

# EMPLOYEE BENEFITS COMPLIANCE UPDATE

A Parker, Smith & Feek Benefit Alert

MARCH 2023

## National Emergency and Outbreak Period Ending Sooner

In January of this year, the White House announced that it intended to end the pandemic-related National Emergency and the separate Public Health Emergency on May 11, 2023. However, Congress has just passed a resolution that ends the National Emergency immediately, and President Biden has stated he will sign the legislation. This change will mean employee benefit rules subject to the National Emergency will end a few weeks earlier than originally anticipated. The new legislation does not change the date for the end of the Public Health Emergency issued by the Department of Health and Human Service (HHS). HHS has not announced plans to change the end date for the Public Health Emergency from the previously declared May 11, 2023 date.

### BACKGROUND

As a reminder, these two emergency declarations affect health plans in different ways:

1. The National Emergency was first declared by President Trump on March 1, 2020, and has been renewed annually ever since. Subsequently, the Department of Labor (DOL), HHS, the Treasury Department (Treasury), and the Internal Revenue Service (IRS) issued a joint notice defining an "Outbreak Period," which runs an additional 60 days after the end of the National Emergency. The joint notice Outbreak Period rules determine how long various benefits-related deadlines, such as COBRA notices, elections, and payments; HIPAA special enrollments; and ERISA claims and appeals deadlines, are extended.
2. The Public Health Emergency was first declared by HHS in March of 2020, and has been renewed every three (3) months since. The Public Health Emergency, among other things, requires health plans to cover various COVID-related services, like vaccines, tests, and treatments, at no cost.

### NATIONAL EMERGENCY ENDING

Once President Biden signs the legislation ending the National Emergency, the 60-day clock determining the end of the Outbreak Period will begin running. Depending on the actual date the legislation is signed into law, the Outbreak Period will end sometime near the end of May 2023.

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## IMPACT ON JOINT NOTICE DEADLINESS

The DOL, HHS and Treasury also recently released FAQs clarifying how the end of the National Emergency will impact employee benefit related delayed deadlines. In short, for affected events that occurred less than 12 months before the end of the national emergency, participants will have their normal deadline imposed beginning the day after the end of the outbreak.

## SUMMARY

Stay tuned for additional guidance and details on National Emergency-related benefit changes as soon as the exact date of the end of the Outbreak Period is determined. Employers must also understand that issues related to the Public Health Emergency may still be subject to change effective with the original May 11, 2023 deadline announced by the Biden Administration unless HHS changes that timeframe.

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