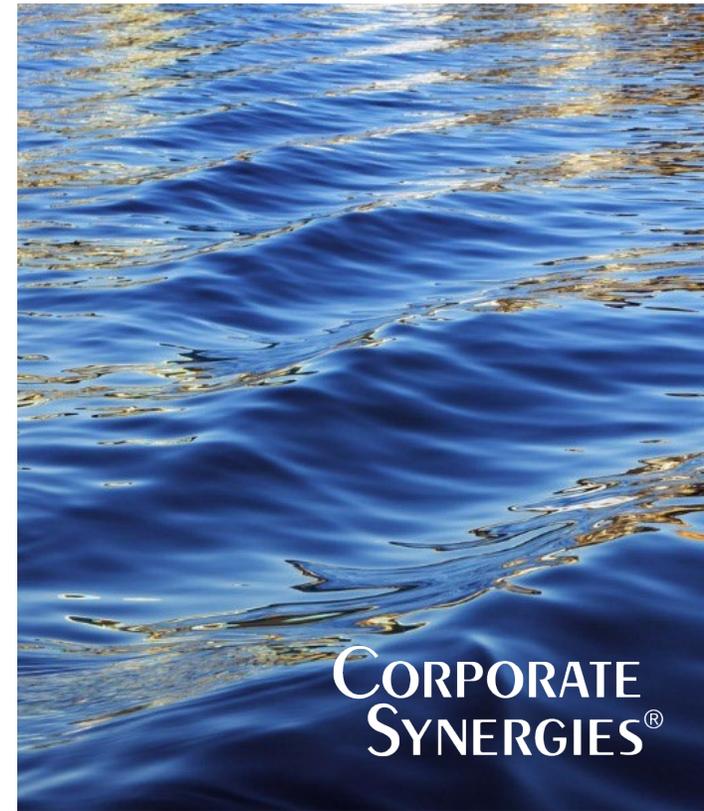




Navigating the End of COVID Relief: What Employers and Plan Sponsors Need to Know

Presented by Daniel Kuperstein, SVP Compliance
Corporate Synergies



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Today's Presenter:



