

Another Change to the Outbreak Period End Date

May 1, 2023

Quick Facts

- On January 31, 2023, President Biden announced the end of the National Emergency (NE) and the Public Health Emergency (PHE).
- On March 27, 2023, the Departments released a set of frequently asked questions (FAQs) clarifying many issues surrounding the end of the NE and PHE.
- On April 10, 2023, President Biden signed a Congressional Resolution ending the NE immediately.
- The Department of Labor (DOL) informally made comments that the Outbreak Period would still end on July 10, 2023.

Background

On January 31, 2023, President Biden [announced](#) that both the NE, as declared by the President, and PHE, as declared by the Department of Health and Human Services (HHS), will end on May 11th, 2023, ending the Outbreak Period on July 10, 2023. On March 27, 2023, the DOL, HHS, and the Treasury (jointly, the Departments) released a set of FAQs providing guidance on the end of the PHE and NE. The FAQs assumed that the end of the Outbreak Period would be July 10, 2023. Subsequently, on March 29, 2023, Congress passed a resolution that ended the National Emergency immediately, and President Biden signed it on April 10, 2023. This change means employee benefit rules subject to the National Emergency will end earlier than originally anticipated, on June 9, 2023. Soon after the resolution was signed the DOL commented informally that the Outbreak Period would still end on July 10, 2023, as reflected in the March FAQs.

National Emergency

During the NE, under the Employee Benefits Security Administration (EBSA) [Disaster Relief Notice 2020-01](#), certain deadlines are “tolled” (disregarded) for either one year from the date of the triggering event or the end of the Outbreak Period, whichever is sooner. The Outbreak Period will end 60 days after the declared end of the NE. The end of the tolling period restarts the timeframe for notices, payments, claims, and special enrollment rights that were previously disregarded. Because the tolling period is applied on an individual basis, tolling may end prior to the outbreak period for some individuals.

Under the EBSA guidance, tolling is permitted for the following deadlines:

- 60-day period to elect Consolidated Omnibus Budget Reconciliation Act (COBRA) insurance

- 60-day period for COBRA-qualified beneficiaries to notify the plan of a qualifying event or Social Security determination of disability
- 45-day grace period for COBRA initial premium payment
- 30-day grace period (or longer) for subsequent COBRA premium payments
- 14-day deadline for plan sponsors/administrators to provide a COBRA election notice
- Deadlines for participants to file a claim for benefits and/or appeal an adverse benefit determination under the Employee Retirement Income Security Act (ERISA)
- 4-month period (federal review process) to file a request for an external review
- 4-month period (or 48 hours after receipt of an incomplete request notification, if later) to complete an incomplete request for external review
- 30- or 60-day deadlines to request enrollment in a group health plan following a HIPAA special enrollment event

Updated Guidance for Emergency Periods

On March 27, 2023, two days before the Congressional Resolution ending the NE was passed, the Departments jointly issued a set of [frequently asked questions](#) (FAQs) regarding the end of PHE and NE. The updated guidance provides clarity on several issues surrounding the end of the PHE and NE.

FAQ Guidance

The [updated guidance](#) was released before President Biden signed the Congressional resolution to end the NE. It assumes that the NE ends May 11, 2023, and provides examples of tolling period end dates assuming the Outbreak Period ends July 10, 2023.

The Departments are clear that while the extensions under the emergency relief period will no longer apply after the end of the Outbreak Period, there is nothing in either the IRS Code or ERISA that prevents a group health plan from allowing longer timeframes to employees and plan participants. The Departments specifically encourage plan sponsors to continue extending these timeframes.

DOL Outbreak Period Extension

After the President signed the Congressional Resolution, the DOL informally commented that they would extend the Outbreak Period another 30 days to align with the original end date.

Summary

The end of the National Emergency has created much confusion for plan sponsors and participants. While the new guidance released in March provides welcome clarity on several important issues, the Congressional Resolution and informal comments from the DOL add to the confusion about the Outbreak Period end date. While formal guidance from the DOL would be welcome, the FAQ guidance is clear that the Outbreak Period will end on July 10, 2023, and plan sponsors can rely on that end date. Plan sponsors should note that they are allowed to, and the DOL encourages, plans to extend deadlines past the Outbreak Period end date. EPIC will continue monitoring the various guidance and provide updates as information becomes available.

EPIC Employee Benefits Compliance Services

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