



A Post-Pandemic Guide for Employers After the COVID-19 Emergency Ends and Things Finally Get Back to Normal—Now With Even More Guidance!

<This Aon bulletin is being re-issued to reflect guidance released by the Treasury Department and the Department of Labor on March 29, 2023.>

April 2023

President Biden announced that the COVID-19 Public Health Emergency (PHE) and the National Emergency Declaration (NED) will end on May 11, 2023, allowing for plan design and administration to revert to pre-pandemic terms.

This Aon bulletin will discuss:

- The End of the PHE: Options for plan sponsors after the PHE ends on May 11, 2023;
- The End of the NED: Examples of the impact on COBRA elections, HIPAA Special Enrollment Rights, and Claims Administration;
- State Coverage Requirements; and
- Action Steps for Employers.

The End of the PHE

For COVID-19 relief and coverage offered by group health plans under federal law, May 11, 2023, will mark changes to the following items.

Coverage of COVID-19 Testing Will No Longer Be Mandatory. Mandatory coverage of COVID-19 diagnostic testing and testing-related services—including over-the-counter tests both in-network and out-of-network without cost-sharing or prior authorization—will no longer be required. Moreover, a high-deductible health plan (HDHP) that pays for such testing before meeting the deductible could again jeopardize health savings account (HSA) eligibility if Internal Revenue Service (IRS) guidance evolves to reflect the PHE.

Employers have the following options for coverage of COVID-19 testing:

- Continue COVID-19 coverage at pandemic levels, while monitoring IRS guidance for the end of HSA/HDHP relief;
- Maintain coverage in-network for COVID-19 testing, but discontinue coverage out-of-network;
- Impose cost-sharing and prior authorization requirements, whether in- or out-of-network;
- Discontinue coverage for COVID-19 testing;

- Discontinue coverage for over-the-counter testing; or
- Apply one or multiple approaches with respect to various plan options.

As employers consider their options, they should keep in mind that any reduction in covered services requires 60 days' notice to participants under ERISA. Moreover, if a plan sponsor chose to cover COVID-19 testing under an employee assistance plan (EAP), the end of the PHE and NED is likely to jeopardize the EAP's HIPAA excepted benefit status. Notification to plan participants should be made in advance.

Coverage of COVID-19 Vaccinations Will Still Be Preventive Care. Even with the end of the PHE, COVID-19 vaccinations will still have to be covered in-network as preventive care to the extent required by the Centers for Disease Control and Prevention. But the end of the PHE means an end to the broader requirement that non-grandfathered plans cover COVID-19 vaccination and related administration in-network and out-of-network with no cost-sharing. Moreover, federal subsidies of vaccines and vaccine administration will also be exhausted, so plan costs per covered vaccine will also increase.

Employers can either:

- Discontinue coverage for out-of-network COVID-19 vaccinations; or
- Impose cost-sharing and prior authorization requirements for out-of-network COVID-19 vaccinations.

Notifying Employees of Changes in Coverage. If a plan materially modifies any of the plan or coverage terms that would affect the content of the Summary of Benefits and Coverage (SBC) that is not reflected in the most recently provided SBC and that does not occur in connection with a renewal or reissuance of coverage, the plan must provide notice of the modification to participants and enrollees no later than 60 days prior to the date on which the modification will become effective.

If a plan made changes to increase benefits or reduce or eliminate cost-sharing for the diagnosis or treatment of COVID-19 or for telehealth or other remote care services and revokes these changes upon the expiration of the PHE, the Departments will consider the plan to have satisfied its obligation to provide advance notice of the material modification if the plan:

- Previously notified the participant, beneficiary, or enrollee of the general duration of the additional benefits coverage or reduced cost-sharing (e.g., that the increased coverage applies only during the PHE); or
- 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.

However, with respect to notices that were issued pursuant to previous guidance, a notification provided with respect to a prior plan year will not be considered to satisfy the obligation to provide advance notice for coverage in the current plan year.

Coverage of Telehealth Permitted for HDHPs, but Not Stand-Alone Coverage. Large employers were permitted to extend stand-alone telehealth coverage to employees and dependents not otherwise eligible for an Affordable Care Act-governed group health plan of the employer for the plan years of the PHE. Employers that adopted this arrangement must cease to offer it at the end of the current plan year. However, HDHPs that offered telehealth during the pandemic have a reprieve. An HDHP can continue to cover telehealth without a deductible or deductible below the minimum without affecting HSA eligibility until the end of plan years starting in 2024.

Pre-Deductible Coverage of COVID-19 Treatment Will Not Jeopardize HSA Contributions. During the PHE, employers were permitted to cover pre-deductible COVID-19 treatment under an HDHP without jeopardizing the ability to make pretax contributions to an HSA. The Departments have confirmed that such relief remains in effect beyond the PHE until further notice.

The End of the NED

With the end of the NED now set for May 11, 2023, certain unknown dates are now known. During the NED, the Departments paused the application of standard deadlines under ERISA, COBRA, and HIPAA until the earlier of:

- **One year** from the standard deadline when individual action would have been required or permitted; or
- **The end of the Outbreak Period (July 10, 2023)**, 60 days after the announced end of the NED.