Daniel N. Kuperstein

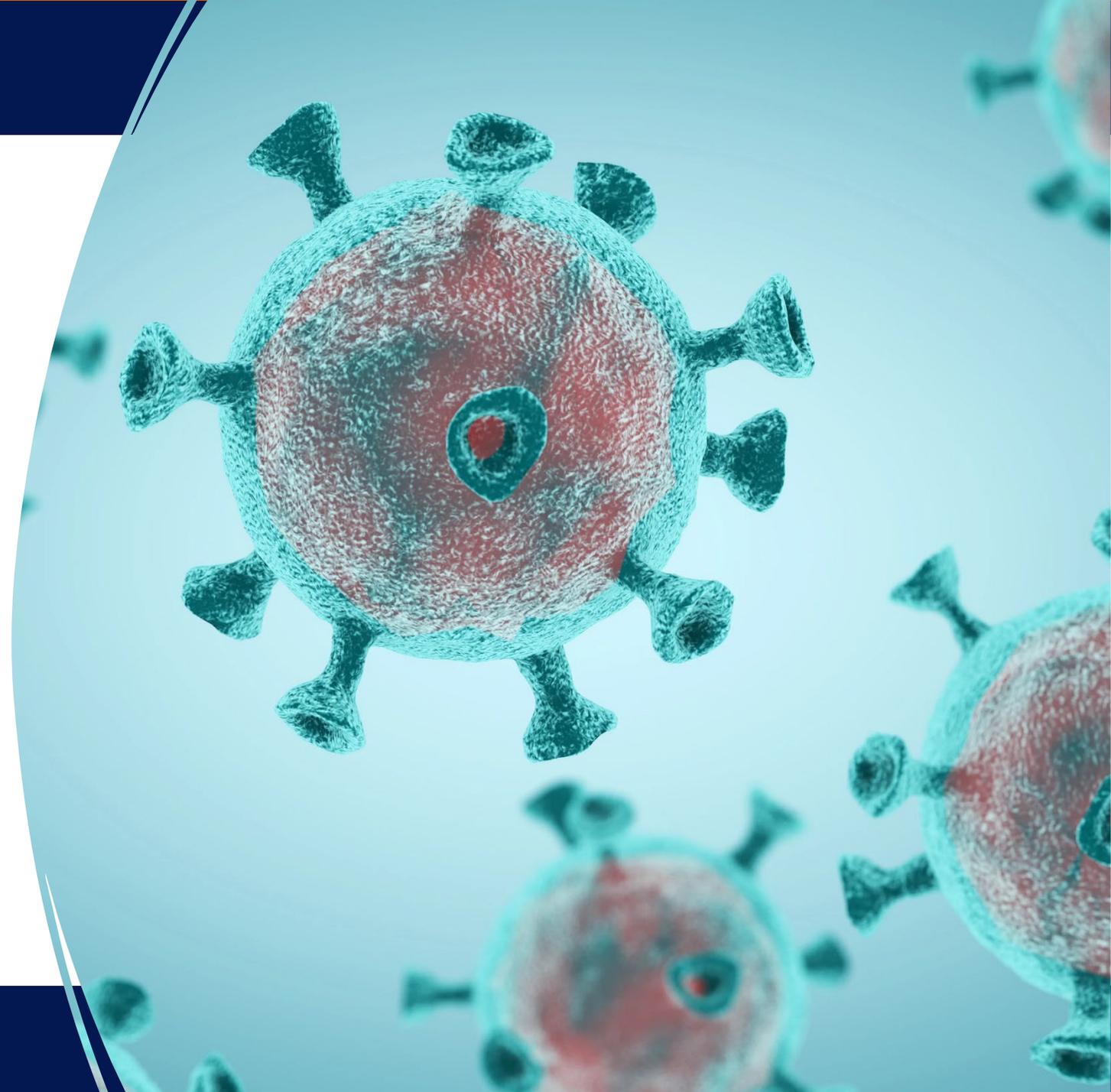
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Dan is Senior Vice President, Compliance at Corporate Synergies. Dan is an ERISA attorney with experience in a broad array of sophisticated employee benefits and labor and employment matters, including matters involving ERISA, the Affordable Care Act, COBRA, HIPAA and GINA compliance. His experience includes representation of both public and private companies, as well as health and pension plans. Dan is admitted in NY, NJ and the Commonwealth of PA.

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Today's Agenda Will Cover....

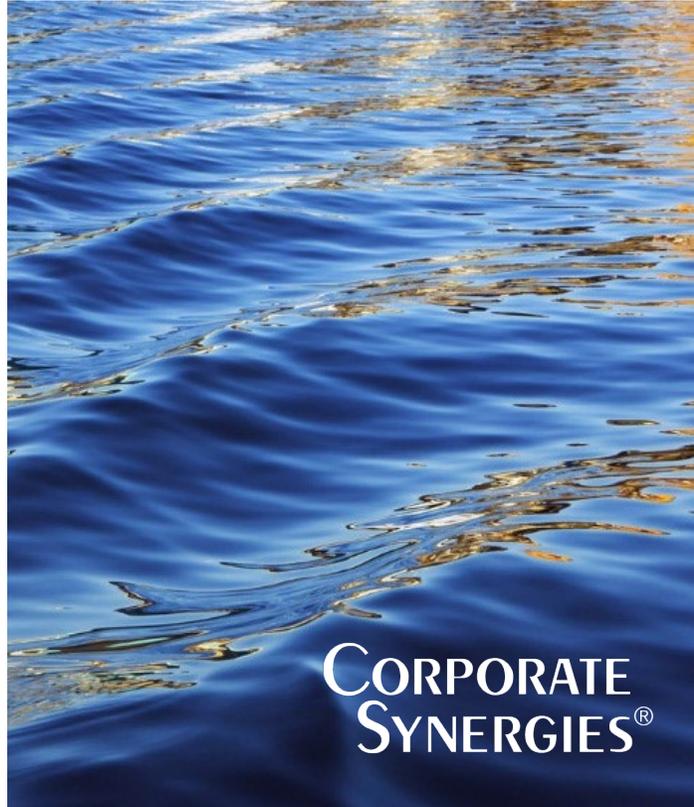
- Overview of COVID Relief and Emergency Periods
- How COVID Relief will Change and Impact on Employers and Plan Sponsors
- Practical Guidance and Next Steps





