
Welcome! We will begin at 3:00 ET.

There will be no sound until we begin the webinar.

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2023

End of the National And Public Health Emergencies

Presented by Benefit Comply

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National Emergency & Public Health Emergency

Two Different Pandemic-Related “Emergencies”

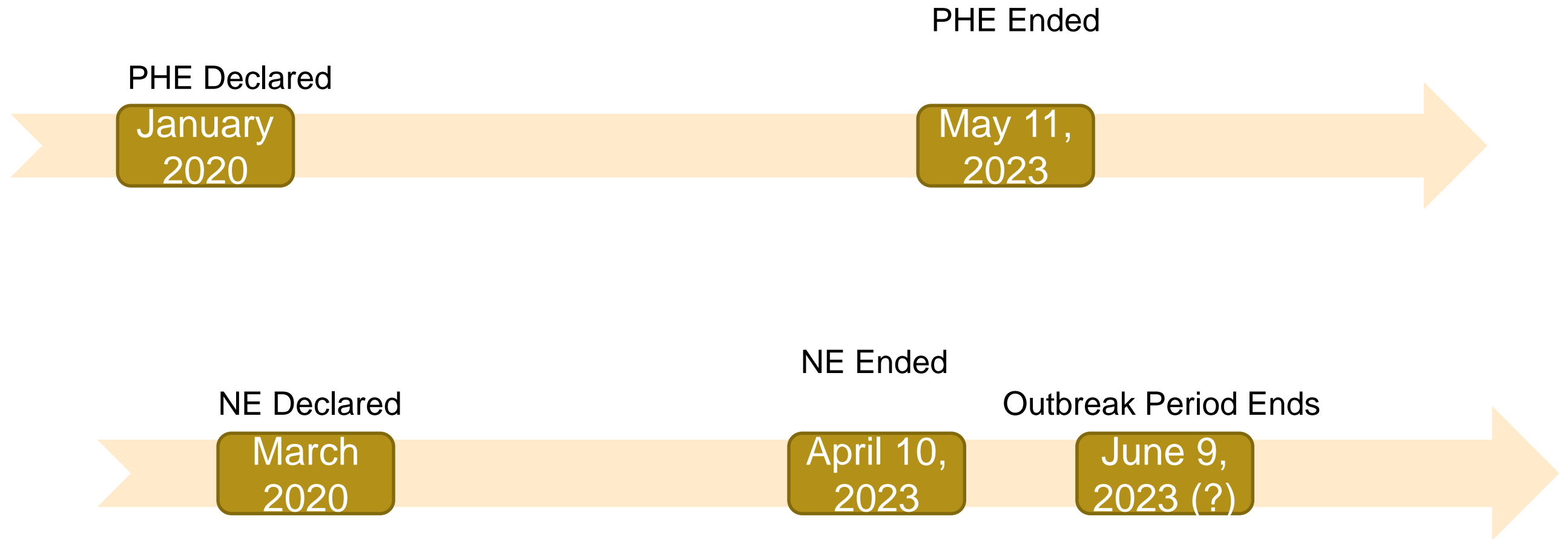
- **National Emergency (NE)**

- First Declared by President Trump March 2020 and renewed annually since then
- Various benefit related deadlines suspended during Outbreak Period
- Outbreak Period = National Emergency + 60 days

- **Public Health Emergency (PHE)**

- Declared by the Dept. of Health and Human Services January 2020 and renewed every three months
- Plan coverage for COVID vaccination and testing, stand-alone telehealth, Medicaid rules

National Emergency & Public Health Emergency



Impact on Benefits

National Emergency

Various Benefit Deadlines Suspended During Outbreak Period

- The 30- or 60-day period to request special enrollment under HIPAA
- The 60-day period to elect COBRA coverage
- The 30- or 45-day grace period for making COBRA premium payments
- The 60-day period by which an individual must notify the plan of a COBRA qualifying event (e.g. divorce) or a determination of disability for the 11 month COBRA disability extension
- The date by which an individual may file claim, an appeal or request external review under the ERISA claims procedure rules
- The 44-day time frame for providing the COBRA election notice.

