

CLIENT ALERT

President Biden Announces Anticipated End of COVID-19 National and Public Health Emergencies

On January 30, 2023, President Biden issued a [Statement of Administration Policy](#) announcing his intent to extend the COVID-19 national and public health emergencies (collectively, "COVID-19 Emergencies") set to expire on March 1 and April 11, respectively, until May 11, 2023. While the COVID-19 Emergencies have not officially been extended at this time, if they are extended through May 11, 2023, then they will end on that date.

This announcement comes more than 3 months prior to the anticipated end of the COVID-19 Emergencies, and is intended to ensure that states, group health plans, health insurers, health care providers, and health plan participants, among many others, have sufficient advance notice, as the end of the COVID-19 Emergencies may trigger significant changes for health plans and employee benefits which are described in more detail below.

Employee Benefits Provisions Tied to COVID-19 Public Health Emergency

COVID-19 Testing

The Families First Coronavirus Response Act, which was enacted on March 18, 2020, requires group health plans (self-funded, fully insured, grandfathered, and non-grandfathered plans, but not excepted benefits such as dental or vision) and health insurance issuers to cover testing or certain other items or services intended to diagnose COVID-19 without cost sharing (deductibles, copays, or coinsurance), prior authorization, or other medical management requirements. It also permits federal agencies to implement the FFCRA through sub-regulatory guidance, program instruction, or otherwise. The Coronavirus Aid, Relief, and Economic Security Act (CARES Act), which was enacted on March 27, 2020, expanded the FFCRA to, among other things, include a broader range of reimbursable COVID-19 diagnostic items and services that must be covered without cost-sharing, prior authorization, or medical management during the public health emergency, including testing provided by out-of-network (OON) providers.

As COVID-19 pandemic progressed and the FDA authorized at-home OTC COVID-19 diagnostic tests that individuals could self-administer and self-read to diagnose COVID-19, on January 10, 2022, the agencies released [initial guidance](#) for plans and carriers, which required them to cover FDA approved at-home, OTC COVID-19 tests (up to 8 total per individual per month) without cost sharing, prior authorization, or medical management, and without the need for a prescription or recommendation of a health care provider during the pendency of the COVID-19 public health emergency. Additional FAQs clarifying some of the initial guidance, were released on February 4, 2022



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COVID-19 Vaccines

Additionally, the CARES Act requires the COVID-19 vaccine to be provided cost-free (similar to other preventive care vaccines) by any non-grandfathered group health plan pursuant to the ACA's preventive care rules, regardless of whether the vaccine is administered by an OON or in-network (INN) provider.

Employee Benefits Provisions Tied to COVID-19 National Emergency

Group Health Plan Notification, Premium, and Claims Filing Deadlines Applicable to Participants

On April 28, 2020, in an effort to assist employees in meeting their various notice, election, and claims filing deadlines that were severely disrupted as the nation was in shutdown, federal agencies (the DOL, HHS, and IRS) released the [Extension of Certain Timeframes for Employee Benefit Plans, Participants, and Beneficiaries Affected by the COVID-19 Outbreak Final Rule](#) ("Covid-19 Extension Final Rule") which provided participants, enrollees, and members with relief from the below applicable deadlines from March 1, 2020 until 60 days after the end of the COVID-19 national emergency:

- The 30-day period (or 60-day period, if applicable) to request a special enrollment;
- The 60-day election period for COBRA continuation coverage;
- The deadline for making COBRA premium payments;
- The deadline for individuals to notify the plan of a qualifying event or determination of disability;
- The deadline within which employees can file a benefit claim, or a claimant can appeal an adverse benefit determination, under a group health plan's or disability plan's claims procedures;
- The deadline for claimants to file a request for an external review after receipt of an adverse benefit determination or final internal adverse benefit determination; and
- The deadline for a claimant to file information to perfect a request for external review upon finding that the request was not complete.

The above relief was further extended in EBSA Disaster Relief Notice 2021-01, which extended the above deadlines until the earlier of: (a) one (1) year from the date (on or after March 1, 2020) that an individual is first eligible for relief; or (b) 60 days after the end of the COVID-19 national emergency.

