

Health Policy in Transit A Purchaser Viewpoint

End of COVID-19 Public Health Emergency (PHE)

In late January 2023, President Biden announced his intention for the COVID-19 Public Health Emergency (PHE) to end on May 11, 2023. The termination of the PHE has many implications across the entire healthcare system and raises several questions on whether and how certain provisions will continue to apply. This Health Policy in Transit provides a high-level overview of the potential implications for employers and outlines considerations regarding the decisions plan sponsors will need to make in response to the ending of the PHE.

COVID-19 Testing

During the PHE, plans covered COVID-19 tests and testing-related services without cost sharing or prior authorization or other medical management requirements (including over-the-counter (OTC) tests), in and out of network. As of May 11, 2023, this requirement will no longer be effective. Plan sponsors have several decision points regarding testing following the close of the PHE. These include:

- Whether to continue covering tests at all, and if so, whether or not to cover both in-network and out-of-network;
- Whether to continue to cover tests at no cost or begin to charge cost sharing; and
- Whether to impose reimbursement limits on OTC tests or not cover OTC tests at all.

Employers may need to make amendments to their plan documents, depending on these decisions. Employers may consider whether to continue to cover COVID-19 tests under HSA-compatible high deductible health plans (HDHPs) on a pre-deductible basis. This is currently allowed under Internal Revenue Service (IRS) Notice 2020-15 but it is unclear when that guidance will expire.

COVID-19 Vaccines

Under the CARES Act, employer plan sponsors must cover COVID-19 vaccines, both in- and out-of-network, and without cost sharing. Separately, under the Affordable Care Act (ACA), non-grandfathered plans must cover certain vaccines for routine use for plan years that begin one year after the date the recommendation is adopted. In early February 2023, the CDC director approved the COVID-19 vaccines for routine use. This means that, even if the CARES Act requirement ends when the PHE ends, plans will be required to cover the vaccines with no cost-sharing under the ACA. It seems likely that post-PHE the requirement to cover out-of-network vaccines will be discontinued, consistent with the ACA requirement. If so, plan sponsors will want to evaluate whether to continue to cover at no cost for both in-network and out-of-network, or only cover at no cost in-network.

Telehealth

During the PHE, plans have been able to offer stand-alone telehealth (and other remote care) benefits to employees who are not eligible for the employer's major medical coverage. For calendar year plans, this provision will end on December 31, 2023. Employers that would like to continue to offer stand-alone telehealth should analyze whether the telehealth benefit(s) could meet the employee assistance program (EAP) excepted benefit requirements, if the telehealth is limited in scope and duration.

Under various HSA-related telehealth provisions effective during the PHE, a HDHP can temporarily cover telehealth and "other remote care services" pre-deductible, and an individual can have stand-alone coverage for telehealth and other remote care services pre-deductible without impacting his/her ability to contribute to an HSA. Employers with calendar year plans can continue offering telehealth on a pre-deductible basis through December 31, 2024. Employers with non-calendar year plans may need to amend the plan to remove telehealth for potential 2023 gap months and then add the benefit back once the 2023 plan year begins. Some employers are considering adopting a short plan year to take advantage of the relief.