

Upcoming End to COVID-19 Emergency Periods Impacts ERISA Benefit Plans

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PRACTICES ERISA and Other Benefits Litigation, Employee Benefits and Executive Compensation

The Biden Administration recently announced plans to end the COVID-19 public health emergency (“**Public Health Emergency**”) and the COVID-19 national emergency (“**National Emergency**”) effective May 11, 2023. The Public Health Emergency and the National Emergency (collectively, the “**Emergencies**”) have been in place since 2020. They are associated with certain temporary COVID-19-related changes that employer-plan sponsors were required to make to their employee benefit plans subject to ERISA (“**ERISA Plans**”).

First, through the duration of the Public Health Emergency, ERISA Plans that are group health plans were required to cover certain COVID-19-related services, including COVID-19 testing, without the imposition of any cost-sharing or prior authorization requirements. In addition, a group health plan’s status as a “high-deductible health plan” under the Internal Revenue Code (“**HDHP**”) has not been compromised by providing such coverage prior to the satisfaction of the applicable minimum deductible. The foregoing requirements and HDHP relief will end on May 11, 2023.

Second, a requirement to toll certain compliance timeframes applicable to ERISA Plans (including group health plans and other employee welfare benefit plans) has been in place since March 1, 2020 and will remain in effect until the 60th day following the announced end of the National Emergency. These timeframes include (i) the 60-day period for a participant to elect COBRA continuation coverage under a group health plan, (ii) the 30-day (or 60-day, if applicable) period for electing HIPAA special enrollment under a group health plan, and (iii) the timeframes for claimants to file their benefit claims and request appeals of any claim denials.

ERISA Plan sponsors should promptly take the following actions in anticipation of the upcoming end to the Emergencies:

- If there is any desire to continue any of the COVID-related coverage requirements, tolling or other Emergencies-related relief after the Emergencies end, carefully evaluate any legal prohibitions and administrative implications before proceeding;
- Review ERISA Plan documents and SPDs, and adopt any amendments required to accurately provide for coverage and administration on a post-Emergencies basis;
- Ensure that relevant participant communications (e.g., benefit claim denial notices, COBRA election notices, etc.) are revised to reflect post-Emergencies information; and
- Contact third-party service providers to confirm that their systems will be updated in time to properly reflect post-Emergencies coverage and administration.

A copy of the Biden Administration’s announcement is available [here](#).