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COVID-19 health plan relief winds down

June 27, 2023

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COVID-19 health plan relief winds down

National emergency (NE) ended April 10.
Public health emergency (PHE) ended May 11.

Group health plan relief tied to PHE

- Group health plans must cover diagnostic testing — including over-the-counter (OTC) tests — and related services provided in- and out-of-network without cost sharing or medical management.
  - These benefits may be disregarded when testing financial limits under the Mental Health Parity and Addiction Equity Act (MHPAEA).
- Nongrandfathered group health plans must cover out-of-network (in addition to in-network) vaccines without cost sharing.
- Offering stand-alone telehealth to benefit-ineligible employees will not trigger many ERISA and Affordable Care Act (ACA) compliance obligations.
- Coverage of testing by an excepted-benefit employee assistance program (EAP) does not provide "significant" medical care benefits.

Group health plan relief tied to NE

Outbreak period extensions for:

- Special enrollment periods under the Health Insurance Portability and Accountability Act (HIPAA)
- Coverage elections, notices and payments under the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA)
- Claims and appeals filing deadlines
- Certain ERISA-required notices and disclosures

Deadline set by Inflation Reduction Act

- Enhanced subsidies for ACA marketplace coverage through 2025

Deadline set by Consolidated Appropriations Act, 2023 (CAA 2023)

- Medicaid continuous enrollment ended March 31, 2023.
- High-deductible health plans (HDHPs) qualifying for health savings accounts (HSAs) may cover telehealth and other remote care on a predeductible basis through the 2023 and 2024 plan years.
- Otherwise HSA-eligible individuals can have predeductible telehealth coverage from a stand-alone vendor outside of the HDHP.

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Key details about post-PHE coverage in FAQs Part 58

Vaccines

- Nongrandfathered plans must continue in-network coverage without cost sharing.
- Out-of-network coverage is no longer required, unless no in-network provider is available.
- Expedited coverage of new COVID-19 vaccines is still required.

Testing

- No coverage is required after the PHE expired.
- Mandate applies to tests furnished or purchased before the PHE ended.

HSA-qualifying HDHPs

- Vaccines may be covered predeductible (and nongrandfathered HDHPs *must* cover in-network vaccines without cost sharing).
- HSA-qualifying HDHPs may continue to cover COVID-19 testing and treatment on a predeductible basis after the PHE ended through plan years ending on or before Dec. 31, 2024 (see IRS Notice 2023-37).

Litigation note

Recent guidance confirms that the *Braidwood Management v. Becerra* (N.D. Tex. March 30, 2023) court order, currently stayed, invalidating part of the ACA's preventive services mandate ***does not*** impact the COVID-19 vaccine coverage that nongrandfathered plans must provide after the PHE expired.

Consider expiration of relief not addressed in FAQs Part 58:

- Relief for **standalone telehealth arrangements** offered to employees not eligible for any other group health plan offered by the employer expires at the end of the plan year beginning on or before May 11, 2023 (i.e., Dec. 31, 2023, for calendar-year plans).
- If an **employee assistance program (EAP)** provides testing after the end of the NE and PHE, evaluate whether doing so provides "significant benefits in the nature of medical care" that would jeopardize the EAP's excepted-benefit status. Guidance permitting EAPs to offer COVID-19 vaccines without jeopardizing excepted-benefit status is not contingent on the PHE or NE.

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Key details about post-PHE coverage in FAQs Part 58

Advance notice of certain midyear benefit changes

- Plans must give 60-days advance notice about midyear changes that materially modify the summary of benefits and coverage (SBC).
- FAQs provide flexibility for plans that end improved benefits or reduced cost sharing for COVID-19 diagnosis or treatment or for other remote care services at the end of the PHE. Past notice about the general duration (i.e., “increased coverage applies only during the PHE”) suffices unless the notice is from a prior plan year, as does a similar communication within a reasonable time frame before the change.

COVID-19 health plan relief winds down

Outbreak period: March 1, 2020–July 10, 2023

DOL, the Treasury Department, and the IRS anticipate that the Outbreak Period will end July 10, 2023 (60 days after the anticipated end of the COVID-19 National Emergency).

