

Benefits BULLETIN



COVID-19 Emergency Declarations Coming to an End: Impact on Group Health Plan Sponsors

● February 20, 2023 ●

On January 30, 2023, the Biden Administration announced that the COVID-19 National Emergency and Public Health Emergency (“Emergencies”) will expire on May 11, 2023. The end of both declared Emergencies affects certain temporary COVID relief measures and coverage mandates that were put in place during the COVID-19 pandemic for employee benefit plans. Some coverage mandates were tied to the duration of the Public Health Emergency (PHE), while other forms of deadline relief were related to the National Emergency (NE). As the end of the Emergencies looms near, employers will want to take the appropriate steps to ensure they are prepared for the expiration of any relief measures, mandates or tolled deadlines implemented during the PHE and NE.

Public Health Emergency

- **Coverage for COVID-19 Testing and COVID Vaccines:** Under the Families First Coronavirus Response Act (FFCRA) as amended by the CARES Act, group health plans and insurers were generally required to cover COVID-19 diagnostic testing (including certain over-the-counter tests) without cost-sharing, prior authorization, or other medical management requirements throughout the duration of the PHE. After the PHE ends, group health plans and insurers will no longer be subject to this requirement. While an employer or insurer may choose to still cover COVID-19 testing as mandated through the PHE, many may choose to no longer do so.

Furthermore, the requirement under the CARES Act that group health plans and insurers provide coverage for COVID-19 vaccines for both in-network and out-of-network without cost-sharing ends with the PHE. **However, non-grandfathered group health plans are still subject to the ACA preventive care mandate and**

must continue to cover, without cost-sharing, in-network coronavirus-related preventive care, such as COVID-19 vaccines.

- **Stand-Alone Telemedicine Relief and Employee Assistance Programs (EAPs):** In another measure to provide relief, the IRS, DOL and HHS (“the Departments”) jointly issued relief stating that certain “large employers” (those with 51 or more employees) could offer stand-alone telemedicine plans to employees who were not eligible for coverage under any other group health plan offered by that employer, without having to comply with various coverage mandates under the ACA. Absent any new legislative developments that would extend this relief, plans that adopted this benefit should cease to offer it upon the close of the plan year that began during the PHE, or work to integrate the telemedicine plan into their major medical plan, thus ensuring compliance with the ACA.

The Departments also provided relief for employers offering COVID-19 testing through an EAP. In this relief, the Departments stated that EAPs will not be considered to provide benefits like medical care solely because they cover diagnostic tests or qualifying coronavirus preventive services during the PHE. If the employer decides to offer these benefits through their EAP, they may need to amend their plan to remove them to preserve the excepted benefits status of the arrangement.

End of the PHE: Employer Next Steps

- Employer-sponsors should reach out to their insurers and TPA to confirm if any specific changes will be made to their coverage. For employer-sponsors that are subject to ERISA, any changes made to the plan (whether by choice or required by the insurer) will need to be communicated to participants in the form of a Summary of Material Modification (SMM) or revised Summary Plan Description (SPD) within 60 days after adoption of the change, although the best practice would be to distribute the SMM in advance of any reduction in health benefits. Employers will want to review their plan language to determine whether an amendment is required. Employers with fully insured plans can rely on the insurance carrier’s updated certificate of coverage as long as they ensure distribution to employees has occurred.
- A new Summary of Benefits and Coverage (SBC) may need to be distributed to plan participants if changes to the plan are made due to the termination of the PHE and these changes affect the language in the SBC. If the plan previously notified participants that testing and vaccine coverage only lasted throughout the duration

of the PHE, then there is no requirement to send a new SBC. However, absent a previous communication such as this, a new SBC should be distributed to plan participants **60 days in advance** of any material plan modifications.

- Employer-sponsors that added the stand-alone telemedicine benefit or offered an EAP that covered COVID-19 testing or COVID-19 preventive services will now have to amend or terminate these offerings in order to become compliant with ERISA and the ACA.

National Emergency

On March 1, 2020, the Department of Labor (DOL) and the Internal Revenue Service (IRS) issued mandatory guidelines aimed at providing extended deadline relief for group health plans subject to the Employee Retirement Income Securities Act of 1974 (ERISA) and the Internal Revenue Code (IRC). The DOL mandated that certain deadlines would be disregarded or “tolled” during the “Outbreak Period.” The Outbreak Period is decided on an individual-by-individual basis, and the individual’s deadline is tolled the earlier of one year from the date the individual was first eligible for relief or 60 days after the announced end of the NE. Since the NE ends on May 11, the Outbreak Period will end on July 10.

The Outbreak Period extension applies to certain deadlines for COBRA elections and premium payments, HIPAA special enrollments, benefit claim deadlines for participants and beneficiaries, and various ERISA disclosures. Due to the complexity of the administration of these tolled deadlines, employers should begin planning now for the end of the NE.

End of the NHE: Employer Next Steps

- Employer-sponsors should review their existing COBRA notices and work with their COBRA vendor to remove any language that was added to the notices regarding the tolled deadlines.
- Confirm with COBRA vendors, TPAs, and claims administrators the process for informing plan participants that pre-NE deadlines will resume after July 10 and ensure they are informing participants about their rights in relation to the winding down.
- Amend any plan documents or SPDs that had language added due to the extended relief during the NE (if applicable).

ADDITIONAL RESOURCES

[Biden's Announcement Ending the Public Health Emergency and National Emergency](#)

[Modifications Announced to COVID-19 Relief for Group Health Plan Deadline Extensions](#)

[FAQs About FFCRA and CARES Act Implementation Part 44](#)