

# COMPLIANCE ALERT

## COVID National Emergency Ends Sooner Than Previously Announced

April 14, 2023

### Action Required:

- Work with trusted advisors to review affected policies and plan deadlines.
- Prepare for the end of both declared emergency periods.

On April 10, 2023, President Biden signed [legislation](#) (the “Resolution”) to formally end the national emergency period (NE) associated with COVID-19 effective April 10, 2023.

The end of the NE will trigger the 60-day countdown to the end of the Outbreak Period at which time various plan-related deadline extensions will return to pre-pandemic timeframes.

While this timing would end the Outbreak Period on June 9, federal agencies are considering maintaining the original end date of July 10.

This development does not affect the public health emergency (PHE) time period, which is still currently scheduled to end on May 11, 2023. While the PHE declaration is in effect, group health plans must comply with several COVID-19-related relief provisions.

### What Should Employers and Plan Sponsors Do Next?

If they haven’t done so already, employers and plan sponsors should work with their trusted plan advisors to review affected plans and policies to be prepared for the end of both declared emergency periods.

Specifically, they should review the plan coverage requirements that will be impacted by the end of the PHE and the changes to the plan deadlines impacted by the end of the NE.

Additionally, affected plan documents and policies should be reviewed, and if necessary updated, to ensure that temporary COVID-19 relief rules from these two emergency periods will no longer be applicable at the times that they are supposed to end and ensure that the generally applicable pre-pandemic plan deadlines and rules go back into effect. ■

### ↓ Full Explanation Follows ↓

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# COVID National Emergency Ends Sooner Than Previously Announced

On April 10, 2023, President Biden signed [legislation](#) (the “Resolution”) to formally end the national emergency period (NE) associated with COVID-19 effective April 10, 2023. However, the Resolution did not end the COVID-19-related public health emergency (PHE), which is still currently scheduled to end on May 11, 2023.

As explained in our recent E-Alert [here](#), the Biden Administration had previously announced a May 11, 2023, end date to both the NE and PHE, but the signing of this Resolution terminates only the NE as of April 10, 2023. The White House also issued a [press release](#) explaining this development.

## How Does This Development Change the Law?

As background, the NE declaration for COVID-19 was issued by President Trump on March 13, 2020 (and effective March 1, 2020). The White House (both under Presidents Trump and Biden) had continually extended the NE.

The NE became important to sponsors of benefit plans when, in 2020, DOL and IRS guidance extended various plan-related deadlines by disregarding or pausing them (i.e., tolling them) for a time period (no longer than one year) during what was referred to as the “Outbreak Period.” The Outbreak Period was defined as a time period that would continue for the duration of the NE period and end 60 days after the end of the NE (see our E-Alerts [here](#) and [here](#)). Now that the President has signed the Resolution, the Outbreak Period will end on June 9, 2023 (previously, after the President’s last announcement, it had been scheduled to end on July 10, 2023).<sup>1</sup>

While this development does not affect the PHE time period, it should also be noted that the PHE (initially declared on January 31, 2020), has also been continuously extended since early 2020, although on a more frequent schedule than the NE. While the PHE declaration is in effect, group health plans must comply with several COVID-19-related provisions.<sup>2</sup>

## What Are the Specific Outbreak Period Rules That Will Change? What Are the Plan Deadlines and Other Rules Impacted by This Change?

The Outbreak Period extension applies to benefit claim deadlines for participants and beneficiaries, as well as deadlines for COBRA elections and premium payments, HIPAA special enrollments, and various ERISA disclosures. The end of the NE will trigger the 60-day countdown to the end of the Outbreak Period, at which time the deadline tolling period will end.

Once this Outbreak Period ends (i.e., on June 9, 2023), the following paused (or tolled) timeframes will begin to run again at pre-pandemic rates:

- The 14-day deadline for plan administrators to provide COBRA election notices to qualified beneficiaries (the Outbreak Period relief guidance suspended the deadline for the plan administrator to provide the COBRA

<sup>1</sup>Update: Based on informal comments from the DOL, it appears that the tolling of benefit plan deadlines may still end on July 10, 2023. Specifically, it appears that the agencies are still contemplating changing the regulation so that the Outbreak Period will still end on July 10 as previously scheduled. We will provide updates if the DOL issues a formal announcement to this effect.

<sup>2</sup>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 vaccinations, without cost sharing, but this coverage requirement will be limited to in-network providers (a good summary of the impact on coverage requirements by KFF is available [here](#)).

election notice to qualified beneficiaries);

- the 30-day (or 60-day in some cases) period to exercise HIPAA special enrollment rights in a group health plan following birth, adoption, or placement for adoption of a child; marriage, loss of other health coverage; or eligibility for a state premium assistance subsidy;
- the 60-day deadline by which a participant or qualified beneficiary must provide notice of divorce or legal separation, a dependent child that ceases to be an eligible dependent under the terms of the plan), or a Social Security disability determination used to extend COBRA coverage;
- the 60-day deadline in which to elect COBRA coverage;
- the date by which monthly COBRA premium payments are due; and
- the deadline under the plan by which participants may file a benefit claim (under the terms of the plan) and the deadlines for appealing an adverse benefit determination or requesting an external review, including for health flexible spending accounts (Health FSAs) and health reimbursement arrangements (HRAs).

### What Should Employers and Plan Sponsors Do Next?

If they haven't done so already, employers and plan sponsors should begin the process now of working with their trusted plan advisors to review affected plans and policies to be prepared for the end of both declared emergency periods. Specifically, they should review the plan coverage requirements that will be impacted by the end of the PHE and the changes to the plan deadlines impacted by the end of the NE (described above).

Additionally, affected plan documents and policies should be reviewed, and if necessary updated, to ensure that these temporary COVID-19 relief rules from these two emergency periods will no longer be applicable at the times that they are supposed to end and ensure that the generally applicable pre-pandemic plan deadlines and rules go back into effect. ■

**If you have any additional questions,  
please call your Corporate Synergies  
Account Manager or 866.CSG.1719.**