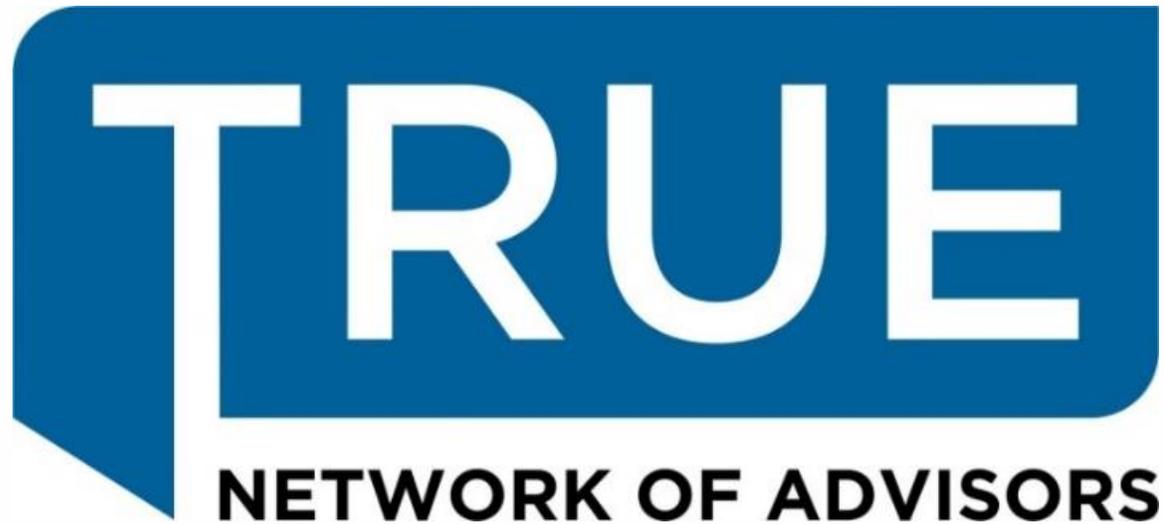




MAYNARDNEXSEN

TRUE Network Advisors
Compliance Webinar
April 3, 2023
Claire Martin

End of the COVID-19 National Emergency: What Employers Need to Know



Presented By:



MAYNARDNEXSEN

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April 2023

Maynard Nexsen

- ❖ Maynard Cooper & Gale is now Maynard Nexsen
- ❖ Merger with Nexsen Pruet was finalized on April 1, 2023
- ❖ The result of the combined firm will be over 500 attorneys in 23 different offices coast to coast:

- **Alabama:** Birmingham, Huntsville, Mobile, Montgomery
- **California:** Los Angeles, San Francisco
- **Florida:** Miami, Orlando
- **Georgia:** Atlanta
- **Iowa:** Des Moines
- **New York:** New York City

- **North Carolina:** Charlotte, Greensboro, Raleigh
- **South Carolina:** Charleston, Columbia, Greenville, Hilton Head/Bluffton, Myrtle Beach
- **Tennessee:** Nashville
- **Texas:** Austin, Dallas
- **Washington, D.C.**

End of the COVID-19 Emergency Periods

- ❖ President Biden has announced his intent to end the two key COVID-19 related emergency periods that have been in effect since early 2020:
 - National Emergency (“NE”) and Public Health Emergency (“PHE”)
- ❖ These emergency periods will end on **May 11, 2023**
- ❖ The end of the emergency periods will affect employer-sponsored group health plans in two ways:
 - May 11, 2023: The end of the cost-free COVID-19 testing/vaccine mandate
 - July 10, 2023: The end of the Outbreak Period extensions for several key health plan deadlines

End of the Public Health Emergency

- ❖ May 11, 2023: The end of the cost-free Covid-19 testing/vaccine mandate
- ❖ FFCRA required that all employer-sponsored group health plans cover COVID-19 testing expenses without any cost sharing during the PHE
 - Fully insured, self-insured, and grandfathered plans
- ❖ No group health plan could impose any deductibles, copays, coinsurance, or any other form of out-of-pocket expense for any covered individual who receives COVID-19 testing during the PHE
- ❖ Expanded to cover out-of-network COVID-19 vaccines without cost-sharing
- ❖ Expanded to include over-the-counter COVID-19 tests

End of the Public Health Emergency

- ❖ So what does this mean for an employer's health plan?
- ❖ Group health plans are no longer required to provide these items/services cost-free as of May 11, 2023
 - Note: Non-grandfathered health plans will still be required to cover in-network COVID-19 vaccines without cost-sharing as part of the ACA's preventive services mandate
- ❖ Plans can choose to continue to offer no- or low-cost COVID-19 testing and vaccines, but it is no longer required
- ❖ End of vaccine subsidies and the increase in vaccine costs to plans

