlines include the following:

- The 30- or 60-day deadline to request a **HIPAA Special Enrollment** (an enrollment right that arises following certain life events such as a marriage, birth, or adoption; loss of eligibility for other group health coverage, health insurance coverage, CHIP or Medicaid; or becoming eligible for state premium assistance, Medicaid or CHIP subsidies).
- The 60-day **COBRA election** deadline.
- The 45-day deadline to make a first **COBRA premium payment** and the 30-day deadline for subsequent COBRA premium payments.
- The 30- or 60-day deadline to notify the plan of a **COBRA Qualifying Event** or disability determination by the Social Security Administration.
- The deadlines for participants to file a **claim for benefits or appeal an adverse benefit determination** under a plan's claims procedures. This includes all claims and appeals under ERISA group health (including health FSAs and HRAs), disability, life, AD&D and pension plans.

If you have experienced any of these events in the past year or if you experience any of these events prior to July 10, 2023, you may have additional time to meet the associated deadline for enacting your rights under the applicable plan. Note that COBRA qualified beneficiaries cannot only elect COBRA prospectively. This means for COBRA elections and HIPAA Special Enrollment elections with retroactive effective dates, you will be responsible for paying applicable healthcare premiums retroactive to the reinstatement date of your benefits.

**Please read this notice carefully.** If you have any questions about this Notice, please contact [**insert HR Department or other employer contact information**].