Overview of the COVID Relief and Emergency Periods

PART I

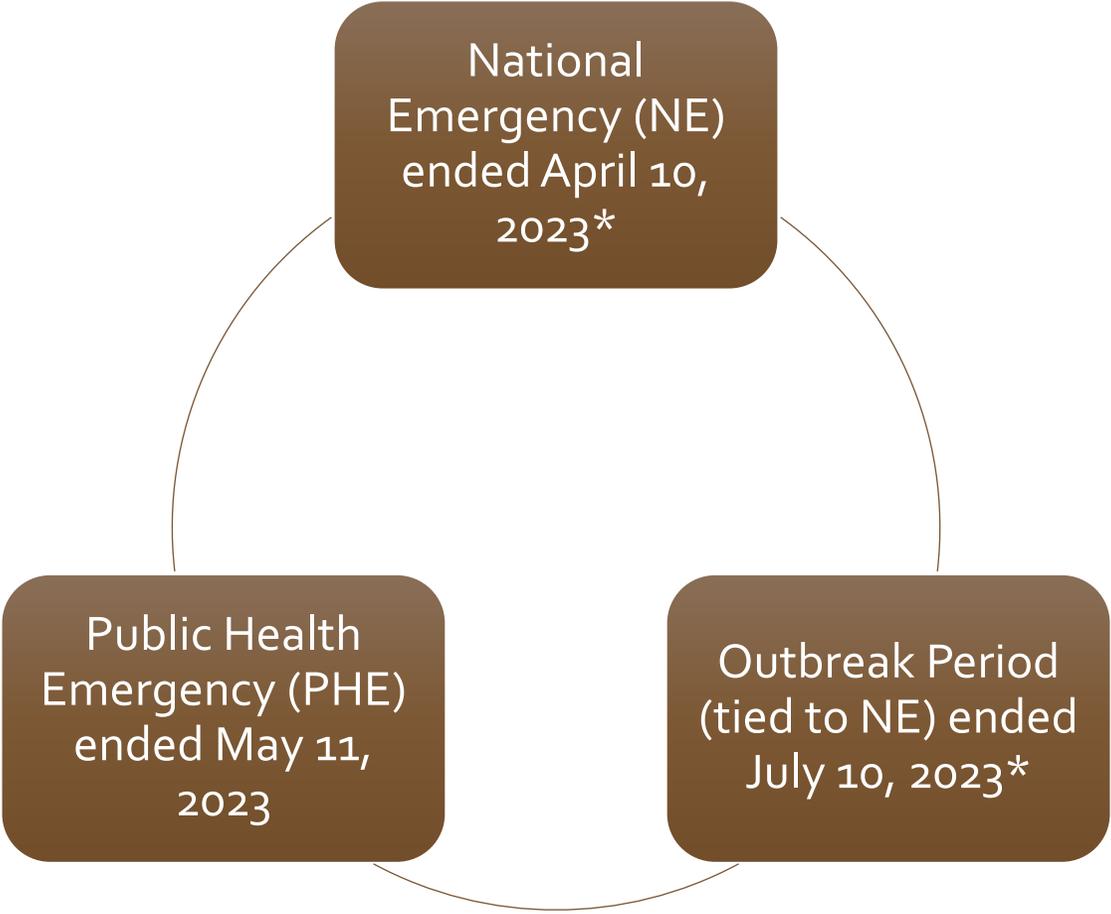


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Major COVID Relief Legislation:

- **Federal Legislation Enacted in Response to COVID-19:**
 - The Families First Coronavirus Response Act (FFCRA) (3/18/2020);
 - The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (3/27/2020);
 - The Consolidated Appropriations Act, 2021 (CAA-21) (12/27/2020);
 - The American Rescue Plan Act of 2021 (ARPA-21) (3/11/2021);
 - The Consolidated Appropriations Act, 2022 (CAA-22) (3/15/2022);
 - The Inflation Reduction Act (8/16/2022); and
 - The Consolidated Appropriations Act, 2023 (CAA-23) (12/29/2022).

