

Health & Group Benefits Update

Update on Issues Affecting Taft-Hartley and Single Employer Plans

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Termination of COVID-19 Public Health Emergency and National Emergency

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COVID-19 Public Health Emergency (PHE) and National Emergency (NE) declarations to end on May 11, 2023.

On January 30, 2023, the Biden Administration announced its plan to extend the COVID-19 Public Health Emergency (PHE) and National Emergency (NE) to May 11, 2023, and then end both emergencies on that same date, May 11, 2023.

The intent of this Benefits Update is to provide plan sponsors with information on the changes due to the expiration of these emergency declarations, how they will affect health plans, and considerations for potential changes.

OVERVIEW

On January 31, 2020, the Department of Health and Human Services (HHS) declared a Public Health Emergency (PHE) due to the COVID-19 pandemic. The HHS has the authority to extend the PHE in 90-day increments and has done so, most recently on January 11, 2023. The PHE provided COVID-19 relief legislation which included requirements for group health plans and health insurance issuers to provide free COVID-19 testing and certain testing-related services.

The National Emergency (NE) was first issued by former President Trump on March 13, 2020 and became effective on March 1, 2020, and was set to continue until March 1, 2022. Shortly after the COVID-19 pandemic began, joint guidance from the Department of Labor (DOL) and the Department of the Treasury suspended, or “tolled,” certain deadlines applicable to benefit plans and participants for the period beginning on March 1, 2020, and ending the earlier of (a) 1 year from the date benefit plans and participants were first eligible for relief or (b) 60 days after the announced end of the National Emergency (NE) (ie, July 10, 2023).

IMPACT AND CONSIDERATIONS FOR PLAN SPONSORS^{1,2,3}

Public Health Emergency (PHE)

COVID-19 Testing: Plan Sponsors will no longer be required to cover tests and testing-related services without cost sharing. In addition, plan sponsors will no longer be required to cover over-the-counter

(OTC) tests. Plan Sponsor considerations include continuing to cover these services at no cost, covering at the same cost sharing as other comparable testing services, excluding out-of-network OTC tests or continuing to impose a \$12 reimbursement limit on all out-of-network OTC tests. For some plan sponsors, continuing to cover the costs of testing may be beneficial. If changes are made to reinstate member cost sharing, plan sponsors are encouraged to notify participants, beneficiaries, and enrollees of key information regarding coverage of COVID-19 diagnosis and treatment, including OTC testing.

COVID-19 Vaccines: Regardless of the PHE and NE expiration, COVID-19 vaccines have been added to the Affordable Care Act's (ACA's) list of preventive services. Thus, per the ACA, non-grandfathered plan benefits will continue to be required to cover recommended preventive services (including those for the COVID-19 vaccines) without cost sharing but can limit coverage to in-network providers even with the end of the PHE and NE.

Please note: Currently the cost of the vaccine is being covered by the Government. Thus, at this time, the only cost to the plan sponsor is for the vaccine administration. Once the Government funding for vaccines end, plan sponsors will be expected to pick up the full cost, both the cost of the vaccine itself as well as its administration fee. Analysis of cost data may be informative to help plan sponsors understand the financial impact of this change.

Standalone Telehealth Benefits: For plan years beginning prior to May 11, 2023, a plan sponsor 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 plan sponsor. These types of standalone arrangements will not be permitted after the PHE ends. Plan sponsors will need to ensure that the plan ceases to offer this coverage following the close of the plan year that began during the PHE. Again, when changes are made to remove the standalone telehealth benefits, plan sponsors should follow the 60-day advance notification of plan change as well as amending any applicable plan documents.

Mental Health Parity and Addiction Equity Act (MHPAEA) Noncompliance Relief: The PHE provided relief from enforcement action against plans that exclude testing and services that are required to be covered without cost sharing for purposes of the MHPAEA tests. This relief appears to end when PHE ends since plans are no longer required to cover testing with no cost-sharing. Plan sponsors will need to ensure MHPAEA compliance based on the plan sponsor decisions made post-PHE regarding COVID-19 testing items and services.

Employee Assistance Programs (EAPs): During the PHE and NE, an EAP was not considered to provide benefits that are significant in the nature of medical care solely because it offers benefits for COVID-19 diagnosis and testing. If Plan sponsors added COVID-19 testing to their EAP, they should revisit the EAP design and evaluate whether it still satisfies criteria to preserve the expected benefit status of the EAP. Removal of this benefit may trigger the 60-day advance notification of a plan change.

National Emergency (NE)

The Department of Labor (DOL) and the Department of the Treasury suspended, or "tolled," certain deadlines applicable to benefit plans and participants for the period beginning on March 1, 2020, and ending the earlier of (a) 1 year from the date benefit plans and participants were first eligible for relief or (b) 60 days after the announced end of the National Emergency (NE).

Deadline Tolling (i.e., Deadline Suspension) will be removed, and key deadlines will be re-instated 60 days after the end of the NE including:

- The 60-day election period for COBRA continuation coverage
- The date for making COBRA premium payments
- The deadline for employers to provide individuals with notice of their COBRA continuation rights
- The 30-day (or 60-day in some cases) Special Election Period (SEP) to request enrollment in a group health plan
- The timeframes for filing claims under the plan's claims-processing procedures
- The deadlines for requesting internal and external appeals for adverse benefit determinations

Plan sponsors should ensure that their programs return to pre-pandemic election and notice deadlines. The Department of Labor has provided guidance that plan sponsors should make “reasonable accommodations to prevent the loss of or undue delay in payment of benefits....and should take steps to minimize the possibility of individuals losing benefits because of a failure to comply with pre-established time frames”. The DOL has also said that plans “should consider” affirmatively sending a notice communicating the end of the one-year relief period for all cases outlined above.

COMMUNICATION AND PLAN RELATED NOTICES^{1,2,3}

If a plan sponsor makes a material modification to any of the plan or coverage terms that would affect the content of the current summary of benefits and coverage (SBC), the plan sponsor must provide notice of the modification to the participants and enrollees no later than 60 days prior to the date on which the modification will become effective. Thus, a plan sponsor “will not be in violation of ERISA for a failure to timely furnish a notice, disclosure, or document that must be furnished between March 1, 2020, and 60 days after the announced end of the COVID-19 National Emergency, if the plan and responsible fiduciary act in good faith and furnish the notice, disclosure, or document as soon as administratively practicable under the circumstances”. It is noted that if a plan sponsor has not sent the required notices necessary during the NE period, they should prepare and send as soon as “administratively practicable”.

For more information about any of the topics covered in this brief, contact your Milliman consultant or the authors.



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1. *Groom Law Group Webinar February 2, 2023 – End of Public Health Emergency and National Emergency – Considerations for Employers, Insurers, and TPAs.*
2. <https://www.kff.org/policy-watch/the-end-of-the-covid-19-public-health-emergency-details-on-health-coverage-and-access>
3. <https://www.hhs.gov/about/news/2023/02/09/fact-sheet-covid-19-public-health-emergency-transition-roadmap.html>