



The End of an Era: Public Health Emergency and National Emergency Expiring

After much uncertainty and multiple extensions, the Biden Administration has announced the previously declared National Emergency and Public Health Emergency will officially come to an end on May 11, 2023.

The Secretary of HHS issued a separate emergency declaration pursuant to the Federal Food, Drug, and Cosmetic Act (“FD&C Act”) on March 27, 2020. The emergency declaration issued pursuant to the FD&C Act remains in effect until terminated by the HHS Secretary and will not expire with the other emergency declarations.

These emergency declarations implemented several temporary measures affecting employee benefit plans through the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) and the Outbreak Period deadline relief. Group health plan sponsors should pay close attention to how this expiration of the National Emergency and Public Health Emergency will impact their plans.

Outbreak Period and Deadline Relief

The U.S. Department of Labor and the Department of the Treasury jointly issued deadline extension relief for group health plans applicable to certain ERISA, HIPAA, COBRA, and claims and appeals notice and disclosure requirements, among others. The guidance included a transition period providing plans additional time to make needed amendments and send out employee communications.

The Outbreak Period was defined as sixty (60) days after the announced end of the COVID-19 National Emergency. With Biden’s announcement of the expiration date of the National Emergency and Public Health Emergency on May 11, 2023, the Outbreak Period is set to end on July 10, 2023. These deadline extensions will revert to the rules as they were pre-pandemic, absent any guidance from HHS, or another agency, to the contrary.

Special rules apply for COBRA elections and premium payments so that COBRA qualified beneficiaries do not benefit from stacked deadline relief.

Mandatory COVID-19 Coverages

Under the CARES Act, group health plans are required to provide coverage for COVID-19 testing and vaccinations without cost-sharing, prior authorization, or other medical management stipulations. Following the expiration of the Public Health Emergency, such coverage will no longer be required. Plan

sponsors of self-insured group health plans may determine how a plan will cover COVID-19 related claims; while insurers of fully-insured group health plans will determine plan coverage of these claims following the expiration of the Public Health Emergency.

Non-grandfathered group health plans will still be required to cover the COVID-19 vaccine under the Affordable Care Act (“ACA”) as a routine immunization, for in-network providers only.

Next Steps

Plans should locate and review plan documents to determine how the expiration of the National Emergency and Public Health Emergency will affect plan terms. This alert does not provide a comprehensive listing of all COVID-19 waivers and measures. Employers should work closely with legal counsel, insurers, and third-party administrators to make any necessary plan amendments. Employee communications will be key for the upcoming transition period.

The content herein is provided for educational and informational purposes only and does not contain legal advice. Please contact our office if you have any questions or would like more information about the upcoming changes outlined above.

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