
COMPLIANCE ALERT



EMPLOYEE BENEFITS | APRIL 18, 2023

Agencies Informally Indicate That the Outbreak Period Tied to the COVID-19 National Emergency Ends July 10, 2023

On April 10, 2023, the President signed [H.J.Res. 7](#), which ended the COVID-19 national emergency on April 10, 2023, approximately one month earlier than anticipated. However, prior to the passage of H.J. Res. 7, the DOL and other federal agencies issued guidance in the form of [FAQs](#) that indicate an end date of May 11, 2023 for the national emergency and public health emergency. Based on informal statements by officials at the DOL and other agencies, the agencies intend to stand by the May 11 end date for the national emergency and the corresponding July 10, 2023 end date for the outbreak period. It is not clear whether the agencies will issue any additional formal written guidance. **This means that despite the President ending the national emergency on April 10, the DOL and other agencies will rely on the previously communicated May 11 end date as described in their FAQs to determine the end of the national emergency and public health emergency.**

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.

The FAQs clarify that with regard to the end of the national emergency, the relief above expires on July 10, 2023 (which is 60 days after the end of the national emergency). 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.

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 July 10, 2023 (the end of the outbreak period), which is September 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 (September 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 July 12, 2023, and the individual is provided a COBRA election notice on July 15, 2023. The deadline to elect COBRA is 60 days after July 15, 2023 (September 13, 2023) because the qualifying event occurred on July 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 July 10, 2023 (the end of the outbreak period), which is August 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 August 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)
 - 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 July 10, 2023 (the end of the outbreak period), which is August 9, 2023, as long as she pays the premiums for the period of coverage after the birth.
- 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 July 10, 2023 (the end of the outbreak period), which is August 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 July 12, 2023. The employee and her child qualify for special enrollment as of the date of the child's birth, July 12, 2023. Because she became eligible for special enrollment on July 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 July 12, 2023, which is August 11, 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**:

- 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.
 - 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

Plans sponsors taking a cautious approach will administer their plans in accordance with the May 11 end date specified in the FAQs and continue to disregard the normal deadlines until after July 10, 2023. Participant communications should be reviewed to ensure that the correct deadlines are communicated.

This alert was prepared for Woodruff Sawyer by Marathas Barrow Weatherhead Lent LLP, a national law firm with recognized experts on the Affordable Care Act. Contact Stacy Barrow or Nicole Quinn-Gato at sbarrow@marbarlaw.com or nquinn-gato@marbarlaw.com.

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