Public Health Emergency

1. Health plan coverage of COVID-19 diagnostic testing;
2. Health plan coverage of COVID-19 vaccines and preventive services;
3. Stand-alone telehealth plans no longer allowed;
4. Telehealth providers prescribing controlled substances;
5. Medicaid/CHIP Coverage Special Enrollment; and
6. Qualified High Deductible Health Plan (QHDHP) Coverage for COVID-19 testing and treatment below the deductible.

National Emergency

Outbreak Period

Outbreak Period = National Emergency + 60 Days

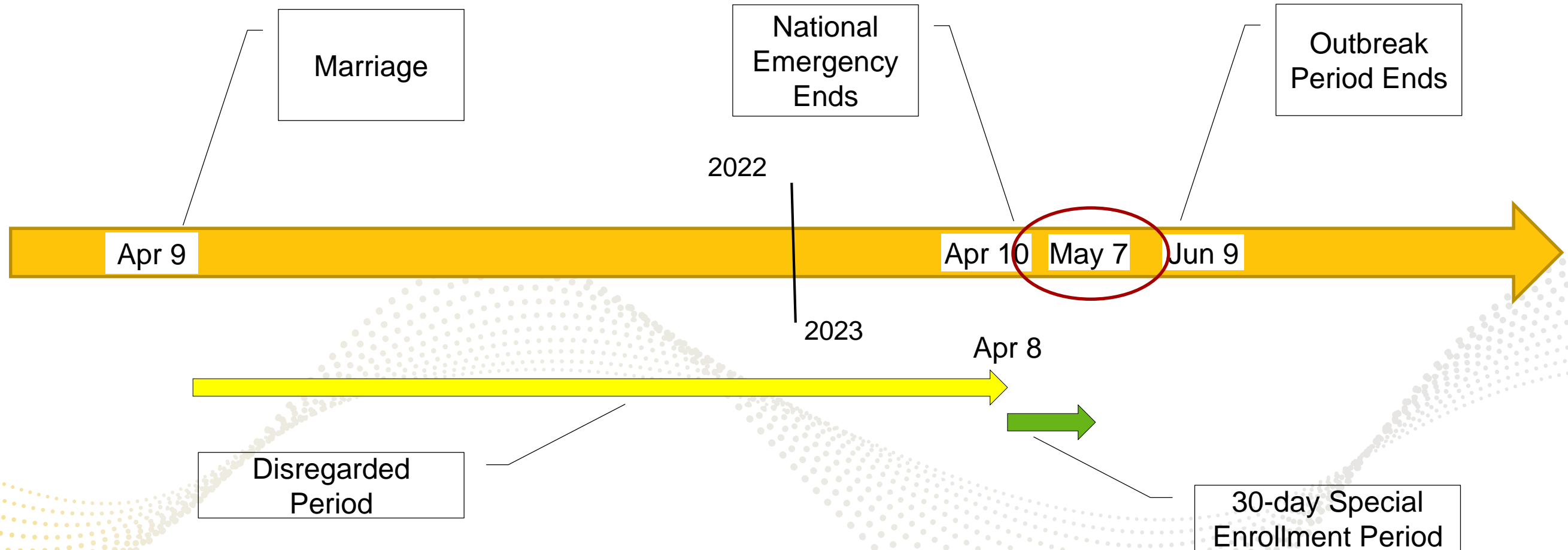
- National Emergency Ends = April 10, 2023
- Outbreak Period Ends = June 9, 2023
- BUT we have heard from several sources that the DOL intends to extend the Outbreak Period so that it instead ends on July 10, 2023
 - Date the Outbreak Period would have ended with originally planned end of the National Emergency on May 11
 - Examples in this slide deck use June 9 but may need to be adjusted if DOL does extend the Outbreak Period

Deadline Extensions

- Applicable deadline is suspended for up to 12 months or until the end of the Outbreak Period whichever is shorter (disregarded period).
- Original deadline period begins to run once the disregarded period is over.