Group Health Plan Notice and Disclosure Requirements Applicable to Plan Sponsors

Relief was not only provided to employees. The COVID-19 Extension Final Rule and [EBSA Disaster Relief Notice 2021-01](#), provided group health plans with relief from providing COBRA election notices for qualifying events occurring from the earlier of: (a) one (1) year from the date (on or after March 1, 2020) that the group health plan was eligible for relief; or (b) 60 days after the end of the COVID-19 national emergency.



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Group health plans and plan sponsors were also afforded relief due to COVID-19 disruptions in EBSA Disaster Relief Notice 2020-01, which eased the burden for group health plans, disability plans, and pension plans to provide notices and disclosures required under ERISA and Internal Revenue Code of 1986 (the "Code") by providing good faith relief for plans or employers who fail to timely furnish a notice, disclosure, or document if they make any required notice or disclosure as soon as administratively practicable under the circumstances from the period of March 1, 2020 through 60 days after the announced end of the COVID-19 National Emergency.

Additionally, pursuant to EBSA Disaster Relief Notice 2020-01, group health plans were provided relief from certain ERISA electronic disclosure requirements for plan participants and beneficiaries who they reasonably believed had effective access to electronic means of communication, including email, text messages, and continuous access websites.

Impact of the End of the COVID-19 Public Health and National Emergencies

If the COVID-19 Emergencies end as of the date indicated in the Statement of Administration Policy, then all of the above-referenced relief will expire as follows:

- The provisions of the FFCRA and CARES Act which require COVID-19 diagnostic tests to be provided without cost sharing (deductibles, copays, or coinsurance), prior authorization, or other medical management requirements are tied to the COVID-19 public health emergency and, therefore, will expire on May 11, 2023 when the public health emergency ends. Accordingly, group health plans and insurers will no longer be required to cover COVID-19 at home or in person diagnostic tests without cost sharing. Any plan materials, such as SPDs, describing coverage for COVID-19 testing by the plan should be amended as necessary.
- Provisions governing coverage of the COVID-19 vaccine are also tied to the COVID-19 public health emergency. Therefore, after May 11, 2023, administration of the COVID-19 vaccine will still be covered without cost (similar to other preventive care vaccines) by health plans and insurers; however, plans and insurers will not be required to cover vaccines administered by OON providers. Any plan materials, such as SPDs, describing coverage for COVID-19 vaccines by the plan should be amended as necessary.
- The COVID-19 Extension Final Rule and EBSA Disaster Relief Notice 2021-01 are tied to the COVID-19 national emergency declaration and will expire on July 10, 2023 (which is 60 days after the end of the COVID-19 national emergency). Thus, all extensions under the COVID-19 Extension Final Rule that are still effective for any plans or participants (i.e., those that are still in the 1-year extension window) will expire and the applicable clock will begin ticking. For example, if an individual received their COBRA election notice on October 1, 2022, the time from October 1, 2022 through July 10, 2023 is disregarded due to the COVID-19 Extension Final Rule. After the outbreak period ends on July 10, 2023, the individual would have until 60 days after July 10, 2023 to elect COBRA, or September 8, 2023. Therefore, it is imperative that employers use the time between now and May 11 to inform participants and beneficiaries of these upcoming changes so they understand how their rights will be impacted. Any plan materials, such as SPDs, notices, or other communications describing these extensions should be amended accordingly.



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- Finally, EBSA Disaster Relief Notice 2020-01 is also tied to the COVID-19 national emergency. Accordingly, after July 10, 2023, employers will no longer have relief from timely providing required notices to participants, and any employers who used the relief as a basis to justify electronic delivery of ERISA plan materials will need to ensure they comply with ERISA electronic delivery requirements for plan materials.

Conclusion

While employers do not need to do anything at this time, particularly as the COVID-19 Emergencies' end date has not been officially announced, the Statement of Administration Policy indicates that the COVID-19 Emergencies will likely be coming to an end in the next several months. Therefore, employers who sponsor group health plans are encouraged to work with their carriers, TPAs, COBRA administrators, and other vendors to develop strategies for ensuring proper communication of the end of the COVID-19 Emergencies and the impact on participants and their benefits. Further, they should identify SPDs and other plan materials that may need to be amended. Additionally, any employers subject to ERISA who relied upon the relaxed electronic delivery standards set forth in Notice 2020-01 and 2021-01 should ensure they review their workforce and strategies to ensure compliance with electronic delivery requirements after July 10, 2023 (unless a different COVID-19 national emergency end date is otherwise announced).

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