



# President Announces End of COVID-19 Emergency Periods

On January 30, 2023, the White House announced<sup>1</sup> its plan to allow the COVID-19 Public Health Emergency (PHE) and National Emergency periods to expire in May 2023.

The COVID-19 pandemic brought with it a number of temporary suspensions to certain ERISA health and welfare plan benefit deadlines that fall within the COVID-19 “Outbreak Period,” which is the period between March 1, 2020 and the earlier of (a) 60 days after the announced end of the national emergency due to COVID-19 (which is set by the President), or (b) one year from the plan or individual’s original deadline date (which will vary by individual occurrence).<sup>2</sup>

## Background

### Public Health Emergency

On January 31, 2020, Health and Human Services (HHS) Secretary Alex Azar II declared a “Public Health Emergency” retroactive to January 27, 2020 for the entire United States due to the COVID-19 pandemic. Generally, such declarations last for 90 days or until HHS declares that the emergency no longer exists (whichever comes first). HHS may extend the emergency health declaration for additional 90-day periods if the public health emergency continues to exist.

During the PHE, group health plans are required to cover the cost of COVID-19 tests and testing-related services without cost-sharing or prior authorization or other medical management requirements. Effective January 15, 2022<sup>3</sup>, this was expanded to include over-the-counter (OTC) home COVID-19 tests.

Because current HHS Secretary Xavier Becerra most recently<sup>4</sup> renewed the PHE effective January 11, 2023, this period was slated to expire April 11, 2023. With the White House’s declaration that this period will be renewed again and then terminate it May 11, 2023 (prior to the end of the 90-day period), employer plans will no longer be required to cover such tests and services with no cost sharing after May 11, 2023.

### National Emergency

The National Emergency began in March 2020 under President Donald Trump, who issued an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act in response to the COVID-19 outbreak. In this declaration, President Trump declared the COVID-19 pandemic to be a “National Emergency” period effective March 1, 2020 for a period of up to one year.

Most recently renewed by President Joe Biden on February 18, 2022, the national emergency period was renewed for an additional year, or March 1, 2022 through February 28, 2023. As previously stated, certain plan deadlines were suspended for up to one year as long as the national emergency was in place. Now that this national emergency is expected to be terminated as of May 11, 2023, the 60-day period following the end of the national emergency will begin on May 12, 2023, thus counting down the end of the COVID-19 Outbreak Period.

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<sup>1</sup> <https://www.whitehouse.gov/wp-content/uploads/2023/01/SAP-H.R.-382-H.J.-Res.-7.pdf>

<sup>2</sup> See the “Extension of Certain Timeframes for Employee Benefit Plans, Participants, and Beneficiaries Affected by the COVID-19 Outbreak” (available [here](#)); EBSA Disaster Relief Notice 2020-01 (available [here](#)); EBSA Disaster Relief Notice 2021-01 (available [here](#))

<sup>3</sup> <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-51.pdf>

<sup>4</sup> <https://aspr.hhs.gov/legal/PHE/Pages/covid19-11Jan23.aspx>



## Impact of the Expiration of the Emergency Periods

Once this Outbreak Period ends (i.e., July 10, 2023), these suspended timeframes will begin to run again at pre-pandemic rates effective July 11, 2023:

- the 14-day deadline for plan administrators to provide COBRA election notices to qualified beneficiaries;
- the 30-day period (or 60-day period, in some cases) to exercise HIPAA special enrollment rights in a group health plan following birth, adoption, or placement for adoption of a child; marriage, loss of other health coverage; or eligibility for a state premium assistance subsidy;
- the 60-day deadline by which a participant or qualified beneficiary must provide notice of divorce or legal separation, a dependent child that ceases to be an eligible dependent under the terms of the plan), or a Social Security disability determination used to extend COBRA coverage;
- the 60-day deadline in which to elect COBRA coverage;
- Individuals electing COBRA outside of the initial 60-day election period (as referenced above) generally have one year and 105 days after the election notice is provided to make the initial premium payment; and individuals electing COBRA within the generally applicable 60-day election period have one year and 45 days after the date of their election to make the initial payment;<sup>5</sup>
- the date by which monthly COBRA premium payments are due; and
- the deadline under the plan by which participants may file a benefit claim (under the terms of the plan) and the deadlines for appealing an adverse benefit determination or requesting an external review, including Healthcare Flexible Spending Accounts (Health FSAs) and Health Reimbursement Arrangements (HRAs).
  - Note: these extensions do not apply to expense reimbursement requests under a non-group health plan such as a Dependent Care FSA nor does this relief apply to Health Savings Account (HSA).

In addition, the relief guidance suspended the deadline for the plan administrator to provide the COBRA election notice (that is, the 14-day deadline [44 days where the employer is the plan administrator]) to qualified beneficiaries.

**Claim Appeal Example (2022):** If a Health FSA participant received a notification of an adverse benefit determination advising that their Health FSA claim was denied on January 28, 2022, the participant would generally be given 180 days (under the generally applicable claims procedures of her health FSA) in which to appeal the denial (i.e., July 26, 2022). Due to the COVID-19 relief, this period was suspended until the earlier of the end of the Outbreak Period (i.e., July 10, 2023) or one year from the original deadline date for that individual. As one year after the original deadline (i.e., July 26, 2023) is earlier than 180 days after the end of the Outbreak Period (i.e., January 6, 2024), the last day for them to submit an appeal is July 26, 2023.

