

# CLIENT ALERT

## Agencies Issue Guidance on the End of the COVID-19 Emergencies

(Revised based on the President's Signature of H.J.Res. 7 on April 10, 2023)

On January 30, 2023, President Biden issued a [Statement of Administration Policy](#) announcing his intent to end the COVID-19 national and public health emergencies on May 11, 2023. However, on April 10, 2023, the President signed H.J.Res. 7, which ends the COVID-19 national emergency approximately one month earlier than anticipated, on April 10, 2023.

On March 23, 2023, before the President signed [H.J.Res. 7](#), the DOL and other federal agencies issued [guidance in the form of FAQs](#) intended to assist group health plans and health insurance issuers as we transition from the state of a public health and national emergency that has been ongoing for more than three years. While these guidelines do not reflect that the national emergency ended a month earlier than expected, they are still instructive for how plans and health insurance issuers should handle the resumed deadlines after June 9, 2023, which is 60 days from the end of the COVID-19 emergency. It is unclear whether the agencies will issue updated guidance due to the unanticipated earlier end date of the national emergency. NOTE: H.J.Res. 7 does not impact the end of the COVID-19 public health emergency, which is set to expire on May 11, 2023.

As a reminder, the national emergency relief disregards the following deadlines until the earlier of one year from the date the individual was first eligible for the relief, or until 60 days after the end of the national emergency:

- The 30-day period (or 60-day period, if applicable) to request a special enrollment;
- The 60-day election period for COBRA continuation coverage;
- The deadline for making COBRA premium payments;
- The deadline for individuals to notify the plan of a qualifying event or determination of disability;
- The deadline within which employees can file a benefit claim, or a claimant can appeal an adverse benefit determination, under a group health plan's or disability plan's claims procedures;
- The deadline for claimants to file a request for an external review after receipt of an adverse benefit determination or final internal adverse benefit determination; and
- The deadline for a claimant to file information to perfect a request for external review upon finding that the request was not complete.



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# Client Alert

Page 2 of 4

The FAQs clarify that with regard to the end of the national emergency, the relief above expires at the end of the outbreak period (which is 60 days after the end of the national emergency). Due to H.J.Res. 7, 60 days after the end of the national emergency, or the expiration date for the outbreak period, is now June 9, 2023. Thus, all extensions that are still effective for any plans or participants (i.e., those that are still in the 1-year extension window) will expire and the applicable clock will begin ticking after June 9, 2023.

## The FAQs include examples to help plans and employers administer the disregarded periods:

- Example 1 (Electing COBRA)
  - An individual experiences a COBRA qualifying event and loses coverage on April 1, 2023. The individual is eligible to elect COBRA and is provided an election notice on May 1, 2023. The deadline to elect COBRA is 60 days after June 9, 2023 (the end of the outbreak period), which is August 8, 2023.
- Example 2 (Electing COBRA)
  - Same facts as Example 1, except the qualifying event and loss of coverage occur on May 12, 2023, and the individual is provided a COBRA election notice on May 15, 2023. The deadline to elect COBRA is 60 days after the end of the outbreak period (August 8, 2023) because the qualifying event occurred on May 12, 2023, after the end of the national emergency but during the outbreak period.
- Example 3 (Electing COBRA)
  - Same facts as Example 1, except the qualifying event and loss of coverage occur on June 12, 2023, and the individual is provided a COBRA election notice on June 15, 2023. The deadline to elect COBRA is 60 days after June 15, 2023 (August 14, 2023) because the qualifying event occurred on June 12, 2023, after the end of the outbreak period.
- Example 4 (Paying for COBRA Premiums)
  - An individual experiences a qualifying event and receives a COBRA notice on October 1, 2022. The individual elects COBRA on October 15, 2022, retroactive to October 1, 2022. The individual has until 45 days after June 9, 2023 (the end of the outbreak period), which is July 24, 2023, to make the initial COBRA premium payment. The initial COBRA premium payment would include the monthly premium payments for October 2022 through June 2023. The premium payment for July 2023 must be paid by July 31, 2023 (the last day of the 30-day grace period for the July 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)
  - An employee who previously declined participation in their employer's group health plan gave birth on April 1, 2023 and would like to enroll herself and the child; however, open enrollment does not begin until November 15, 2023. The employee and her child qualify for special enrollment as early as the date of the child's birth, April 1, 2023. The employee may exercise her special enrollment rights for herself and her child until 30 days after June 9, 2023 (the end of the outbreak period), which is July 9, 2023, as long as she pays the premiums for the period of coverage after the birth.