– FAQs Part 58

Rule. The outbreak period ends 60 days after NE *or another date announced by the agencies.*

Assumption. The FAQs *assumed* the NE would end on May 11.

Confirmation. The Department of Labor (DOL) informally confirmed that the **outbreak period will still end on July 10**, even though legislation enacted after the FAQs ended the NE earlier than May 11 (on April 10).

Quick review of outbreak period relief

Deadlines extended

- HIPAA special enrollment
- COBRA continuation coverage
  - COBRA election period
  - Initial COBRA premium payment
  - Ongoing COBRA premium payment
  - Notice of qualifying event or determination of disability
- Claim deadlines
  - Benefit claims
  - Appeals of adverse benefit determinations
- Request an external review

Duration of relief

Pause deadlines occurring during the outbreak period **until the earlier of:**

- One year from the date a particular individual is first eligible for relief*
- **July 10, 2023**

*One-year cap applies for individuals who become relief-eligible between March 1, 2020, through July 10, **2022**.

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How to calculate HIPAA special enrollment deadline as outbreak period relief ends

Outbreak period ends July 10.

Resume normal time frames for special enrollment events after July 10.

Date on which benefit-eligible employee gives birth	HIPAA special enrollment window begins	HIPAA special enrollment deadline
Feb. 23, 2022 (during outbreak period)	Feb. 23, 2022	**March 25, 2023** One year and 30 days after birth
April 1, 2023 (during outbreak period)	April 1, 2023	**Aug. 9, 2023** 30 days after outbreak period ends
May 12, 2023 (during outbreak period)	May 12, 2023	**Aug. 9, 2023** 30 days after outbreak period ends
July 12, 2023 (after outbreak period)	July 12, 2023	**Aug. 11, 2023** 30 days after birth

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How to calculate COBRA election deadline as outbreak period relief ends

Outbreak period ends July 10.

Resume normal time frames for COBRA qualifying events after July 10.

Date coverage is lost due to a COBRA qualifying event	Date COBRA election notice is provided	Deadline to elect COBRA
Feb. 23, 2022 (during outbreak period)	Feb. 25, 2022	**April 26, 2023** One year and 60 days after COBRA notice provided
April 1, 2023 (during outbreak period)	May 1, 2023	**Sept. 8, 2023** 60 days after outbreak period ends
May 12, 2023 (during outbreak period)	May 15, 2023	**Sept. 8, 2023** 60 days after outbreak period ends
July 12, 2023 (after outbreak period ends)	July 15, 2023	**Sept. 13, 2023** 60 days after COBRA notice provided

