



The End Is Near! Biden Announces COVID Emergency Declarations Will End May 11, 2023

February 2023

On January 30, 2023, President Biden announced that the COVID-19 public health emergency (PHE) and the National Emergency declaration (NED) will end on May 11, 2023.

The Secretary of Health and Human Services declared the PHE on January 31, 2020, for a 90 days' period and subsequently renewed the PHE 12 times. The current PHE renewal is set to expire on April 11, 2023. In 2020, then-President Trump declared the NED as of March 1, 2020, for 12 months. President Biden renewed the NED twice, with the latest renewal set to expire on February 28, 2023. According to the latest announcement, the PHE and the NED will be extended until May 11, 2023.

What the Expiration of the Emergencies Means for Employers

Ending the PHE

Certain COVID-19-related provisions of the Families First Coronavirus Response Act and the Coronavirus Aid, Relief, and Economic Security Act apply for the duration of the PHE and affect services provided by employer group health plans.

Item	During the PHE	Optional or Mandatory?	Once the PHE has Expired
COVID-19 diagnostic testing and testing-related services (including OTC)	Provide at no cost in- and out-of-network without prior authorization and pre-deductible in an HSA-HDHP	Mandatory	No longer required to provide at no-cost, regardless of network status; Testing may still be paid before the deductible is met in an HSA-HDHP under IRS Notice 2020-15
COVID-19 vaccinations	Provide at no cost in- and out-of-network	Mandatory	Must still be provided as a no-cost preventive service in network No longer required to provide at no cost when out-of-network

Ending the NED

The NED tolled the counting of days in determining the deadlines for COBRA, HIPAA special enrollments, and ERISA claims and appeals during the "Outbreak Period," thus giving employees extra time to make elections, payments, or submit a claim or appeal. For employers and plan administrators, Employee Benefits Security Administration Disaster Relief Notices 2020-01 and 2021-01 had the deadlines disregarded until the earlier of (a) one year from the date that the individual action would



otherwise have been required or permitted, or (2) 60 days after the announced end of the NED (i.e., the end of the Outbreak Period). Once the NED ends, the Outbreak Period and deadline extensions will run for another 60 days, ending on July 10, 2023.

What Employers Should Do Now

In anticipation of the end of the PHE and the NED, employers should consider the following steps:

- Decide how to address plan cost-sharing and/or reimbursement once the PHE ends;
- Review and amend plan terms as necessary;
- Distribute a Summary of Material Modifications and Summary of Benefits and Coverage for any changes;
- Work with vendors to determine how to handle any outstanding elections, claims, and appeals;
- Send notices to affected individuals that the extensions are ending and advise them of any pending deadlines; and
- Update, revise, and, where necessary, re-distribute COBRA notices, HIPAA notices, and ERISA claims and appeals policies removing the tolling language.

Resources

The President's statement can be found [here](#).



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