**Claim Appeal Example (2023):** Assume the same facts as above, but the notification of adverse benefit determination was made February 28, 2023, for which a generally applicable appeal period of 180 days would end August 26, 2023. Due to the aforementioned COVID-19 relief, the date that is 180 days from the end of the Outbreak Period (i.e., January 7, 2024) is earlier than one year from the original deadline date (i.e., August 26, 2024). Therefore, the last day for them to submit an appeal is January 6, 2024.

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<sup>5</sup> <https://www.irs.gov/pub/irs-drop/n-21-58.pdf>

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**COBRA Election Example (2022):** If a qualified beneficiary is provided a COBRA election notice on June 1, 2022, a qualified beneficiary would generally be given 60 days from the date of the COBRA election notice to make an election to receive COBRA continuation coverage (i.e., July 30, 2022). Due to the COVID-19 relief, this period was suspended until the earlier of the end of the Outbreak Period (i.e., July 10, 2023) or one year from the original deadline date for that individual. As one year after the original deadline (i.e., July 30, 2023) is earlier than 60 days following the end of the Outbreak Period (i.e., September 8, 2023), they would be required to make their COBRA election no later than July 30, 2023.

**COBRA Election Example (2023):** Assume the same facts as above, but the COBRA election notice is provided on May 1, 2023, for which a generally applicable 60-day COBRA election period would end June 29, 2023. Due to the aforementioned COVID-19 relief, the date that is 60 days from the end of the Outbreak Period (i.e., September 8, 2023) is earlier than one year from the original deadline date (i.e., June 29, 2024). Therefore, they would be required to make their COBRA election no later than September 8, 2023.

**COBRA Initial Premium Payment Example (Electing Within 60 Days of Receipt of Election Notice):** If a qualified beneficiary is provided a COBRA election notice on June 1, 2022, and makes their election on July 15, 2022, a qualified beneficiary would generally be given 45 days from the date of the COBRA election to make their initial COBRA premium payment (i.e., August 28, 2022). Due to the COVID-19 relief<sup>6</sup>, this period was suspended for up to one year, which would have been August 28, 2023. However, due to the expiration of this relief, this initial premium payment would be due no later than August 24, 2023, which is 45 days from July 11, 2023.

**COBRA Initial Premium Payment Example (Electing More Than 60 Days After Receipt of Election Notice):** If a qualified beneficiary has a qualifying event and is provided a COBRA election notice on June 1, 2022, and makes their election on December 1, 2022, retroactive to August 1, 2022, because that qualified beneficiary did not elect COBRA continuation coverage within 60 days of their election notice, they would have – due to the COVID-19 relief<sup>3</sup> – one year and 105 days after June 1, 2022 to make the initial COBRA premium payment (i.e., September 13, 2023). However, due to the expiration of this relief, this initial premium payment would be due no later than August 24, 2023, which is 45 days from July 11, 2023.

In short, as of July 11, 2023, generally applicable deadlines to make COBRA elections; make initial or monthly COBRA premium payments; provide notification of Social Security disability determinations, HIPAA special enrollment or COBRA qualifying events; and file claims, appeals, and for external review will resume.

Employers and plan sponsors should bear in mind that not every plan participant and continuant will have the same deadline for the events described above.<sup>7</sup> Current guidance does not impose specific notice requirements (e.g., furnishing a dedicated notice to plan participants advising of adjustments to plan deadlines). HealthEquity will amend its participant communications to ensure all materials accurately reflect that statutorily prescribed deadlines will resume following the end of the Outbreak Period.

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## Conclusion

As we approach the announced end of the Outbreak Period, plan administrators and impacted qualified beneficiaries and participants should carefully consider their options and how the resumption of applicable plan deadlines could impact them such as:

<sup>6</sup> <https://www.irs.gov/pub/irs-drop/n-21-58.pdf>

<sup>7</sup> <https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/disaster-relief/ebsa-disaster-relief-notice-2021-01>

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- Qualified beneficiaries who have yet to elect COBRA coverage, or who have elected but have not paid premiums, should consider carefully any claims that may have been incurred during the Outbreak Period versus required COBRA premiums and ensure that any elections and premium payments are timely made;
- Plan administrators that took advantage of the tolling period should carefully examine their termination records and ensure that any COBRA election notices that have fallen during the Outbreak Period are timely sent, taking into consideration any portion of the 14-day deadline (44 days when the employer is the plan administrator);
- Reimbursement account (e.g., Health FSA/HRA) members should remember that the deadlines to submit claims and/or appeals will begin again as of the end of the Outbreak Period and should carefully consider any claim submission or applicable appeal deadlines falling within or near the end of the Outbreak Period.

As the Outbreak Period draws to a close, and group health plan administration begins a return to pre-pandemic norms, careful review and consideration of existing – and potentially forthcoming – guidance and examination of individual facts and circumstances is paramount. Bear in mind that any of the information contained herein could be superseded by such additional federal guidance.

HealthEquity will continue to monitor agency guidance on this matter and provide updates accordingly. As always, we strongly encourage employers and plan sponsors to consult competent legal or benefits counsel for all guidance on how the actions apply in their circumstances.

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