



UPDATE: COVID-19 – CONGRESSIONAL ACTION ON END OF THE NATIONAL EMERGENCY – IMPACT ON EMPLOYER SPONSORED HEALTH PLANS

In February, we issued a [briefing](#) describing the impact of the upcoming end of two federal COVID-19 emergency declarations – the National Emergency and the Public Health Emergency. Due to political action since then, the exact dates on which employers may begin winding down the relief associated with the National Emergency are still unclear. This situation presents a frustrating dilemma for employers and service providers alike. Until federal agencies issue clarifying guidance in writing, we are left needing to prepare for two potential timelines. This briefing outlines both.

BACKGROUND

In 2020, the Employee Benefits Security Administration (EBSA) and the Internal Revenue Service (IRS) issued regulatory guidance extending certain timeframes impacting group health plans during the COVID-19 national emergency. That guidance established a period of time from March 1, 2020 until 60 days after the announced end of the COVID-19 national emergency (or such other date announced by EBSA and the IRS in later guidance) as the “Outbreak Period.”

Group health plans were instructed to disregard the Outbreak Period for purposes of:

- The 30-day period to request a special enrollment in a group health plan;
- The 60-day period to request enrollment into a group health plan upon losing eligibility for CHIP coverage becoming eligible for the CHIP subsidy;
- The date within which individuals may file a benefit claim under a plan’s claims procedures;
- The date within which a claimant may file an appeal of an adverse benefit determination under a plan’s claims procedures;
- The date within which a claimant 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;
- The 60-day election period for COBRA continuation coverage;
- The date for making COBRA premium payments; and



- The date for a group health plan, sponsor, or administrator to provide a COBRA election notice.

In February of 2021, EBSA and the IRS released additional guidance in [Disaster Relief Notice 2021-01](#), which stated that "individuals and plans with timeframes that are subject to the relief under the Notices will have the applicable periods under the Notices disregarded until the earlier of (a) 1 year from the date they were first eligible for relief, or (b) 60 days after the announced end of the National Emergency (the end of the Outbreak Period). On the applicable date, the timeframes for individuals and plans with periods that were previously disregarded under the Notices will resume. In no case will a disregarded period exceed 1 year."

On February 18, 2022, President Biden issued a [notice](#) extending the COVID-19 national emergency through March 1, 2023. In its January 30, 2023 announcement, the administration stated that the National Emergency would be extended one final time and expire on May 11, 2023.

Update

On April 10, 2023, President Biden signed a bipartisan congressional resolution to bring the COVID-19 National Emergency to a close weeks before it was set to expire. (This resolution does not impact the Public Health Emergency end date, outlined below.) This action has made it unclear what the actual end date of the Outbreak Period will be. **If employers follow the resolution, then June 9, 2023 will be the last day of the Outbreak Period.** Frustratingly, EBSA and the IRS have not changed their guidance in the wake of the congressional resolution. Some analysts have suggested that EBSA and the IRS do not intend to change the timelines set forth in the briefing below. They have pointed to informal verbal comments made by employees of the Department of Labor to support that assertion. To date, the DOL has not issued a written clarification. **Plans wishing to be prepared for an earlier deadline may wish to assume the Outbreak Period will end on June 9, 2023.**

IMPACT AND TIMELINES

With respect to the Outbreak Period, this means that the clock will still run for one year from the date an individual was first eligible for relief, but all **Outbreak Period relief will end** 60 days after the end of the National Emergency.

Practice Tip: If you think about the date one year prior to the end of Outbreak Period relief as a “turning point,” events and deadlines prior to that day will enjoy a one-year extension to the deadline/timeline that would otherwise apply. If the event/deadline occurs after that one-year-prior date, they will not get the full year. They’ll get the lesser of the end of the Outbreak Period plus their standard timing (30 days, 60 days, as applicable).



The chart below summarizes the impact of the two potential timelines.

| TWO POTENTIAL TIMELINES FOR UNWINDING OUTBREAK PERIOD | | |
|---|---|---|
| Source | Administration Declaration | Congressional Resolution |
| End Date of National Emergency | May 11, 2023 ¹ | April 10, 2023 |
| End of Outbreak Period relief | July 10, 2023 | June 9, 2023 |
| “Turning point” date | July 11, 2022 | June 10, 2022 |
| Impact | Deadlines and grace periods that would have otherwise begun on or before July 10, 2022 will enjoy a full one-year extension to their deadline or grace period. | Deadlines and grace periods that would have otherwise begun on or before June 9, 2022 will enjoy a full one-year extension to their deadline or grace period. |
| | Deadlines and grace periods that would have otherwise begun on or after July 11, 2022 will not get a full-year extension. Instead, their grace period or window to act will begin July 11, 2023. | Deadlines and grace periods that would have otherwise begun on or after June 10, 2022 will not get a full-year extension. Instead, their grace period or window to act will begin June 10, 2023. |

To date, the employee benefits community is still waiting for EBSA and the IRS to provide clarifying guidance. We will continue to provide updates as additional guidance warrants.

¹ By signing the Congressional Resolution, Biden ensured that the actual end of the National Emergency was April 10, 2023. However, it is the opinion of many in the employee benefits legal community that federal regulators may still enforce deadlines based on this date.



Keenan is not a law firm and no opinion, suggestion, or recommendation of the firm or its employees shall constitute legal advice. Clients are advised to consult with their own attorney for a determination of their legal rights, responsibilities and liabilities, including the interpretation of any statute or regulation, or its application to the clients' business activities.