

Benefit Minute

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President Biden Proposes End Date for Covid Emergencies

President Biden has announced his intention to end both the Covid Public Health Emergency and the Covid National Emergency on May 11, 2023, although no official declaration has been made. The end of these emergency declarations will impact employer sponsored group health plans in a number of ways and employers should be familiar with and begin planning for these changes.

End of Covid Public Health Emergency

President Trump first declared the Covid Public Health Emergency (PHE) on January 31, 2020 and it has been renewed for consecutive 90-day periods since then. During the Covid PHE, health insurers have been required to cover certain Covid medical services without cost-sharing. Once the PHE ends, the scope of the free coverage will change.

Covid vaccines - insurers and group health plans must continue to cover vaccines in-network without cost-sharing (i.e. free to participants) as an ACA preventive care service. Coverage for out-of-network vaccines will no longer be required and will be based on plan design.

Covid testing - insurers and group health plans will no longer be required to cover in-network and/or out-of-network Covid testing and testing-related services without cost-sharing. This includes high deductible health plans (HDHP) which were granted temporary relief from the IRS to provide Covid testing and testing-related services without being subject to the HDHP minimum deductible. We await additional information from insurers regarding how Covid testing will be covered when the PHE ends, as well as guidance from the IRS stating when the temporary HDHP relief will lapse.



OTC Covid tests - Insurers and group health plans will no longer be required to pay or reimburse for OTC Covid tests. Since most group health plans do not cover OTC items, it is likely that these will no longer be covered. OTC Covid tests are still a reimbursable expense from a health care flexible spending account or a health savings account.

During the PHE, employers have been permitted to offer standalone telemedicine to employees who are not eligible for the employer's medical plan. This telemedicine coverage may continue through the end of the plan year that begins on or before the expiration of the PHE. Thereafter, employees should not be offered or covered under a standalone telemedicine program. Going forward, a plan design that integrates telemedicine with the employer's group health plan will generally be the most compliant approach.

Finally, during the PHE, the states generally could not disenroll Medicaid enrollees. This protection for Medicaid participants is now ending. As a result, there is an expectation that employees who waived group health plan coverage may request special enrollment in the employer's plan due to the loss of eligibility for Medicaid.

End of Covid National Emergency/Outbreak Period

In March 2020, President Trump also declared Covid as a National Emergency. Under regulations issued soon thereafter, insurers and group health plans have been required to toll (in other words, stop the clock on) certain ERISA and COBRA deadlines. This is referred to as the Outbreak Period and it tolled days from counting towards the applicable deadlines until the earlier of one year from the original deadline or end of the Outbreak Period.

The Outbreak Period will end 60 days after the end of the Covid National Emergency. Based on an expected end date of May 11, 2023 for the National Emergency, the Outbreak Period will end on July 10, 2023.

Once the Outbreak Period ends, the following items will revert to the pre-Covid deadlines:

- COBRA elections
- COBRA premium payments
- HIPAA special enrollment right elections
- ERISA claim filing and appeals dates

During the Outbreak Period, employers have been given flexibility to act in good faith and with reasonable diligence with respect to ERISA disclosure and claims processing requirements. For example, they are permitted to provide required documents such as SPDs and SMMs as soon as administratively practicable under the circumstances and use alternative electronic means of communicating with plan participants whom the employer reasonably believes has effective access to such electronic means of communication. Good faith relief will cease at the end of the Outbreak Period.

Outbreak Period Example

This example sets forth the claims filing deadline for a calendar year health care flexible spending account with a runout period of three calendar months after the end of the plan year:

- Plan year ended 12/31/20: runout period ended 3/31/22 (one year from the original deadline of 3/31/21)
- Plan year ended 12/31/21: runout period will end 3/31/23 (one year from the original deadline of 3/31/22)
- Plan year ended 12/31/22: runout period will end 10/10/23 (three months from end of the Outbreak Period)
- Plan year ended 12/31/23: runout period ended 3/31/24

End of Qualified Disaster Relief Payments

For the duration of the National Emergency, employers are permitted to provide tax free payments to employees for reasonable and necessary personal, family, living or funeral expenses incurred as a result of Covid. These tax free reimbursements cease when the National Emergency ends.

Next Steps for Plan Sponsors

In preparation for the end of the Covid emergencies, plan sponsors should take the following steps:

- Continue to monitor announcements from the Biden administration to formalize the end date of the Covid emergencies
- Obtain an understanding of when and how insurers and third party claims payers will implement coverage changes, especially for Covid vaccines/testing and claims filing deadlines. As of now, they are evaluating potential changes to current Covid accommodations while awaiting updates from the federal government
- Consider how plan design changes will be communicated to plan participants, especially if changes are made in the middle of a plan year
- If COBRA is administered in-house, make changes to COBRA notices as needed and communicate new (pre-Covid) deadlines to COBRA participants