

Preparing for the End of the COVID-19 Emergency: High-Deductible Health Plans and Health Savings Accounts

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The Biden administration originally announced its intent to end the COVID-19 National Emergency (NE) and the COVID-19 Public Health Emergency (PHE) on May 11, 2023 (read our prior [article](#) for more information). Although the end date of the NE was subsequently advanced to April 10, 2023, by Congressional resolution, the US Departments of Labor, Health and Human Services, and the Treasury (the Departments) have given no indication that the change will affect employee benefits plans. Plan sponsors should continue to treat May 11 as the end of the NE until the Departments say otherwise.

During the COVID-19 pandemic, certain permissive practices were allowed by high-deductible health plans (HDHPs) and health savings accounts (HSAs). This article explores whether these benefit offerings can be continued at the end of the PHE and NE.

HDHPs AND HSAs

IRS Notice 2020-15 temporarily permits the coverage of COVID-19 testing with no cost-sharing for HDHPs. It provides that an HDHP will not fail to be an HDHP merely because the plan covers expenses related to COVID-19 testing and treatment prior to satisfying the applicable minimum deductible. This guidance was not directly tied to the NE or the PHE, meaning that it will eventually lapse. The eighth question/answer of the FAQs indicates that individuals covered by an HDHP who have purchased items related to COVID-19 testing or treatment prior to meeting the applicable minimum deductible can continue to contribute to an HSA until further guidance is issued. The Departments also assured plan sponsors that future changes will generally not require HDHPs to make mid-year changes for covered individuals to remain eligible to contribute to an HSA.

Thus, individuals covered by an HDHP may continue to contribute to an HSA following the end of the PHE. COVID-19 vaccinations also continue to be considered preventive care under Section 223 of

the Code for purposes of determining whether a health plan is an HDHP.

ACTION ITEMS

Once the PHE and NE have ended, employers can continue their practice of allowing individuals covered by an HDHP plan to contribute to an HSA. Employers need to also consider whether they will continue to cover COVID-19 tests as required by a doctor or OTC without cost-sharing. Employers should strategize what effect this might have on the HDHP. This might also require an amendment to the health plan or its summary plan description. Employers should continue to watch for further guidance from the Departments on this issue.

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