Big Picture: 2 Emergency Periods and 1 Outbreak Period



COVID-19 Health Plan Relief from Emergency

Public Health Emergency (PHE) ended May 11, 2023

- Group Health Plan (GHP) Relief Tied to PHE:
 - GHPs must cover diagnostic testing—including OTC tests—and related services provided in- and out-of-network without cost sharing or medical management.
 - These benefits may be disregarded when testing financial limits under MHPAEA.
 - Non-grandfathered GHPs must cover out-of-network (in addition to in-network) vaccines without cost sharing.
 - Offering standalone telehealth to benefit-ineligible employees will not trigger ERISA and ACA compliance obligations.
 - Coverage of testing by an excepted benefit employee assistance program (EAP) does not provide “significant” medical care benefits.

National Emergency (NE) ended April 10, 2023; Outbreak Period – July 10, 2023

- GHP Relief Tied to NE:
 - Outbreak period deadline extensions for:
 - Special enrollment periods under HIPAA
 - Coverage elections, notices and payments under COBRA
 - Claims and appeals filing deadlines
 - Certain ERISA-required notices and disclosures



Compliance Deadlines Paused During Outbreak Period: Quick Review of Relief

- **Compliance Deadlines Extended/Paused:** The disregarded periods extend the following periods and dates:
 - the 30-day period (or 60-day period, if applicable) to request HIPAA 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.
- **Duration of Relief:** The rules pause deadlines occurring during the Outbreak Period until the earlier of:
 - One year from the date a particular individual is first eligible for relief*
 - July 10, 2023 (60 days after the end of the NE)

COVID-19 Health Plan Relief – Cont'd

Deadline Set by Inflation Reduction Act

- Enhanced subsidies for ACA Exchange coverage through 2025.



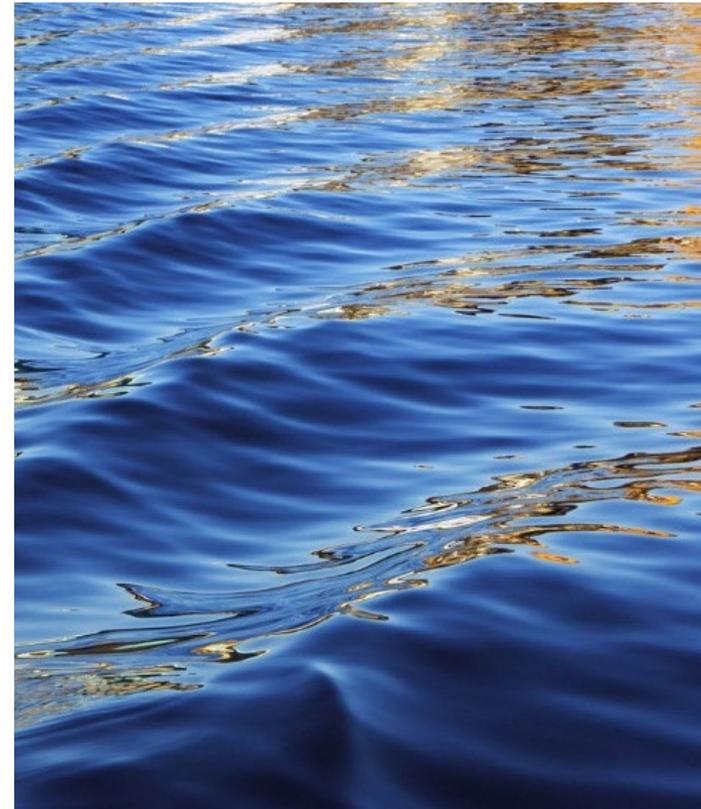
Deadlines Set by Consolidated Appropriations Act, 2023 (CAA-2023)

- Medicaid continuous enrollment ended March 31, 2023.
- High-deductible health plans (HDHPs) qualifying for health savings accounts (HSAs) may cover telehealth and other remote care on a pre-deductible basis through the 2023 and 2024 plan years.
- Additionally, for the same time periods (through 2024 PY), HSA-eligible individuals can have pre-deductible telehealth coverage from a standalone vendor outside of the HDHP.



