

HEALTH CARE BULLETIN

COVID -19 Emergency Periods

How the End of the COVID-19 Emergency Periods Impacts Health Plans

On Jan. 30, 2023, the Biden Administration [announced](#) its plan to end the COVID-19 national emergency and public health emergency (PHE) on May 11, 2023. However, on April 10, 2023, President Biden signed a [resolution](#) ending the COVID-19 national emergency early. Employer-sponsored health plans have been required to comply with certain coverage requirements during the COVID-19 emergency periods, including the following:

- Health plans must cover COVID-19 diagnostic tests and related services without imposing any cost sharing (such as deductibles, copayments or coinsurance) during the PHE; and
- Non-grandfathered health plans must cover certain preventive services, including recommended COVID-19 vaccines and boosters, without cost sharing. During the PHE, this coverage mandate applies to COVID-19 immunizations provided by all providers, regardless of whether they are in-network or out-of-network.

In addition, during the COVID-19 outbreak period (which is tied to the national emergency), certain health plan deadlines are extended, including the deadlines to request special enrollment under HIPAA and elect COBRA continuation coverage.

Impact on Health Plans

When the PHE ends, health plans will no longer be required to cover COVID-19 diagnostic tests and related services without cost sharing. Health plans will still be required to cover recommended preventive services, including COVID-19 immunizations, without cost sharing, but this coverage requirement will be limited to in-network providers. In addition, once the COVID-19 outbreak period ends, health plans can go back to their nonextended deadlines for purposes of HIPAA special enrollment, COBRA continuation coverage, and claims and appeals procedures.

Provided to you by **Nulty Insurance**

Public Health Emergency

The PHE is scheduled to end on **May 11, 2023**.

Outbreak Period

The Departments of Labor, HHS and the Treasury (Departments) announced that the outbreak period will end on **July 10, 2023**. They have informally remarked that this date is not impacted by the national emergency's early end. However, official guidance on this point would be helpful.

FAQ Guidance

On March 29, 2023, the Departments issued [FAQs](#) to address how certain health plan requirements related to the COVID-19 pandemic will change when the emergency periods end.



HEALTH CARE BULLETIN



PUBLIC HEALTH EMERGENCY

Background

HHS first declared that a [PHE](#) exists due to the COVID-19 pandemic on Jan. 31, 2020. A PHE declaration lasts for 90 days unless it is terminated early by HHS. At the end of the 90-day period, HHS can extend the PHE or let it expire. HHS has repeatedly extended the COVID-19 PHE since it began in early 2020. HHS promised to provide at least 60 days' notice to the public before the PHE's end date. On Jan. 30, 2023, the Biden Administration [announced](#) that the PHE will end on **May 11, 2023**.

Health Plan Changes

When the PHE ends, the following health plan coverage rules related to the COVID-19 pandemic will no longer apply:

- **COVID-19 Diagnostic Testing Without Cost Sharing**—During the PHE, health plans and health insurance issuers must cover COVID-19 tests and related services without imposing any cost sharing or prior authorization or other medical management requirements. As of Jan. 15, 2022, this coverage requirement extends to at-home COVID-19 diagnostic tests. Health plans and issuers will no longer be required to provide this first-dollar coverage when the PHE ends. However, the Departments are encouraging health plans and issuers to continue providing this coverage, without imposing cost sharing, after the PHE ends.
- **COVID-19 Vaccines—Out-of-Network Providers**—Non-grandfathered group health plans and health insurance issuers must cover qualifying coronavirus preventive services, including recommended COVID-19 immunizations, without cost sharing requirements. This coverage must be provided within 15 business days after the date on which a recommendation is made by the U.S. Preventive Services Task Force (USPSTF) or Advisory Committee on Immunization Practices (ACIP) regarding the qualifying coronavirus preventive service. During the PHE, covered services may be provided by in-network or out-of-network providers.

Once the PHE ends, health plans and issuers must continue to cover recommended COVID-19 immunizations without cost sharing but can limit this coverage to in-network providers. However, if a plan or issuer does not have a provider in its network who can provide a qualifying coronavirus preventive service, the plan or issuer must cover the item or service when furnished by an out-of-network provider and may not impose cost sharing with respect to the item or service.

- **Standalone Telehealth Benefits**—For plan years beginning during the PHE, a large employer (more than 50 employees) may offer standalone telehealth benefits and other remote care services to individuals who are not eligible for coverage under any other group health plan offered by the employer without violating the Affordable Care Act's market reforms. These types of standalone arrangements will not be permitted after the PHE ends.