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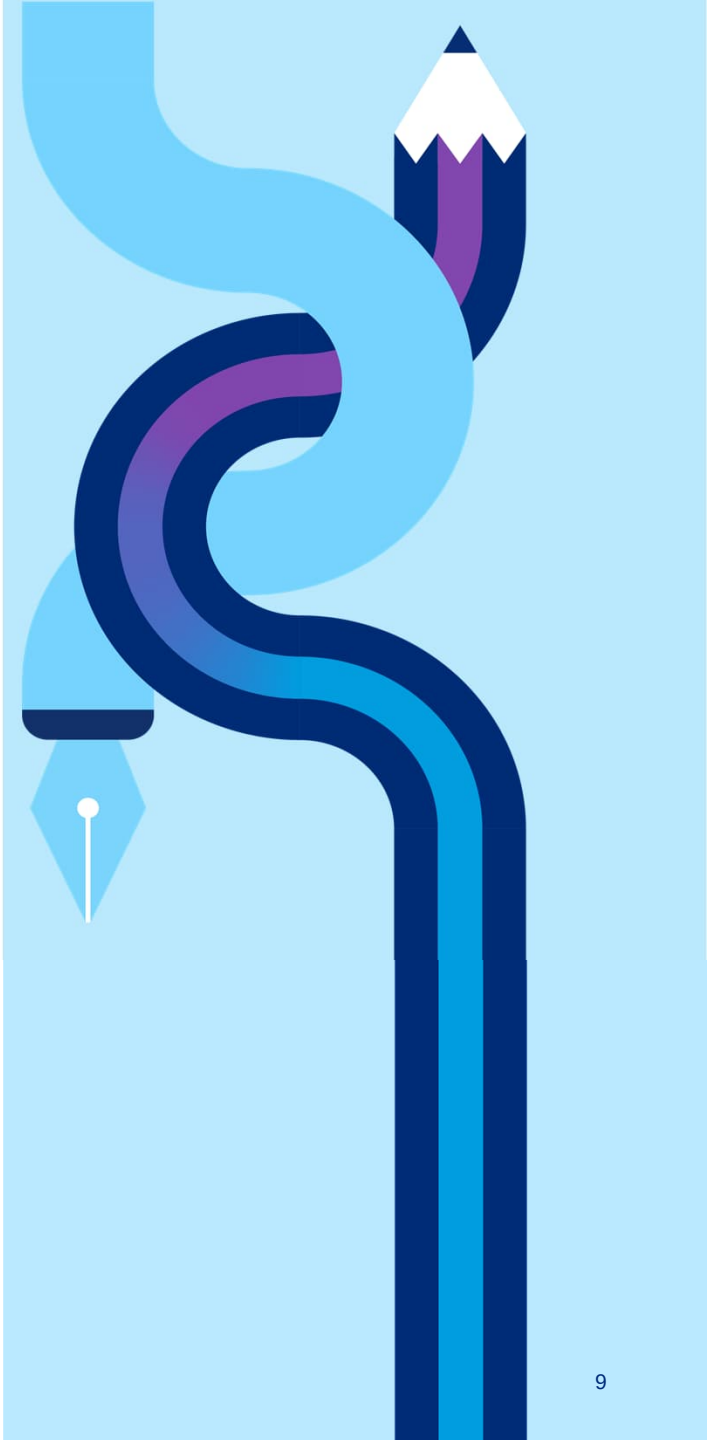
Calculating COBRA premium deadlines could be complicated

Example in FAQ Part 58:	
Coverage lost due to COBRA qualifying event *and* notice provided	Oct. 1, 2022
Individual elects COBRA coverage	Oct. 15, 2022 (within the 60-day COBRA election time frame)
Initial payment deadline	**Aug. 24, 2023** (45 days after outbreak period ends)
Initial payment amount	**October 2022–July 2023**