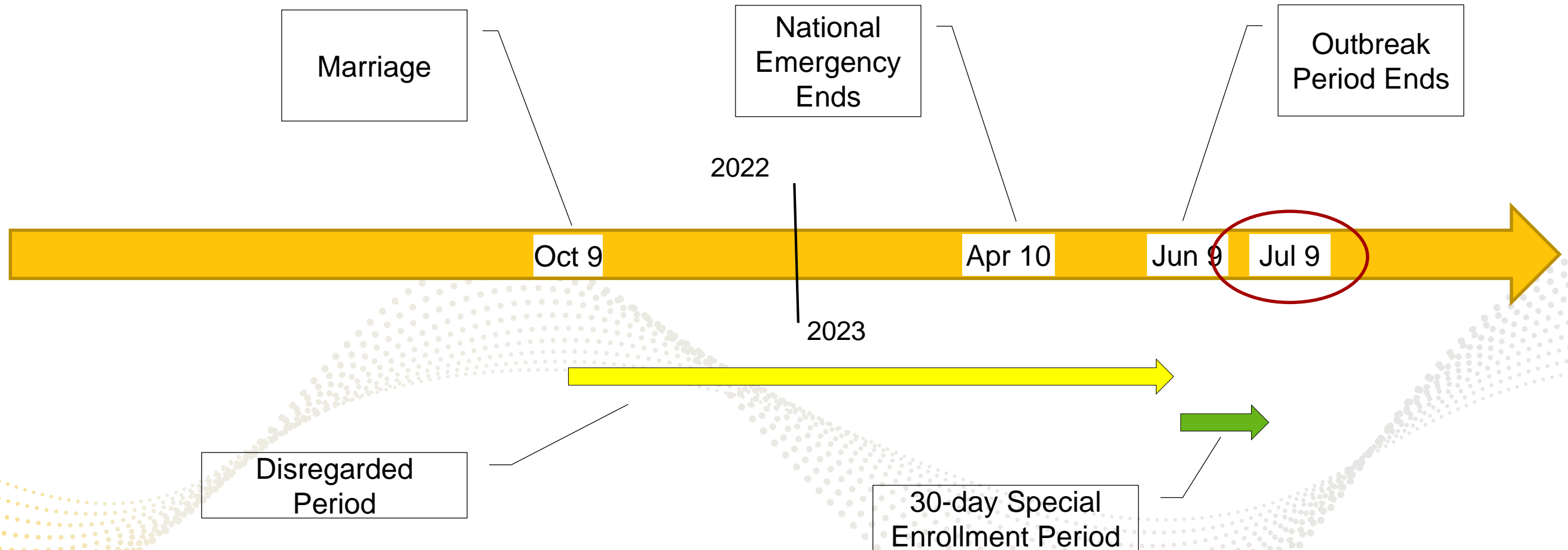
Deadline Suspension Example

HIPAA Special Enrollment #1



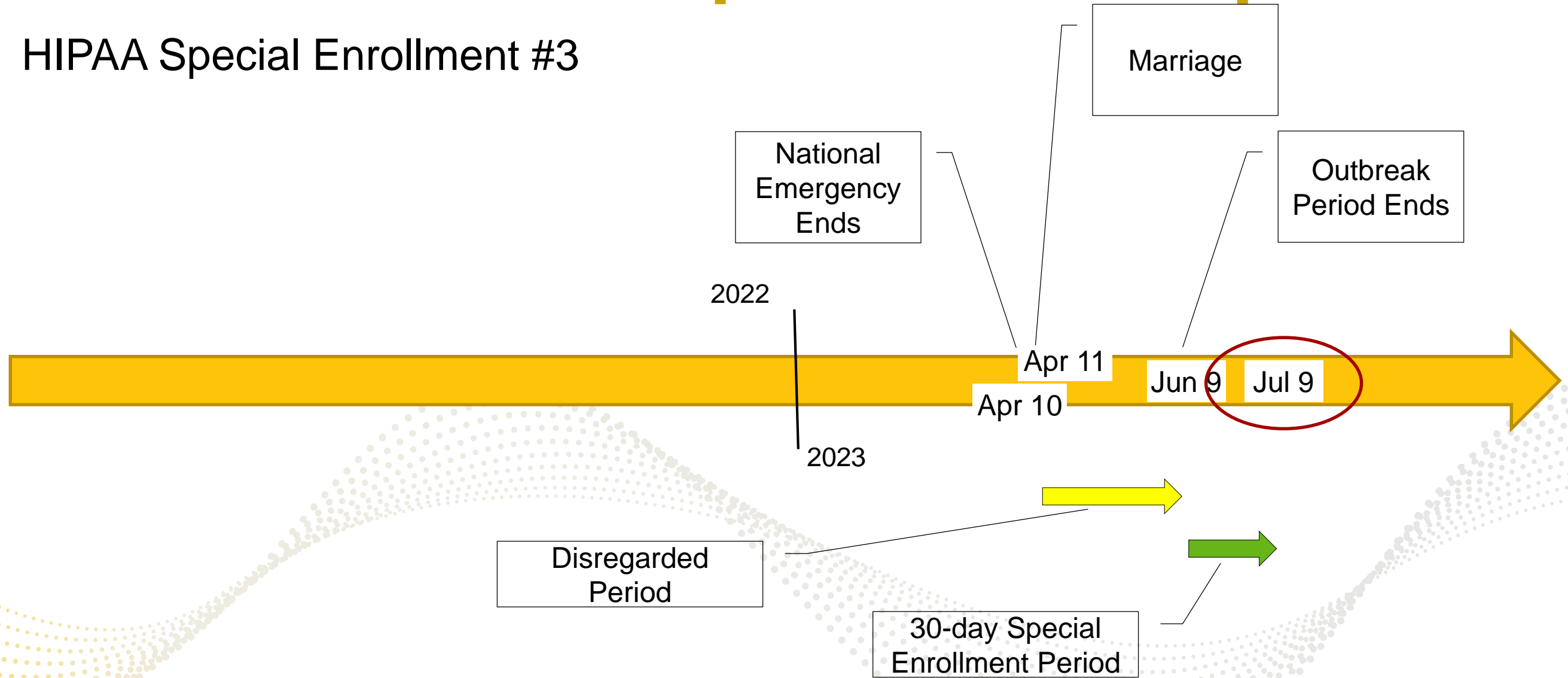
