

02/01/2023 Alert 2023-01

Employee Benefits Compliance

National and Public Health Emergencies Ending May 11, 2023

Introduction

On January 30, 2023, President Biden announced the administration's intent to end the National Emergency (NE) and the Public Health Emergency (PHE) related to the COVID-19 pandemic effective May 11, 2023. Currently, the PHE, which is issued by Health and Human Services (HHS) and reviewed every 90-days, was set to expire on April 11. The NE, an annual declaration from the President, was set to expire on March 1. As discussed below, the end of these emergency declarations means an end to several significant relief measures introduced as a result of the COVID-19 pandemic. Most notably, the NE triggered certain deadline relief during the "Outbreak Period" and the PHE required that group health plans provide coverage of COVID-19 testing and related items and services without cost sharing. Note that other COVID-19 relief measures are not tied to either the PHE or NE, but were mandated by statute, regulation, or sub-regulatory guidance. For a complete summary of COVID-19 rules and relief see our updated [COVID-19 Guidance Summary Chart](#).

National Emergency Relief Expiring

Background

The COVID-19 NE was originally issued by the Trump administration in March of 2020. In April 2020, in connection with the NE, the Department of Labor, Internal Revenue Service, and HHS (the Departments) announced the extension of certain timeframes under ERISA and the Internal Revenue Code (Code) for group health plans during the COVID-19 NE. Specifically relevant to group health plans, the Departments' relief extended the following deadlines:

- The 30 -day deadline (or 60 days for CHIP enrollment requests) by which a participant requests special enrollment under HIPAA
- The 60-day election period for COBRA continuation coverage
- The 30-day deadline for making COBRA premium payments
- The 60-day deadline for participants to notify the plan of a COBRA qualifying event or determination of disability
- The deadline for participants to file an ERISA benefit claim under the plan's claims procedure (claims deadlines can vary by type)

- The deadline by which claimants must file an ERISA appeal of an adverse benefit determination under the plan's claims procedure (180 days following receipt of an adverse benefit determination)
- The four-month deadline for claimants to file a request for an external review after receipt of an adverse benefit determination or final internal adverse benefit determination (or to file information related to such a request) of an ERISA claim.

Impacted group health plans (extensions were optional for non-federal governmental plans) were required to disregard the period from March 1, 2020 (the start of the COVID-19 National Emergency) until sixty (60) days after the announced end of the National Emergency, or such other date announced by the Departments in a future notice. The Departments referred to this period of time as the "Outbreak Period". More specifically, the Outbreak Period tolled the deadlines by which participants were required to provide notice to the plan on the issues set forth above until the earlier of: (a) 1 year from the date they were first triggered, or (b) 60 days after the announced end of the during the Outbreak Period. Administering these deadline extensions was administratively complex and costly, especially with respect to COBRA election and payment deadlines. For a full discussion of the Outbreak Period relief, see [Alert 2020-13](#).

Action Items

With the announcement of the end of the NE, the Outbreak Period will end 60 days after May 11, 2023, on July 10, 2023, after which plans will no longer be required to toll the above noted deadlines. The following examples illustrate the impact of the end of the NE and Outbreak Period on tolled deadlines:

- If a qualified beneficiary would have been required to make their COBRA election (generally 60 days after the loss of coverage) by March 1, 2022, the Outbreak Period delays that election requirement until the earlier of 1 year from that date (March 1, 2023) or the end of the Outbreak Period, plus an additional 60-day extension. With the May 11, 2023 end of the Outbreak Period and 60-day extension (July 10, 2023), the applicable deadline would be March 1, 2023.
- If a qualified beneficiary would have been required to make their COBRA election (generally 60 days after the loss of coverage) by August 1, 2022, the Outbreak Period delays that election requirement until the earlier of 1 year from that date (August 1, 2023) or the end of the Outbreak Period, plus an additional 60-day extension. With the May 11, 2023 end of the Outbreak Period and 60-day extension (July 10, 2023), the applicable deadline would be July 10, 2023.
- If an individual experienced the birth of a child in February 2023, with the Outbreak Period over May 11, 2023, the employee would have 60 days from the end of Outbreak Period (July 10, 2023)

plus the 30-days allowed under HIPAA to give notice of the birth to request enrollment from the plan, which is August 9, 2023.

Employers should plan to provide notice to plan participants and other affected individuals about the end of the Outbreak Period and all associated deadline relief. To facilitate that process, Alliant prepared a template End of Outbreak Period Extensions Model Notice and SMM, available through your Alliant team, that includes important reminders for participants about the return to standard deadlines. It will also be critically important to engage with third-party administrators (both COBRA and claims administrators) to ensure proper administration of all applicable deadlines.

Public Health Emergency Relief

Background

The COVID-19 PHE was initially declared by the Secretary of HHS in January 2020 and has been renewed every 90 days since, most recently on January 11, 2023. Each renewal extends the period during which group health plans and insurers must pay for COVID-19 tests, including over-the-counter tests, without cost sharing as required by the Families First Coronavirus Response Act (FFCRA). That FFCRA mandate was effective March 18, 2020, through the end of the PHE.

Action Items

With the end of the PHE, and unless new guidance is released, group health plans will no longer be required to continue coverage of COVID-19 testing without cost sharing after May 11, 2023. Employer plan sponsors should consider whether they want to continue covering COVID-19 testing without cost sharing beyond the end of the PHE and work with carriers or TPAs to implement any changes to COVID testing costs. Any changes to the cost of COVID-19 testing will also require an SMM communicating the change to plan participants.

In addition, the temporary relief included in [FFCRA FAQ Part 43](#) that permitted large employers to expand telehealth offerings to employees and dependents not otherwise eligible for coverage under any of the employer's group health plans was also tied to the PHE. Specifically, the ability for plan sponsors to offer telehealth benefits to ineligible employees only applies for the duration of any plan years beginning before the end of the PHE. Employers that chose to offer expanded telehealth benefits will need to discontinue the benefit by the end of the plan year that begins before May 11, 2023 (the benefit is not available for plan years beginning on or after May 11, 2023).

Conclusion

The end of these two expended emergency periods will provide administrative relief for employer plan sponsors, but also call for active engagement with insurance carriers and TPAs to develop a practical approach to administering the many issues likely to arise from the end of the NE and Outbreak Period, and the PHE. Employers plan sponsors should also plan to inform all plan participants and other affected individuals (e.g., former employees with outstanding COBRA elections) of these changes. We will continue to provide updates as additional guidance is released.

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