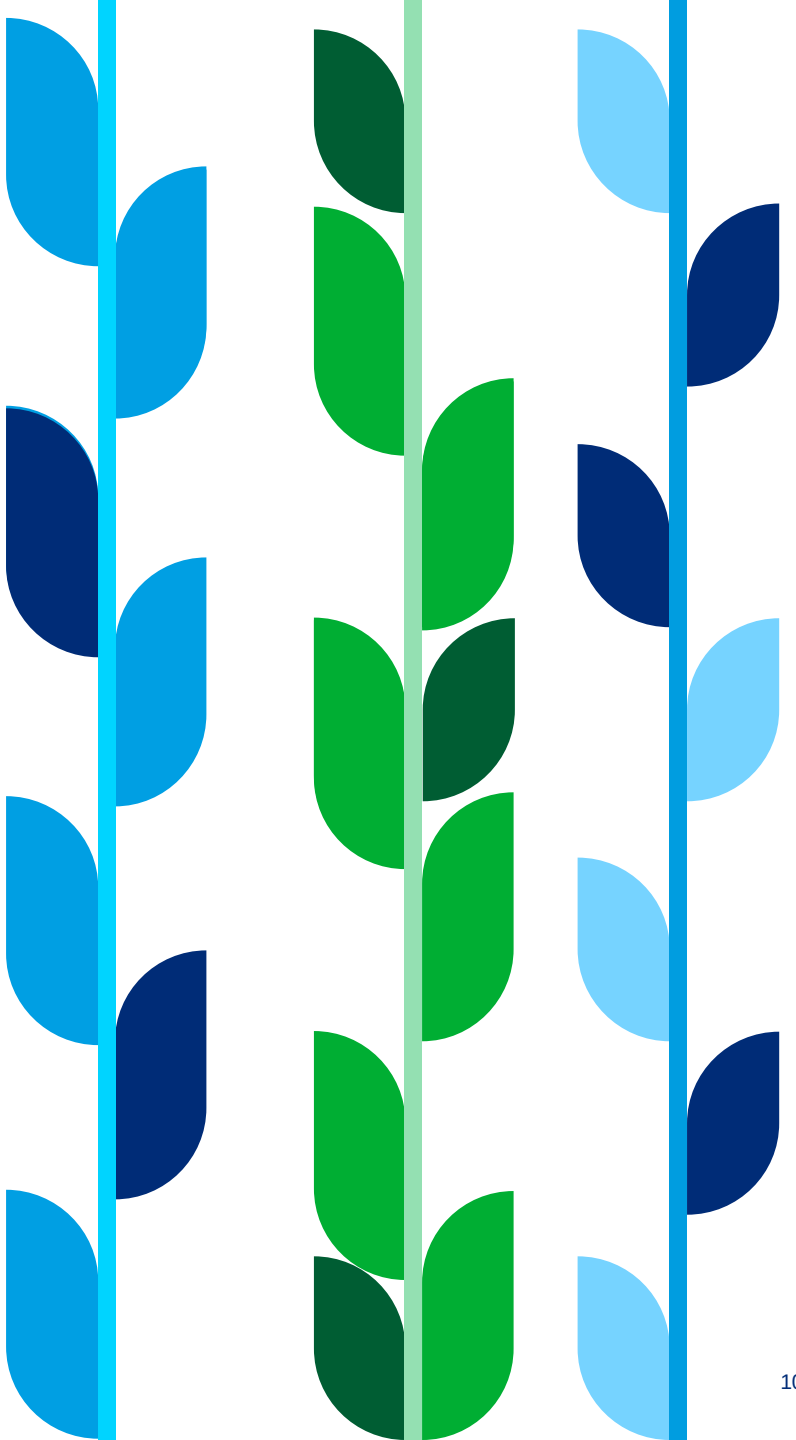
What if COBRA elected *after* the 60-day normal COBRA election time frame, but *before* the outbreak period ends?

- Issue is not addressed in FAQs Part 58.
- Guidance would be helpful to clarify whether the initial payment would be due Aug. 24 (45 days after July 10) or Oct. 23 (105 days after July 10, based on Example 1 in IRS Notice 2021-58, which requires initial payment one year and 105 days after receipt of the COBRA notice).



Agencies *encourage* group health plans to exceed minimum requirements

- After the PHE, agencies **encourage** plans to:
  - Continue covering COVID-19 tests (without cost sharing) and treatment
    - HSA-qualifying HDHPs must apply the deductible to such coverage for plan years ending on or after Jan. 1, 2025 (IRS Notice 2023-37)
  - Communicate in advance about how benefits are changing (i.e., will enrollees still receive free OTC tests?)
- Agencies encourage plans to extend the deadlines that will resume after the outbreak period ends.
- Key considerations:
  - Obtain permission from the insurer or stop-loss carrier in advance of exceeding minimum requirements
  - Evaluate impact on MHPAEA compliance. For example, before extending coverage of free COVID-19 tests, confirm that doing so won't impact the plan's financial testing.



COVID-19 healthcare relief winds down

FAQs Part 58: Employer action encouraged as Medicaid redeterminations begin

- CAA 2023 ended Medicaid continuous enrollment on March 31.
- Millions are expected to lose Medicaid or Children's Health Insurance Program (CHIP) coverage, generally over the next 12–14 months, as states redetermine eligibility.
- Employees or dependents losing Medicaid or CHIP coverage have a 60-day **HIPAA special enrollment right** to enroll in employer's health plan (extended by the outbreak period relief to Sept. 8 for those losing Medicaid or CHIP coverage from March 31 until July 10).