Deadline Suspension Example

HIPAA Special Enrollment #2



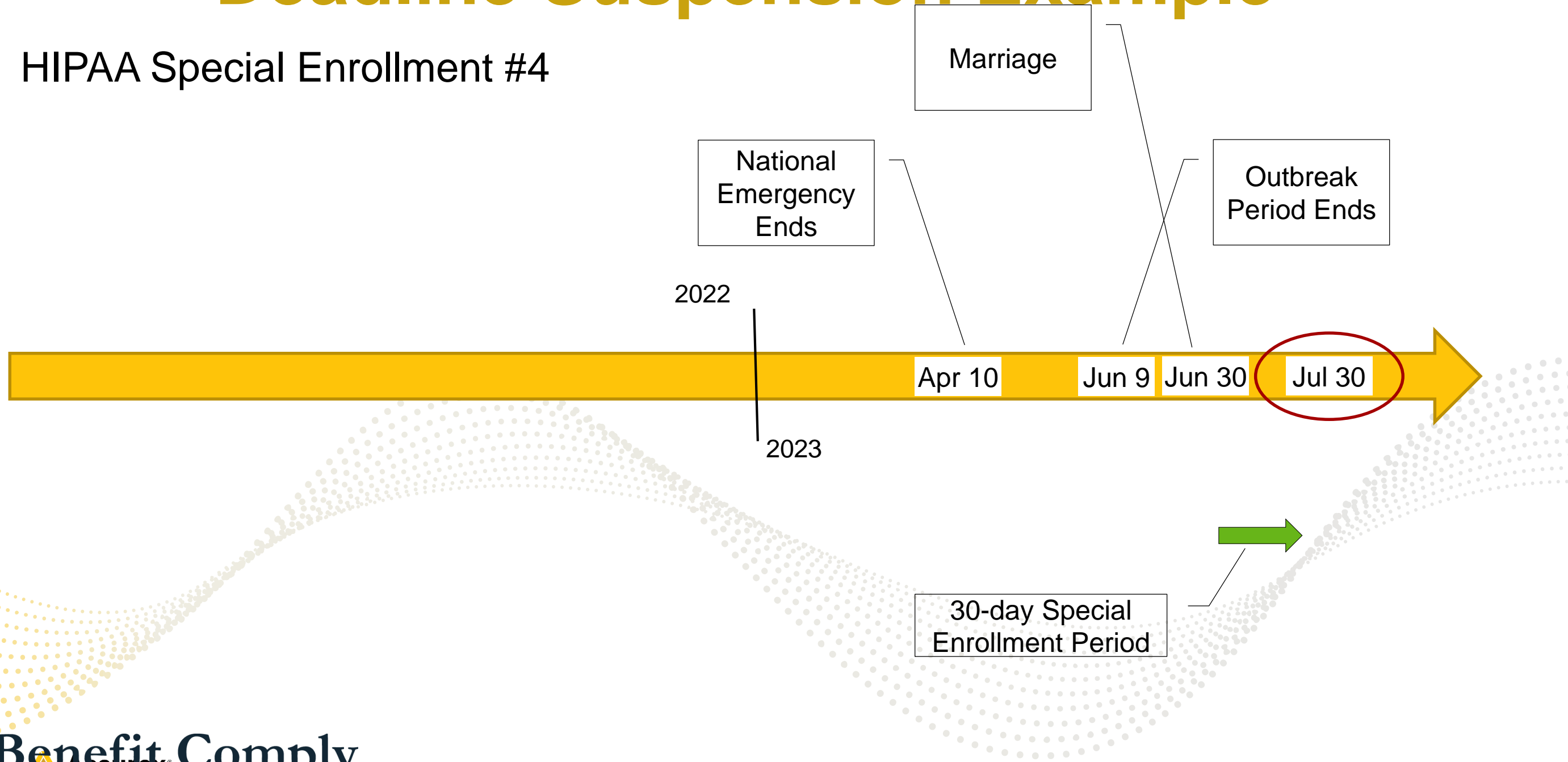
Deadline Suspension Example

