



Compliance Action Items

National and Public Health Emergencies End Effective May 11, 2023

March 21, 2023



On January 30, 2023, the Biden administration announced the end the National Emergency (NE) and the Public Health Emergency (PHE) related to the COVID-19 pandemic effective May 11, 2023.

The end of these emergency declarations means an end to several significant relief measures introduced as a result of the pandemic. Below are action items for group health plans related to the end of these emergency declarations.

The End of the PHE – COVID-19 Testing and Vaccines

The PHE required group health plans to provide coverage of COVID-19 testing and related items and services without cost sharing and required coverage of out-of-network vaccines without cost sharing. Importantly, providing vaccines in-network without cost sharing is required as ACA preventive care. It also allowed employers to choose to offer telehealth benefits to employees that were not eligible for other group health plan coverage.

Action items related to the end of the PHE include:

- Ask your insurance carrier whether there are ongoing state insurance code mandates requiring coverage of COVID-19 testing and whether those mandates include an expiration date. If not, does the carrier plan to amend and administer the plan without this coverage.
- Ask your insurance carrier whether there are ongoing state insurance code mandates requiring coverage of out-of-network COVID-19 vaccines. If not, does the carrier plan to amend and administer the plan without this coverage.
- Self-funded plans should decide whether to continue to cover COVID-19 testing without cost sharing under certain circumstances. To manage costs, plans should generally not continue to pay for all COVID testing (e.g., non-diagnostic testing). Confirm TPAs can amend and administer the plan with any design changes.
- Self-funded plans should decide whether to continue to cover COVID-19 vaccines from out-of-network providers without cost-sharing. Confirm TPA can amend and administer the plan with any design changes.

- Employers that chose to offer temporary telehealth benefits to employees and dependents not otherwise eligible for the group health plan must 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). Not many plans elected to offer this optional benefit expansion to ineligible employees but those that did will need to work with TPAs and other vendor partners to end this expanded benefit offering.
- Prepare and distribute an SMM documenting any plan design changes to telehealth or the coverage of COVID-19 testing or vaccines if your carrier, TPA, or other vendor partner has not already done so.

The End of the NE – Outbreak Period Deadline Extensions

The NE triggered certain deadline relief or deadline “tolling” during the “Outbreak Period.” The deadlines at issue were primarily related to HIPAA Special Enrollment Right requests, ERISA claims and appeals filings, and COBRA notice, election and payment deadlines. The period that these deadlines were tolled was limited to the earlier of one year from the date an individual was first eligible for relief, or 60 days after the announced end of the National Emergency. Therefore, all deadline tolling ends 60 days after May 11, 2023, or July 10, 2023.

The following examples illustrate the individual-by-individual 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.

Action items related to the end of the PHE include:

- Ask your insurance carrier how they plan to return to statutory ERISA claims and appeals deadlines and whether they are preparing any participant communications.
- Self-funded plans (including H-FSAs) should confirm that TPAs are tracking all individual ERISA claims and appeals deadlines, are prepared to return to statutory ERISA claims and appeals deadlines, and whether they are preparing any participant communications.
- Contact COBRA administrators to confirm that they are tracking all individual COBRA election and payment deadlines, are prepared to return to statutory deadlines,

and whether they are preparing any participant communications.

- Confirm that anyone processing HIPAA special enrollment right requests (enrollment rights due to marriage, birth or adoption, loss of other coverage or entitlement to a CHIP premium subsidy) is prepared to return to statutory deadlines.
- Prepare and distribute an SMM documenting the return to statutory deadlines related to COBRA, HIPAA, and ERISA claims and appeals if your carrier, TPA, or other vendor partner has not already done so.

Other Relief

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.

Notably, two such provisions relate to Health Savings Account (HSA) compatible High Deductible Health Plans (HDHPs). The CARES Act originally allowed HDHPs to cover telehealth below the HDHP deductible without compromising HSA eligibility. That initial relief expired, was given an eightmonth extension (from April through December of 2022) by the Consolidated Appropriations Act of 2022, and was then extended for by the Consolidated Appropriations Act of 2023 for two additional years through plan years beginning before January 1, 2025.

Next, under separate IRS relief issued in March of 2020 ([Notice 2020-15](#)) COVID-19 testing and treatment are considered HSA compatible coverage until further guidance is issued. Therefore, plans that choose to continue to provide COVID-19 testing without cost sharing can do so without compromising HSA eligibility. For a complete summary of COVID-19 rules and relief see our updated [COVID-19 Guidance Summary Chart](#).

Alliant also has a Model SMM that can be used for participant communication purposes, but it will require customization depending on plan design choices or plan administration issues.

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