Changes to COVID Relief and Impact on Employers & Plan Sponsors

Part II



COVID-19 Health Plan Relief Winds Down: Key Details about post-PHE coverage in FAQs [Part 58](#)*

VACCINES

- Non-grandfathered plans must continue in-network coverage without cost sharing.
- Out-of-network coverage is no longer required, unless no in-network provider is available.
- Expedited coverage of new COVID-19 vaccines is still required.

TESTING

- No coverage required after expiration of the PHE.
- The COVID testing mandate applies to tests furnished or purchased before the PHE ended.

COVID-19 Health Plan Relief Winds Down: Key Details about post-PHE coverage in FAQs [Part 58](#)

HSA-QUALIFYING HDHPS:

- Vaccines may be covered pre-deductible (and non-grandfathered HDHPS *must* cover in-network vaccines without cost sharing).
- HSA-qualifying HDHPS *may* continue to cover COVID-19 testing and treatment on a pre-deductible basis after the PHE ended through plan years ending on or before Dec. 31, 2024 (see IRS [Notice 2023-37](#)).

ADVANCE NOTICE OF CERTAIN MIDYEAR BENEFIT CHANGES:

- Plans must give 60-days advance notice about midyear changes that materially modify the summary of benefits and coverage (SBC).
- FAQs provide flexibility for plans that end improved benefits or reduced cost sharing for COVID-19 diagnosis or treatment, or for other COVID-related remote care services, at the end of the PHE. Past notice about the general duration (*e.g.*, a notice providing: “increased coverage applies only during the PHE”) suffices unless the notice is from a prior plan year, as does a similar communication within a reasonable time frame before the change.

What Was Not Addressed in FAQs Part 58?

- **Standalone Telehealth Arrangements:** Relief for **standalone telehealth arrangements** offered to employees not eligible for any other group health plan offered by the employer expires at the end of the plan year beginning on or before May 11, 2023 (e.g., expires on Dec. 31, 2023, for calendar-year plans).
- **Use of EAPs to Provide Testing:** If an **employee assistance plan (EAP)** provides testing after the end of the NE and PHE, evaluate whether doing so provides “significant benefits in the nature of medical care” that would jeopardize the EAP’s excepted-benefit status. Guidance permitting EAPs to offer COVID-19 vaccines without jeopardizing excepted-benefit status is not conditioned on the continuation of the PHE or NE.

***Note: Impact of Recent Litigation:** More recent guidance (in [FAQs Part 59](#)) confirms the *Braidwood Management v. Becerra* (N.D. Tex. March 30, 2023) court order, invalidating part of the ACA’s preventive services mandate, does not impact the COVID-19 vaccine coverage that non-grandfathered plans must provide after the PHE expired.

FAQs ADDRESS “OUTBREAK PERIOD” RULES

- **FAQs Part 58:**

- **Rule:** DOL, Treasury & IRS anticipate that the Outbreak Period will end July 10, 2023 (60 days after the anticipated end of the COVID-19 NE).
- **Assumption:** The FAQs *assumed* the NE would end on May 11.
- **Confirmation:** DOL informally confirmed that the Outbreak Period will still end on July 10, even though legislation enacted after the FAQs ended the NE earlier than May 11 (on April 10).



GUIDANCE ON OUTBREAK PERIOD RULES

How do we figure out the Pause Period under the Outbreak Period Rules?

- Identify the original due date (but for the Outbreak Period) and add 1 year (if the participant became relief-eligible between March 1, 2020, through July 10, **2022**).
- For example, COBRA election period would have otherwise ended May 31, 2020. Plan can require election by May 31, 2021.
- For example, COBRA election period would have begun on April 1, 2021, but now begins on April 1, 2022.



GUIDANCE ON OUTBREAK PERIOD RULES

Calculating COBRA Election Deadline as Outbreak Period Relief Ends:

Example 1

- Sarah's coverage is lost due to employment termination, a COBRA qualifying event: **2/23/22** (during Outbreak Period).
- COBRA 60-day election period starts (when Election Notice is provided): **2/25/22**.
- Deadline to elect COBRA: **4/26/2023** – one year and 60 days after Election Notice is provided.

