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The End of the COVID Emergency and Its Impact on Group Health Plan Coverage Requirements

After nearly three years of emergency measures related to COVID-19, the U.S. government acted this spring to officially end the COVID-19 Public Health Emergency and the National Emergency. Accordingly, the Departments of Labor, Treasury, and Health and Human Services (the “Tri-Agencies”) issued Frequently Asked Questions addressing the impact of the end of these emergencies on employee benefit plans, group health plan coverage requirements, and welfare benefit plan extensions. Plan sponsors should take note of these changes.

Public Health Emergency

Under the Families First Coronavirus Response Act and the CARES Act, most group health plans were required to expand coverage for COVID-19 tests (including over-the-counter tests) and related diagnostic services. This coverage was provided for both in-network and out-of-network services without cost sharing, prior authorization, or other medical management criteria. This increased coverage was only required during the Public Health Emergency. Accordingly, when the Public Health Emergency ended on May 11, 2023, the enhanced COVID-19 testing coverage was no longer required.

National Emergency

In 2020, the Departments of Labor and the Treasury released a Joint Notice that extended the time limits for several welfare benefit plan-related occurrences. Specifically, during the National Emergency, certain deadlines do not start to run until the earlier of: (i) one year from the applicable deadline; or (ii) 60 days after the end of the National Emergency (which is referred to as the “Outbreak Period”). The extended deadlines generally relate special

enrollment under the Health Insurance Portability and Accountability Act (HIPAA); COBRA notices, elections and premiums payments; and claims and appeals.

The FAQs state that the National Emergency is “anticipated” to end on May 11, 2023. Based on this statement, the Outbreak Period will end 60 days later on July 10, 2023. The FAQs also provide examples that illustrate how the end of the National Emergency will change the welfare benefit plan deadlines that were extended due to the National Emergency.

It is important to note that on April 10, 2023, President Biden signed a law that immediately terminated the COVID-19 national emergency under the National Emergencies Act. While this ended a “national emergency” earlier than May 11, the Tri-Agencies have not released guidance stating that the Outbreak Period will end earlier than July 10. Thus, unless the Tri-Agencies issue guidance stating that the Outbreak Period will end on an earlier date, plan sponsors should continue to act under the assumption that May 11, 2023, is the end of the National Emergency and July 10, 2023, is the end of the Outbreak Period.

Action required by plan sponsors

Plan design considerations

After May 11, plan sponsors will no longer be required to continue covering COVID-19 tests and vaccines at the enhanced level. Plan sponsors must decide whether or not to revert to normal cost-sharing after May 11.

The FAQs make clear that high deductible health plans (HDHPs) can continue to cover pre-deductible COVID-19 testing and treatment without affecting eligibility for a health savings account (HSA). However, the FAQs state that this relief will only last until the IRS issues further guidance. Thus, plan sponsors of a HDHP should take this into consideration and continue to monitor this relief.

Plan sponsors should work with benefits counsel and third-party plan vendors to ensure that any intended plan changes are made, properly documented, and effectively communicated with plan participants.

Participant communications

Plan sponsors should review any communications and plan documents that discuss coverage of COVID-19 tests and vaccines. If a plan design change is made after May 1, 2023, the plan sponsor will likely need to amend the plan and issue a Summary of Material Modification (SMM).

In addition, plan sponsors should consider proactively communicating the end of National Emergency and the impact on deadline extensions to plan participants. This includes communicating

upcoming deadlines related to the end of the Outbreak Period to participants and enrollees and Preparing reminders for end dates of certain benefits (if applicable).

Contact us

If you have further questions relating to the end of the government's COVID-19 emergency and its impact on employee benefit plans, please contact Emily Langdon or your Husch Blackwell attorney.