End of the Public Health Emergency

- ❖ **HDHP & HSA: Pre-Deductible COVID-19 Diagnosis & Treatment:**
 - Temporary relief permitted HDHPs to provide coverage for COVID-19 diagnosis and treatment prior to the deductible being satisfied without impacting HSA eligibility
 - Unclear if relief is ending immediately with PHE, at the end of the year, or another time
- ❖ **Telehealth Coverage for HDHPs Unaffected:**
 - CARES Act permitted HDHPs to provide telehealth and remote care with no deductible or impact on HSA eligibility during the COVID-19 pandemic
 - The CAA 2023 extended this relief for plan years beginning in 2023 and 2024

Next Steps for the End of the PHE

- ❖ **For the end COVID-19 testing and vaccine mandate:**
 - **Reevaluate whether to continue offering free or low-cost COVID-19 testing and/or out-of-network vaccines**
 - Consider cost increase of COVID-19 vaccines
 - **Review plan documents and administrative processes and procedures**
 - **Amend plan documents, as necessary**
 - **Timely notify plan participants of any material changes**
 - Changes to Summary of Benefits and Coverage?

End of the National Emergency

- ❖ July 10, 2023: The end of the Outbreak Period extensions for several key health plan deadlines
- ❖ The Outbreak Period extended certain timeframes under ERISA, HIPAA and COBRA to provide employers and employees relief related to certain group health plan deadlines:
 - The 30-day period for exercising special enrollment rights under HIPAA
 - The timeframe to file claims for plan benefits
 - The timeframe to file appeals and/or requests for external review for adverse plan benefit determinations
 - The 60-day period for electing COBRA continuation coverage
 - The 45-day period for making initial COBRA premium payments
 - The 30-day grace period for making subsequent monthly COBRA premium payments
 - The 30-day period to enroll in another group health plan

End of the National Emergency

- ❖ During the Outbreak Period, plans and participants are to “disregard” the Outbreak Period for the purpose of calculating these plan deadlines
- ❖ The maximum period that must be disregarded during the Outbreak Period is the earlier of:
 - One year from the date the individual was first eligible for relief under the Outbreak Period; or
 - 60 days from the announced end of the NE
- ❖ This requires an individual-by-individual assessment
- ❖ The Outbreak Period extensions apply from March 1, 2020 until 60 days after the announced end of the NE (*i.e.*, July 10, 2023)

End of the National Emergency

- ❖ So what does this mean for an employer's group health plan?
- ❖ Health plans will stop disregarding the Outbreak Period from the applicable ERISA, COBRA, and HIPAA timeline calculations as of July 10, 2023
 - Example: COBRA Election Period (generally 60 days to elect COBRA after receiving notice)
 - Employee's hours are reduced causing the employee to lose active coverage, and he receives the COBRA election notice on April 1, 2023
 - The 60-day COBRA election period is extended by disregarding the Outbreak Period for purpose of calculating his election period
 - Following the end of the Outbreak Period (which is July 10, 2023 (and earlier than his one-year deadline)), the employee will have 60 days to elect COBRA (through September 8, 2023)

End of the National Emergency

- ❖ Health plans will stop disregarding the Outbreak Period from the applicable ERISA, COBRA, and HIPAA timeline calculations as of July 10, 2023
 - Example: COBRA Premium Payments (generally 45-days for initial premiums and a 30-day grace period for subsequent premiums)
 - Employee fails to make timely COBRA premium payments by the end of the 30-day grace period for COBRA premiums due for March, April, and May 2023
 - The standard 30-day COBRA premium payment grace period is extended by disregarding the Outbreak Period
 - The employee has until 30 days after the end of the Outbreak Period (until August 9, 2023) to make his COBRA premium payments for the months of March, April, and May

End of the National Emergency

- ❖ Health plans will stop disregarding the Outbreak Period from the applicable ERISA, COBRA, and HIPAA timeline calculations as of July 10, 2023
 - Example: HIPAA Special Enrollment (generally 30 or 60 days following event)
 - On April 1, 2023, employee has a baby and would like to enroll herself and her newborn in the employer's group health plan (outside of normal open enrollment)
 - The standard 30-day special enrollment period is extended by disregarding the Outbreak Period
 - The employee has until 30 days after the end of the Outbreak Period (August 9, 2023) to enroll herself and her child in the plan

Next Steps for the End of the NE

❖ For the end of the Outbreak Period:

- Review plan documents, communications, election forms, and internal administrative process and procedures
- Amend or update plan documents, communications, and forms, as necessary
- Timely notify affected participants or COBRA qualified beneficiaries of new deadlines
- Work with TPAs and vendors to ensure administration and communications reflect new deadlines