# Client Alert

Page 3 of 4

- Example 6 (Special Enrollment Period)
  - Same as Example 5, except that the employee gave birth on May 12, 2023. The employee and her child qualify for special enrollment as of the date of the child's birth, May 12, 2023. Because Individual C became eligible for special enrollment during the outbreak period, the extensions under the emergency relief notices still apply. The employee may exercise her special enrollment rights for herself and her child until 30 days after June 9, 2023 (the end of the outbreak period), which is July 9, 2023, as long as she pays the premiums for the period of coverage after the birth.
- Example 7 (Special Enrollment Period)
  - Same as Example 5, except that the employee gave birth on June 12, 2023. The employee and her child qualify for special enrollment as of the date of the child's birth, June 12, 2023. Because she became eligible for special enrollment on June 12, 2023, after the end of both the national emergency and the outbreak period, the extensions under the emergency relief notices do not apply. The employee may exercise her special enrollment rights for herself and her child until 30 days after June 12, 2023, which is July 12, 2023, as long as she pays the premiums for the period of coverage after the birth.

The FAQs also note that until further guidance is issued, individuals enrolled in HSA-qualified plans may still receive coverage for items and services related to COVID-19 treatment without first satisfying the applicable annual deductible.

The FAQs clarify the following with regard to the end of the public health emergency, which is not impacted by H.J.Res. 7 and expires on May 11, 2023:

- The provisions of the FFCRA and CARES Act which require COVID-19 diagnostic tests to be provided without cost sharing, prior authorization, or other medical management requirements are tied to the COVID-19 public health emergency and, therefore, will expire on May 11, 2023, when the public health emergency ends.
  - Accordingly, group health plans and insurers will no longer be required to cover COVID-19 at home or in person diagnostic tests without cost sharing.
  - The agencies encourage plans and insurers to continue providing this coverage without imposing cost sharing.
  - Plans and insurers must consider the date an item or service was rendered, not the date the claim was submitted, when determining whether the item or service was provided during the public health emergency.
- The agencies encourage plans and insurers to notify participants, beneficiaries, and enrollees regarding key information of coverage of COVID-19 related items and services (including testing for COVID-19), including the date the plan or insurer will stop providing coverage and/or begin imposing cost sharing requirements or other medical management requirements.



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# Client Alert

Page 4 of 4

- Generally, plans and insurers must provide 60-days prior notice of a change to benefits that impacts any information that would affect the content of the Summary of Benefits and Coverage (SBC); however, the agencies will consider the 60 days advance notice of any of the COVID-19-related treatment changes due to the end of the public health emergency as satisfied if:
  - The plan or insurer 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
  - The plan or insurer 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.

Note: It is not sufficient if the above notification was provided in a prior plan year. The notification must have been provided during the current plan year based on the recent guidance.

- Provisions governing coverage of the COVID-19 vaccine are also tied to the COVID-19 public health emergency.
  - After May 11, 2023, administration of the COVID-19 vaccine will still be covered without cost (similar to other preventive care vaccines) by health plans and insurers; however, plans and insurers will not be required to cover vaccines administered by OON providers; however, if the plan or insurer does not have a provider in its network who can provide the vaccine, the plan or insurer must cover the vaccine when furnished by an out-of-network provider in the same manner as would apply to in-network providers and may not impose cost sharing.

## Conclusion

Communication is key here. Employers need to be diligent to ensure they understand the approach their carriers and/or TPAs will take to comply with this guidance, and are encouraged to work with their carriers, TPAs, COBRA administrators, and other vendors to develop strategies for ensuring proper communication of the end of the COVID-19 Emergencies and the impact on participants and their benefits, and identify SPDs and other plan materials that may need to be amended.

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