

Preparing for the End of the COVID-19 Emergency Declarations: Part II Considerations for COVID-19 Vaccine Coverage

Alert

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By Lisa Rippey

As explained in [Part I: Preparing for the End of the COVID-19 Emergency Declaration](#) series, the Public Health Emergency (PHE) and National Emergency (NE) are coming to a close. While the Biden Administration had initially announced its intent to end the NE on May 11, 2023, President Biden signed a bill into law on April 10, 2023 that immediately terminated the NE. The PHE, however, is still set to expire on May 11, 2023. The end of the NE and PHE will have significant impacts on group health plans. Part II of our series will focus on how the expiration of the Emergency Declarations will change the COVID-19 vaccination coverage requirements currently in place and what plan sponsors should do in anticipation of such change.

Under Section 3203 of the CARES Act, most group health plans are required to cover any qualifying coronavirus preventive service (COVID Preventive Service) without cost-sharing (including deductibles and copays or coinsurance) pursuant to Section 2713 of the Public Health Service Act. A "qualifying coronavirus preventive service" is an item, service or *immunization* that is intended to prevent or mitigate COVID-19, and that is one of the following:

- An evidence-based item or service with an A or B rating recommended by the United States Preventive Services Task Force (USPSTF)
- An immunization for routine use for children, adolescents, or adults recommended by the Advisory Committee on Immunization Practices (ACIP) of the Center for Disease Control and Prevention

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Both the USPSTF and the ACIP have included COVID-19 vaccines on their lists of recommended immunizations.

In its November 6, 2020 interim final rules, the DOL required that during the PHE, group health plans cover any COVID Preventive Service without cost-sharing, regardless of whether the services are provided by an in-network or out-of-network provider. Recent [guidance](#) issued by the Agencies on March 29, 2023, clarifies that after the PHE expires, most non-grandfathered group health plans will still be required to provide in-network COVID Preventive Services (which includes COVID-19 vaccines) without cost-sharing. After the PHE, group health plans are not required to provide benefits for COVID Preventive Services delivered by an out-of-network provider if the plan has a network of providers who can provide the applicable COVID Preventive Service.

It is important to note that on March 30, 2023, the District Court of Texas in *Braidwood Management v. Becerra*, struck down part of the ACA's coverage requirement for preventive services. The ruling blocked the federal government from requiring group health plans to cover services recommended or updated by the USPSTF. However, the portion of the ACA requiring group health plans to cover services recommended or updated under the ACIP remains intact. Therefore, because the COVID-19 vaccine has been recommended by the ACIP, first-dollar coverage of COVID-19 vaccines is still required for in-network and out-of-network coverage during the PHE and for in-network coverage post-PHE.

In light of the end of the PHE, group health plan sponsors should consider the following with respect to COVID-19 vaccination coverage:

- **Whether the group health plan will continue to cover out-of-network COVID-19 vaccines at no cost, or at all:** Insured plans should reach out to their insurers to confirm what the insurer has decided to cover. Self-insured plans should work with their third party administrators to determine what coverage options are available after the end of the PHE.
- **Whether a plan amendment or participant notice is required:** Plan sponsors will need to ensure plan documents, summary plan descriptions and other participant communications accurately reflect what type of coverage is available, if any, for out-of-network COVID-19 vaccines after the PHE. Group health plans may need to be amended, depending on the language used in the plan and whether the out-of-network COVID-19 vaccine coverage changes. Similarly, participant notice may also be required, depending on the plan sponsor's coverage choice.

For more information on how the expiration of the Emergency Declarations will change the COVID-19 vaccination coverage, please contact [Nick Bertron](#), [Sam Butler](#), [Audrey Fenske](#), [Lisa Rippey](#), [Stephanie Schmid](#) or the Stinson LLP contact with whom you regularly work.

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