Notice of Plan Changes

According to the Departments' [FAQs](#), health plans and issuers are encouraged to notify participants, beneficiaries and enrollees of key information regarding coverage of COVID-19 diagnosis and treatment, including testing. This includes the date when the plan or issuer will stop coverage if the plan or issuer chooses to no longer cover COVID-19 diagnostic tests or when the plan or issuer will begin to impose cost-sharing requirements, prior authorization or other medical management requirements on COVID-19 tests, to the extent applicable under the plan or coverage.

In addition, if a plan or issuer makes a material modification to any of the plan or coverage terms that would affect the content of the summary of benefits and coverage (SBC), that is not reflected in the most recently provided SBC, and that occurs other than in connection with a renewal or reissuance of coverage, the plan or issuer must provide notice of the



modification to participants and enrollees **not later than 60 days prior to the date on which the modification will become effective.**

As a special rule, if a plan or issuer made changes to increase benefits or reduce or eliminate cost sharing for the diagnosis or treatment of COVID-19 or for telehealth or other remote care services and revokes these changes upon the expiration of the PHE, the Departments will consider the plan or issuer to have satisfied its obligation to provide advance notice of the material modification if the plan or issuer:

- Previously notified the participant, beneficiary or enrollee of the general duration of the additional benefits coverage or reduced cost sharing (such as, that the increased coverage applies only during the PHE); or
- Notifies the participant, beneficiary or enrollee of the general duration of the additional benefits coverage or reduced cost sharing within a reasonable timeframe in advance of the reversal of the changes.

However, a notification provided with respect to a prior plan year will not be considered to satisfy the obligation to provide advance notice for coverage in the current plan year.

NATIONAL EMERGENCY – OUTBREAK PERIOD

Background

Various deadlines related to employer-sponsored group health plans are extended during the COVID-19 outbreak period. The outbreak period began in March 2020, when former President Donald Trump declared a national emergency due to the COVID-19 pandemic, and it will continue until 60 days after the end of the COVID-19 national emergency (or such other date as announced by the federal government).

On Jan. 30, 2023, the Biden Administration announced its plan to end the COVID-19 national emergency on May 11, 2023. The Departments' [FAQs](#) provide that the outbreak period will end on **July 10, 2023** (60 days after May 11, 2023).

However, on April 10, 2023, President Biden signed a bipartisan [resolution](#) ending the COVID-19 national emergency early. If the end of the outbreak period is based on the early end to the COVID-19 national emergency, the outbreak period would end on June 9, 2023 (60 days after April 10, 2023).

However, the Departments have informally indicated that the resolution does not affect the outbreak period's end date, and that the end date of July 10, 2023 still applies. Formal guidance has not been issued and would be helpful in determining when the deadline extensions end.

Deadline Extensions

During the outbreak period, some key deadlines for employee benefit plans and participants are extended. Deadline extensions that apply during the outbreak period include the following:

- **HIPAA Special Enrollment**—The 30-day period (or 60-day period, if applicable) to request special enrollment.
- **COBRA Notice and Premium Payment Deadlines**—The 60-day period to elect COBRA coverage; the date for making COBRA premium payments (generally at least 45 days after the day of the initial COBRA election, with a grace period of at least 30 days for subsequent premium payments); and the date for individuals to notify the plan of a qualifying event or disability determination (generally 60 days from the date of the event, loss of coverage or disability determination).
- **Claims and Appeals Deadlines**—The deadlines to file a benefit claim, file an appeal of an adverse benefit determination or request an external review of a claim under the plan's claims and appeals procedures.

HEALTH CARE BULLETIN



Under the relief, **these deadline extensions end when the outbreak period is over** or, if earlier, after an individual has been eligible for a specific deadline extension for one year.

Examples

The Departments' FAQs provide the following examples to show how health plans and issuers should apply the deadline extensions as the outbreak period comes to an end. *Note that these FAQs assume that the outbreak period will end on July 10, 2023.*

Example 1 (Electing COBRA)

Facts: Individual A works for Employer X and participates in Employer X's group health plan. Individual A experiences a qualifying event for COBRA purposes and loses coverage on April 1, 2023. Individual A is eligible to elect COBRA coverage under Employer X's plan and is provided a COBRA election notice on May 1, 2023. What is the deadline for Individual A to elect COBRA?

Conclusion: The last day of Individual A's COBRA election period is 60 days after July 10, 2023 (the end of the outbreak period), which is Sept. 8, 2023.

Example 2 (Electing COBRA)

Facts: Same facts as Example 1, except the qualifying event and loss of coverage occur on May 12, 2023, and Individual A is eligible to elect COBRA coverage under Employer X's plan and is provided a COBRA election notice on May 15, 2023. What is the deadline for Individual A to elect COBRA?