The Departments' guidance applies to the following dates and time periods under ERISA, COBRA, and HIPAA:

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

Under the Departments' new guidance, counting days to determine the minimum allowable time periods for certain plan actions under ERISA, COBRA, and HIPAA begins again on July 10, 2023. Thus,

the applicable deadline will vary for each individual, whether the deadline relates to an ERISA claim, a COBRA election, a COBRA payment, or a HIPAA Special Enrollment. As of July 10, 2023, the Departments will offer no further “good faith” fiduciary relief for failure to timely comply with disclosure and other obligations (e.g., providing Summary Plan Documents, SBCs, or Summary of Material Modifications).

The following examples illustrate how the end of the NED will determine minimum deadlines. Note the following:

- When the NED ends on May 11, many filing and election deadlines will have expired. Employers will have to determine how to communicate this to employees, including whether to adopt a grace period for deadlines that have expired.
- Nothing in the Code or ERISA prevents a group health plan from allowing for a longer ERISA claims filing period, COBRA election period, COBRA payment period, or HIPAA Special Enrollment period.

NED Example 1: COBRA Election for Terminated Employee—One-Year Period Determines Deadline

- Date employee received a COBRA notice—May 1, 2022
- Standard deadline to elect COBRA—July 1, 2022
- New Deadline to elect COBRA—July 1, 2023

NED Example 2: COBRA Election for Terminated Employee—End of Outbreak Period Determines Deadline

- Date employee received COBRA notice—February 1, 2023
- Standard deadline to elect COBRA—April 3, 2023
- New Deadline to elect COBRA— September 8, 2023 (60 days after the end of the Outbreak Period)

NED Example 3: HIPAA Special Enrollment Rights—One-Year Period Determines Deadline

- Date employee’s baby was born—February 1, 2022
- Plan’s HIPAA Special Enrollment deadline—March 3, 2022 (30 days after the event)
- New Deadline to enroll baby—March 3, 2023

NED Example 4: HIPAA Special Enrollment Rights—End of Outbreak Period Determines Deadline

- Date employee's baby was born—October 1, 2022
- Plan's HIPAA Special Enrollment deadline—October 31, 2022 (30 days after the event)
- New Deadline to enroll baby—August 9, 2023 (30 days after the end of the Outbreak Period)

NED Example 5: ERISA Claims Administration—Plan's One-Year Period Determines Deadline

- Date claim incurred—January 1, 2021
- Plan deadline to file claim—January 1, 2022 (one year after expense incurred)
- New Deadline to file claim—January 1, 2023

State Coverage Requirements

States may impose additional requirements on insurers and insured plans regulated by state law for coverage of diagnosis and treatment of COVID-19, provided such requirements do not contradict federal law. For example, in 2021, California adopted requirements for fully insured and governmental plans subject to California law to provide in-network and out-of-network coverage of COVID-19 testing, vaccination, and therapeutics without cost-sharing during the PHE, then for an additional six months, with such in-network coverages continuing for an unstated duration. California has not clarified these requirements since the announcement of the end of the PHE and NED.

Action Steps for Employers

- Monitor the Departments for guidance clarifying administration of the end of the PHE and NED;
- Review written plan documents and amend if necessary to reflect the end of the PHE and the Outbreak Period (deadline extensions during the Outbreak Period are unlikely to have been addressed in plan documents, so amendments may be unnecessary);
- Confirm vendors and service providers will administer plans in accordance with plan sponsor's intent following the end of the PHE;
- Confirm vendors and service providers will accurately calculate deadlines following the end of the Outbreak Period and will use updated communication materials;
- Review and update employee communication materials. Notification to plan participants is required within 60 days following the adoption of a reduction in coverage. If the change impacts the SBC, notification is required 60 days in advance of the change;
- As noted above, any reduction in benefits triggers the ERISA 60 day notice period; and

- Even if not legally required to provide a new notice, plan sponsors should consider providing new communications that summarize reversion to typical coverage terms, administration, and regular deadlines to prevent participant confusion.

Resources

The March 2023 guidance (*FAQs about Families First Coronavirus Response Act, Coronavirus Aid, Relief, and Economic Security Act, and Health Insurance Portability and Accountability Act Implementation Part 58*), is available [here](#).

Additional information is also available at the Department of Labor's blog. The latest update, *What Does the End of the COVID-19 Public Health Emergency Mean for Health Benefits?*, is available [here](#).



About Aon:

[Aon plc](#) (NYSE: AON) exists to shape decisions for the better — to protect and enrich the lives of people around the world. Our colleagues provide our clients in over 120 countries and sovereignties with advice and solutions that give them the clarity and confidence to make better decisions to protect and grow their business.

Follow Aon on [LinkedIn](#), [Twitter](#), [Facebook](#) and [Instagram](#). Stay up-to-date by visiting the [Aon Newsroom](#) and sign up for News Alerts [here](#).