WINSTON & STRAWN LLP

BLOG

COVID-19 Federal Emergency Declarations Ending in May 2023: The Impact on Private Health Plans

FEBRUARY 2, 2023

On January 30, 2023, the White House announced its intent to extend both the COVID-19 National Emergency and the COVID-19 Public Health Emergency declarations to May 11, 2023, and to end both emergency declarations on that date. The Public Health Emergency was initially declared by the Department of Health and Human Services as of January 27, 2020. The Secretary of Health and Human Services has authority to renew the Public Health Emergency in increments of 90 days. The COVID-19 National Emergency declaration, first issued by President Trump on March 13, 2020, and continued by President Biden on February 18, 2022, was set to expire at the end of February 2023.

COVID relief legislation included requirements for group health plans and health insurance issuers to provide free COVID-19 diagnostic testing and certain testing-related services. Additionally, during the pandemic, the Departments of Labor, the Treasury, and Health and Human Services issued guidance instructing plans to toll, or suspend, certain ERISA deadlines during the Outbreak Period, which began March 1, 2020, and ends on the earlier of (a) one year from the date of the original triggering deadline and (b) 60 days after the announced end of the National Emergency due to COVID-19. See our prior blog posts, including Departments Issue Further Guidance Under FFCRA and CARES Act Affecting Health Plans, Labor and Treasury Departments Provide Retirement Plan Relief and Extend Notice and Claim Deadlines, and Agencies Issue Guidance Extending Certain Employee Benefit Plan Deadlines.

The following chart summarizes the impact that the end of the federal emergency declarations will have on private group health plans:

ITEM	CURRENT REQUIREMENT	IMPACT AND NEXT STEPS

ITEM	CURRENT REQUIREMENT	IMPACT AND NEXT STEPS
COVID 19 diagnostic tests and testing-related services (including certain over-the-counter COVID 19 tests)	The Public Health Emergency requires coverage without cost sharing, prior authorization, or other medical-management diagnostic testing. Over-the-counter tests were required to be covered beginning in January 2022.	Participants may incur out-of-pocket costs for COVID 19 diagnostic tests and testing-related services. Health plans should • Work with insurers and/or claims administrators to review projected costs for COVID 19 diagnostic tests and testing-related services, including OTC tests • Determine whether participants will be required to share in all or a portion of the costs for COVID 19 tests and testing services, and when this change will take effect • Communicate any required changes to participants • Send Summary of Material Modifications (SMM)/revised Summary Plan Description (SPD) within 60 days if making a change. *Note: There are currently resources outside private plans that provide free over-the-counter tests or reimbursement for tests. Once the Public Health Emergency ends, these resources may no longer be available or may be more limited, which may affect plan costs.*

ITEM	CURRENT REQUIREMENT	IMPACT AND NEXT STEPS
COVID 19 vaccines	The Public Health Emergency requires coverage without cost sharing (including vaccines received out of network). The ACA and CARES Act require free coverage of COVID 19 vaccines as a preventive-care benefit, effective January 1, 2022.	In-network coverage of vaccines will continue to be covered at 100% under the Affordable Care and CARES Acts. Participants may have out-of-pocket costs if they receive a COVID 19 vaccine from an out-of-network provider. Health plans should: • Work with insurers and/or claims administrators to confirm that COVID 19 vaccines are covered at 100% if provided in network • Review projected costs and determine whether there will be cost sharing for out-of-network vaccines • Communicate any required changes to participants • Send Summary of Material Modifications (SMM)/revised Summary Plan Description (SPD) within 60 days if making a change. *Note: There are currently resources outside private plans that provide free COVID 19 vaccines. Once the Public Health Emergency ends, these resources may no longer be available or may be more limited, which may affect plan costs.*

ITEM	CURRENT REQUIREMENT	IMPACT AND NEXT STEPS
COBRA elections and notice deadlines including: • COBRA qualifying event or disability extension notification deadlines • COBRA election period • COBRA premium-payment due date	The National Emergency requires plans to disregard the "Outbreak Period" when determining the COBRA election, notice, and payment deadlines. The "Outbreak Period" began March 1, 2020, and will end on the earlier of (i) one year from the date of the original deadline and (ii) 60 days after the end of the National Emergency declaration (mid-July 2023).	Plans will need to ensure their COBRA program returns to pre-pandemic election and notice deadlines. The COBRA administrator should be able to provide an implementation plan, including identification of and communication with affected participants. Health plans should: • Contact their COBRA program administrator to confirm that they have an implementation plan in place for the end of the National Emergency • Confirm that the COBRA administrator's system can identify the individuals who will be affected by this change • Communicate directly with the affected participants regarding the change, with broader communication to all participants.

ITEM	CURRENT REQUIREMENT	IMPACT AND NEXT STEPS
Other group health plan provisions such as: • The HIPAA special enrollment period to request group health plan coverage • Deadline to file a claim, request a claims appeal, or request an external review	The National Emergency requires plans to disregard the "Outbreak Period" when determining these deadlines. The "Outbreak Period" began March 1, 2020, and will end on the earlier of (i) one year from the date of the original deadline and (ii) 60 days after the end of the National Emergency declaration (mid-July 2023).	Plans will need to ensure that their claims administrators have an implementation plan in place, including identification of and communication with affected participants. Health plans should: • Contact their claims administrator to confirm that they have an implementation plan in place for the end of the National Emergency • Confirm that the claims administrator's system can identify the individuals who will be affected by this change • Communicate directly with the affected participants regarding the change, with broader communication to all participants.
COVID 19 treatment	There is no federal mandate requiring group health plans to cover treatment of COVID 19. Most private plans currently require some form of cost sharing.	Plans should contact their insurer and/or claims administrator for information regarding any potential change to cost sharing for COVID 19 treatment and to review projected costs for COVID 19 treatments *Note: There are currently resources outside private plans that provide free COVID 19 treatment, such as antiviral medications. Once the Public Health Emergency ends, these resources may no longer be available or may be more limited, which may affect plan costs.*

Plan sponsors and issuers may also need to reevaluate any plan redesign to ensure that it complies with the Mental Health Parity and Addiction Equity Act. In addition, plan sponsors that offered COVID testing and treatment through EAPs should revisit the EAP design to make sure it still satisfies excepted-benefit criteria.

Please contact a member of the Winston & Strawn Employee Benefits and Executive Compensation Practice or your Winston relationship attorney for further information.

5 Min Read

Authors

Amy Gordon

Joanna Kerpen

Susan Nash

Jamie Weyeneth

Related Topics

Benefits Bulletin | COVID-19 | Health and Welfare Benefits | Labor & Employment

Related Capabilities

Employee Benefits & Executive Compensation | Labor & Employment

Related Regions

North America

Related Professionals

Amy Gordon

Joanna Kerpen

Susan Nash

Jamie Weyeneth

This entry has been created for information and planning purposes. It is not intended to be, nor should it be substituted for, legal advice, which turns on specific facts.

© 2024 Winston & Strawn LLP.