Conclusion: Because the qualifying event occurred on May 12, 2023, after the end of the COVID-19 national emergency period but during the outbreak period, the deadline extensions still apply. The last day of Individual A's COBRA election period is 60 days after July 10, 2023 (the end of the outbreak period), which is Sept. 8, 2023.

Example 3 (Electing COBRA)

Facts: Same facts as Example 1, except the qualifying event and loss of coverage occur on July 12, 2023, and Individual A is eligible to elect COBRA coverage under Employer X's plan and is provided a COBRA election notice on July 15, 2023. What is the deadline for Individual A to elect COBRA?

Conclusion: Because the qualifying event occurred on July 12, 2023, after the end of both the COVID-19 national emergency period and the outbreak period, the deadline extensions do not apply. The last day of Individual A's COBRA election period is 60 days after July 15, 2023, which is Sept. 13, 2023.

Example 4 (Paying COBRA Premiums)

Facts: Individual B participates in Employer Y's group health plan. Individual B has a qualifying event and receives a COBRA election notice on Oct. 1, 2022. Individual B elects COBRA continuation coverage on Oct. 15, 2022, retroactive to Oct. 1, 2022. When must Individual B make the initial COBRA premium payment and subsequent monthly COBRA premium payments?

Conclusion: Individual B has until 45 days after July 10, 2023 (the end of the outbreak period), which is Aug. 24, 2023, to make the initial COBRA premium payment. The initial COBRA premium payment would include the monthly premium payments for October 2022 through July 2023. The premium payment for August 2023 must be paid by Aug. 30, 2023 (the last day of the 30-day grace period for the August 2023 premium payment). Subsequent monthly COBRA premium payments would be due the first of each month, subject to a 30-day grace period.



Example 5 (Special Enrollment Period)

Facts: Individual C works for Employer Z. Individual C is eligible for Employer Z’s group health plan, but previously declined participation. On April 1, 2023, Individual C gave birth and would like to enroll herself and the child in Employer Z’s plan. However, open enrollment does not begin until Nov. 15, 2023. When may Individual C exercise her special enrollment rights?

Conclusion: Individual C and her child qualify for special enrollment in Employer Z’s plan as early as the date of the child’s birth, April 1, 2023. Individual C may exercise her special enrollment rights for herself and her child until 30 days after July 10, 2023 (the end of the outbreak period), which is Aug. 9, 2023, as long as she pays the premiums for the period of coverage after the birth.

Example 6 (Special Enrollment Period)

Facts: Same facts as Example 5, except that Individual C gave birth on May 12, 2023. When may Individual C exercise her special enrollment rights?

Conclusion: Individual C and her child qualify for special enrollment in Employer Z’s plan as of the date of the child’s birth, May 12, 2023. Because Individual C became eligible for special enrollment on May 12, 2023, after the end of the COVID-19 national emergency period but during the outbreak period, the deadline extensions still apply. Individual C may exercise her special enrollment rights for herself and her child until 30 days after July 10, 2023 (the end of the outbreak period), which is Aug. 9, 2023, as long as she pays the premiums for the period of coverage after the birth.

Example 7 (Special Enrollment Period)

Facts: Same facts as Example 5, except that Individual C gave birth on July 12, 2023. When may Individual C exercise her special enrollment rights?

Conclusion: Individual C and her child qualify for special enrollment in Employer Z’s plan as of the date of the child’s birth, July 12, 2023. Because Individual C became eligible for special enrollment on July 12, 2023, after the end of both the COVID-19 national emergency period and the outbreak period, the deadline extensions do not apply. Individual C may exercise her special enrollment rights for herself and her child until 30 days after July 12, 2023, which is Aug. 11, 2023, as long as she pays the premiums for the period of coverage after the birth.

PRE-DEDUCTIBLE TELEHEALTH COVERAGE

In response to the COVID-19 pandemic, the Coronavirus Aid, Relief and Economic Security ([CARES Act](#)) allowed high deductible health plans (HDHPs) compatible with health savings accounts (HSAs) to provide benefits for telehealth or other remote care services before plan deductibles were met. This relief was not linked to the PHE or outbreak period; rather, it applied for plan years beginning before Jan. 1, 2022. A [spending bill](#) extended this relief to telehealth services provided in months beginning after March 31, 2022, and before Jan. 1, 2023.

The [Consolidated Appropriations Act, 2023](#) (CAA), which was signed into law on Dec. 29, 2022, extends the ability of HDHPs to provide benefits for telehealth or other remote care services before plan deductibles have been met without jeopardizing HSA eligibility. This extension applies for plan years beginning after Dec. 31, 2022, and before Jan. 1, 2025. Thus, regardless of when the COVID-19 emergency periods end, HDHPs may be designed to waive the deductible for any telehealth services for plan years beginning in 2023 and 2024 without causing participants to lose HSA eligibility.