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What Happens Once the COVID-19 National Emergency Ends in May?

February 8, 2023

The Biden Administration recently announced that the national emergency declarations, originally issued in 2020 because of the COVID-19 pandemic, will end on May 11, 2023. While in effect, the national emergency declarations required employee benefit plans to provide certain coverages and toll various deadlines. This Client Alert identifies steps employers should take to prepare to administer their plans upon the expiration of the national COVID-19 emergency.

The End of Tolling Employee Benefit Plan Deadlines

During the national COVID-19 emergency, employee benefit plan deadlines were tolled for the period starting March 1, 2020 until 60 days after the end of the national COVID-19 emergency. The employee benefit plan deadlines tolled include:

- Time period to request HIPAA special enrollment;
- Time period to elect COBRA continuation coverage;
- The deadline to make COBRA premium payments;
- The date for individuals to notify plans of a COBRA qualifying event or determination of disability;
- The date within which individuals may file a benefit claim under the plan's claim procedures;
- The date within which individuals may file an appeal of an adverse benefit determination under the plan's claims procedures;
- The date within which individuals may file a request for an external review after receipt of an adverse benefit determination or final internal adverse benefit determination; and
- The date within which individuals may file information to perfect a request for external review.

Our [May 2020 Client Alert](#) provides additional details.

In February 2021 the Departments of Labor and Treasury explained that individuals and plans affected by the national COVID-19 emergency would have certain periods disregarded *until the earlier of* (a) one year from the date the individual or plan was first eligible for relief, or (b) 60 days after the end of the national COVID-19 emergency. This means that the tolling period (and its end) will be *specific for each individual*. Our [March 2021 Client Alert](#) provides additional details.

The following examples illustrate how tolling will be applied with the end of the national COVID-19 emergency:

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- If a COBRA qualified beneficiary is required to make a COBRA election by March 1, 2022, her deadline is delayed until the *earlier* of March 1, 2023 or 60 days after the end of the national COVID-19 emergency. The national COVID-19 emergency ends on May 11, so 60 days after its end is July 10, 2023. Therefore, the COBRA qualified beneficiary must make an election by March 1, 2023.
- If a participant received notification of a denied health FSA claim on August 1, 2022, his date to file an appeal is delayed until the *earlier* of August 1, 2023 or 60 days after the end of the national emergency. Sixty days after the end of the national COVID-19 emergency is July 10, 2023. Therefore, the participant in this example has until July 10, 2023 to file an appeal.

Effect on COVID-19 Testing and Vaccine Coverage Requirements

As discussed in our [January 2022 Client Alert](#) and [February 2022 Client Alert](#), during the national COVID-19 emergency, group health plans must cover COVID-19 testing services (including the test itself, the visit with a health provider, and FDA-approved over-the-counter tests) and COVID-19 vaccines without cost sharing or pre-authorization, including for services and vaccines provided by out-of-network providers.

Once the national COVID-19 emergency ends on May 11, group health plans will no longer be required to provide first-dollar coverage for COVID-19 testing and related services received through a healthcare provider or over-the-counter test. However, non-grandfathered plans will still be required to cover COVID-19 vaccines without cost-sharing for in-network providers. It is unclear whether the relief that allows High Deductible Health Plans (“HDHPs”) to provide first-dollar coverage for diagnosing and treating COVID-19 before the deductible is met will also expire on May 11.

Telehealth Coverage for High Deductible Health Plans Unaffected

The 2020 CARES Act initially permitted HDHPs to provide remote care with no deductible without affecting a participant’s eligibility to contribute to a health savings account during the COVID-19 pandemic. The Consolidated Appropriations Act, 2023 (“CAA”) extended the telehealth safe harbor, which was set to expire December 31, 2024. Because of the extension in the CAA, this telehealth provision will not be affected by the end of the national COVID-19 emergency. Our [January 2023 Client Alert](#) provides additional information.

Next Steps

Prior to the expiration of the national COVID-19 emergency, employers should

- Confirm with their TPA and other vendors how the end of the tolling deadlines and coverage requirements will be communicated to participants and beneficiaries;
- Confirm the TPAs and other vendors are accurately calculating the tolled deadlines based on the end of the national COVID-19 emergency; and
- Determine whether plan documents and notices need to be modified to address the end of the tolling deadlines and coverage requirements.

If you have any questions, please contact a member of Kutak Rock’s [Employee Benefits and Executive Compensation practice group](#).

