

“END OF PANDEMIC”

EFFECTS UPON EMPLOYERS, PLANS, AND PRODUCTS

“Please note any advice we are giving you in this communication should be reviewed with your attorneys. The statements that follow are based upon either what we as a company practice for ourselves, what we have observed as business best practices by others, or both.”

Form I-9 Temporary Flexibility for Collecting Documentation Ends July 31, 2023

Starting **August 1, 2023**, per the U. S. Immigration and Customs Enforcement (ICE), employers must resume in-person inspection of documents required for completion of Form I-9. In addition, employers will have until **August 30, 2023**, to complete in-person physical document inspections for employees whose documents were inspected remotely during the pandemic.

During the pandemic, employers with employees taking physical proximity precautions due to COVID-19 were not required to review the employee’s identity and employment authorization documents in the employee’s physical presence. Employers were required to inspect the documents required by Form I-9 remotely (e.g., over video link, fax, email, etc.) and obtain, inspect, and retain copies of the documents, within three business days.

COVID-19 Diagnostic Testing Costs

Starting **May 11, 2023**, plans and issuers of health care insurance will no longer be required to provide coverage for items and services related to diagnostic testing for COVID-19. If going forward the plans or policies provide for diagnostic testing for COVID-19, they may impose cost-sharing requirements, pri COVID-19 Vaccinations

Section 3203 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) will still require plans and issuers to provide coverage, without cost sharing, qualifying coronavirus preventive services for COVID-19 vaccines and their administration after the official end of the pandemic. This requirement under the CARES Act does not end with the pandemic. Through a regulatory quirk, the plan or issuer does not have to cover vaccines or the administration of them if (a) the vaccine and administration is delivered by an out-of-network provider and (2) the plan or issuer has a network of providers. All of this is subject to change due to the status of any appeal of a Federal Court decision (*Braidwood Management Inc. v. Becerra*) decided on March 30, 2023, or any regulatory changes by the pandemic enforcement departments (DOL, HHS, and Treasury).

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End of Disregarded Election Notices

Election deadlines disregarded due to emergency COVID-19 measures will end 60 days after the official end of the pandemic, or on **July 10, 2023**. The disregarded periods that were affected by the pandemic were extended and included:

- requests for special enrollment,
- the 60-day election period for COBRA continuation coverage,
- the date for making COBRA premium payments,
- the date for individuals to notify the plan of a qualifying event or determination of disability,
- the date within which individuals may file a benefit claim under the plan's claims procedure,
- the date within which claimants may file an appeal of an adverse benefit determination under the plan's claims procedure,
- the date within which claimants may file a request for an external review after receipt of an adverse benefit determination or final internal adverse benefit determination,
- the date within which a claimant may file information to perfect a request for external review upon a finding that the request was not complete, and
- the date for providing a COBRA election notice.

Plan and insurance administrators can now revert to reading the plans and insurance policies to determine when the various deadlines apply.

Telemedicine Extensions

Licensure of medical professionals is a State-by-State matter. Generally, for telemedicine to be available to a plan participant or insured individual, two things have to apply: (1) telemedicine has to be allowed under State law, and (2) the plan or insurance policy has to provide for telemedicine. During the pandemic, several if not most States temporarily relaxed or eliminated bars to telemedicine. It has become so popular, many commentators have predicted that the pre-pandemic restrictions may not be reimposed.

During the COVID-19 pandemic, the Centers for Medicare and Medicaid (CMS) mandated that most restrictions on telemedicine be eliminated for Medicare and Medicaid patients; CMS recently extended its enlargement of eligibility for telemedicine services through the end of Calendar Year 2023. For Medicare and Medicaid patients, through 2023 telemedicine services will be considered the same as in-person visits and will be paid by CMS at the same rate as regular, in-person visits. After 2023 there is no certainty that telemedicine authorization as expanded due to the pandemic will continue, and it may require legislation.

The Consolidated Appropriations Act, 2023 (CAA 2023) extended telemedicine (and telehealth) benefits for high deductible health plans (HDHP) paired with health savings accounts (HSAs). Under CAA 2023, employers can continue to offer first-dollar telehealth benefits without affecting their employees' eligibility to receive HSA contributions. This was originally a part of the CARES Act, which allowed an HDHP to cover general telehealth services without cost sharing, prior to the deductible, without affecting an employee's eligibility to make or receive HSA contributions; that special treatment for telehealth would have expired on December 31, 2022, but CAA 2023 extended it to plan years beginning on or before **January 1, 2025**. Extension beyond then will probably require more legislation.