Example 2

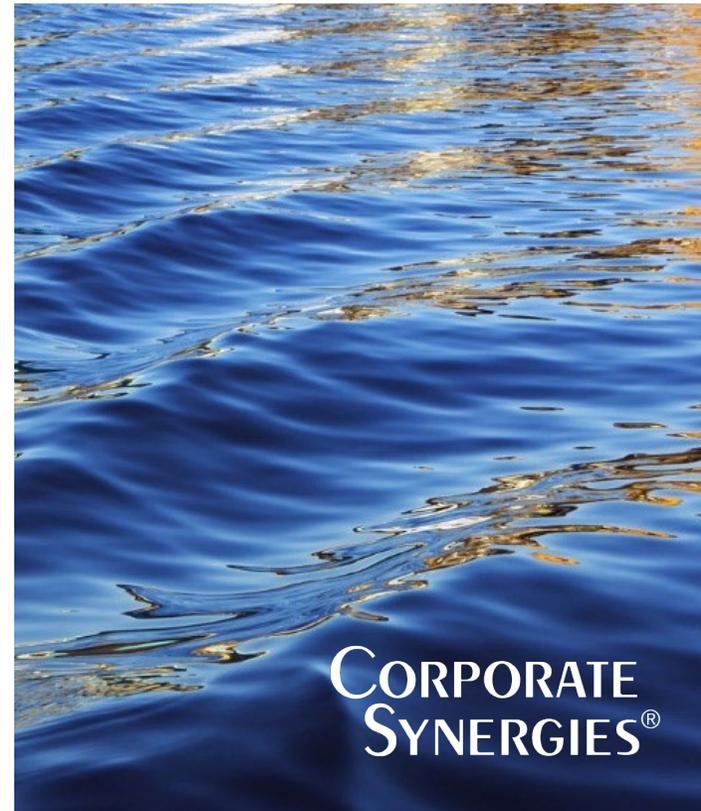
- Megan's 60-day COBRA election period starts **5/1/23** (during Outbreak Period).
- Deadline to elect COBRA: **9/8/23** – 60 days after Outbreak Period ends.

Example 3

- Sophie's COBRA election period starts **7/15/23** (after Outbreak Period ended).
- Deadline to elect COBRA: **9/13/23** – 60 days after COBRA Election Notice was provided.



Next Steps



After the Emergency: Agencies Encourage Plan Sponsors to Exceed Minimum Requirements

- **After the PHE, agencies encourage plan sponsors to:**
 - Continue covering COVID-19 tests (without cost sharing) and treatment
 - Note: HSA-qualifying HDHPs must apply the deductible to such coverage for plan years ending on or after Jan. 1, 2025 (IRS Notice 2023-37)
 - Communicate in advance about how benefits are changing (e.g., explain as to whether participants will still receive free OTC tests)
 - Agencies encourage plans to extend the deadlines that will resume after the Outbreak Period ends.
 - Agencies encourage plans to extend the 60-day HIPAA special enrollment right to enroll in employer's health plan in light of the millions who were expected to lose (and who now have lost) Medicaid or CHIP coverage in light of the end of Medicaid continuous enrollment (current enrollment deadline extended to 9/8/23 by Outbreak Period relief for those losing coverage between 3/31 - 7/10).
- **Key considerations before exceeding minimum requirements:**
 - Obtain permission from your plan's insurance carrier or stop-loss carrier in advance of exceeding minimum requirements.
 - If there is a financial impact of doing so, evaluate impact on MHPAEA compliance.

Next Steps – Moving Forward as COVID Relief Ends:

- Confirm that all applicable vendors are prepared to wind down COVID-19 relief, including carriers, third-party administrators, claim administrators, FSA and COBRA administrators, and plan enrollment and technology vendors.
- Consider whether to extend plan coverage or deadlines beyond the minimum:
 - Obtain and document advance approval from insurance carrier or stop-loss carrier.
 - Confirm vendors can and will administer extended deadlines.
- Develop a participant communications plan:
 - Determine whether the plan document or summary plan description (SPD) requires revision/amendment.
 - Communicate to participants and beneficiaries any changes to plan coverage and deadlines.
 - Consider whether advance notice about any midyear change is required.

Disclaimer

This presentation does not constitute legal advice.

While this presentation provides commentary on laws and regulations as of August 10, 2023, Corporate Synergies is not engaged in the practice of law.

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