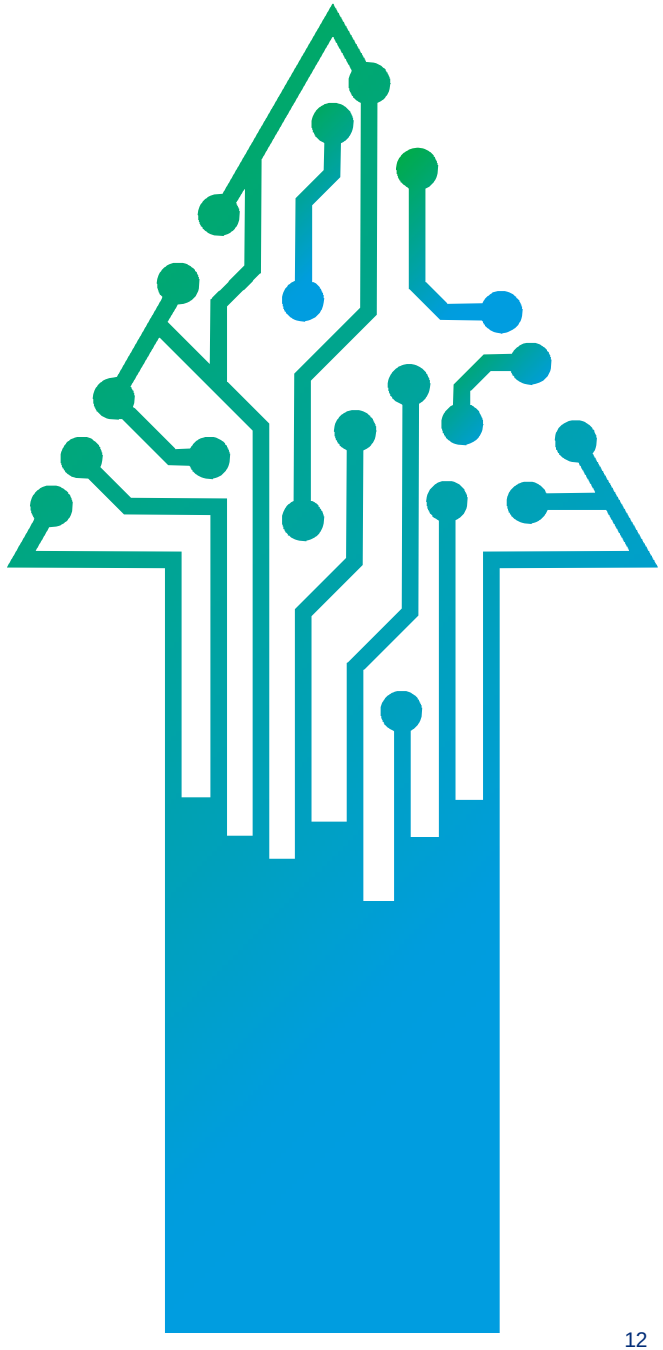
Agencies *encourage* employers to:

- Adopt a longer special enrollment period (obtain permission from insurer or stop-loss carrier first)
- Educate benefit staff about Medicaid redeterminations
- Make sure impacted individuals know their options (sample provided)
- Encourage employees to update their state Medicaid or CHIP agency contact information and to respond to state communications

Next steps

Moving forward as COVID-19 emergencies end

- Confirm vendors — including carriers, third-party administrators (TPAs), claim administrators, COBRA administrators, enrollment vendors and flexible spending arrangement (FSA) vendors — are prepared to wind down COVID-19 relief.
- Consider whether to extend plan coverage or deadlines beyond the minimum.
  - Obtain and document advance approval from insurer or stop-loss carrier.
  - Confirm vendors can/will administer extended deadlines.
- Develop a communications plan.
  - Communicate to participants and beneficiaries any changes to plan coverage and deadlines.
  - Consider whether advance notice about any midyear change is required.
  - Consider whether the plan document or summary plan description (SPD) requires revision/amendment.
  - Consider distributing DOL flyer on Medicaid redeterminations.



Law & Policy resources

- Early end to national emergency creates ‘outbreak period’ confusion (April 13, 2023)
- COVID-19 national emergency may end earlier than previously announced (March 31, 2023)
- Medicaid redeterminations and the projected cost to employer health plans (Feb. 23, 2023)
- Top 10 compliance issues for health and leave benefits in 2023 (Oct. 28, 2022)
- Deadline relief continues for health plans and participants (Nov. 12, 2021)

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