HIPAA Special Enrollment #3



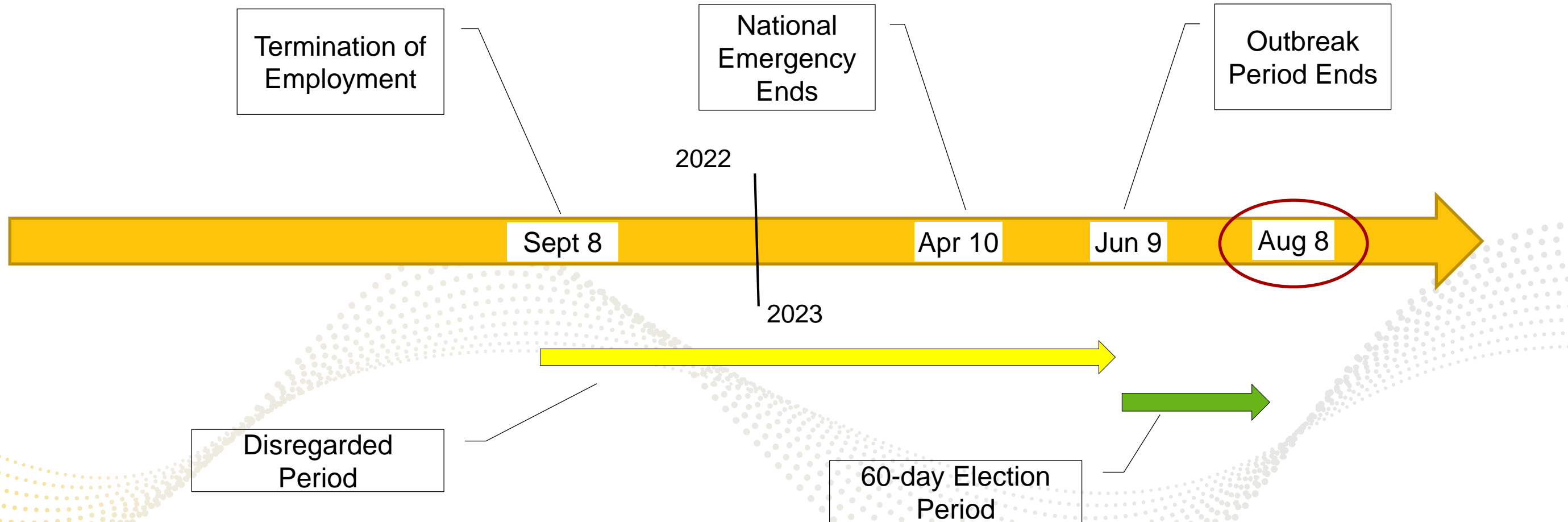
Deadline Suspension Example

HIPAA Special Enrollment #4



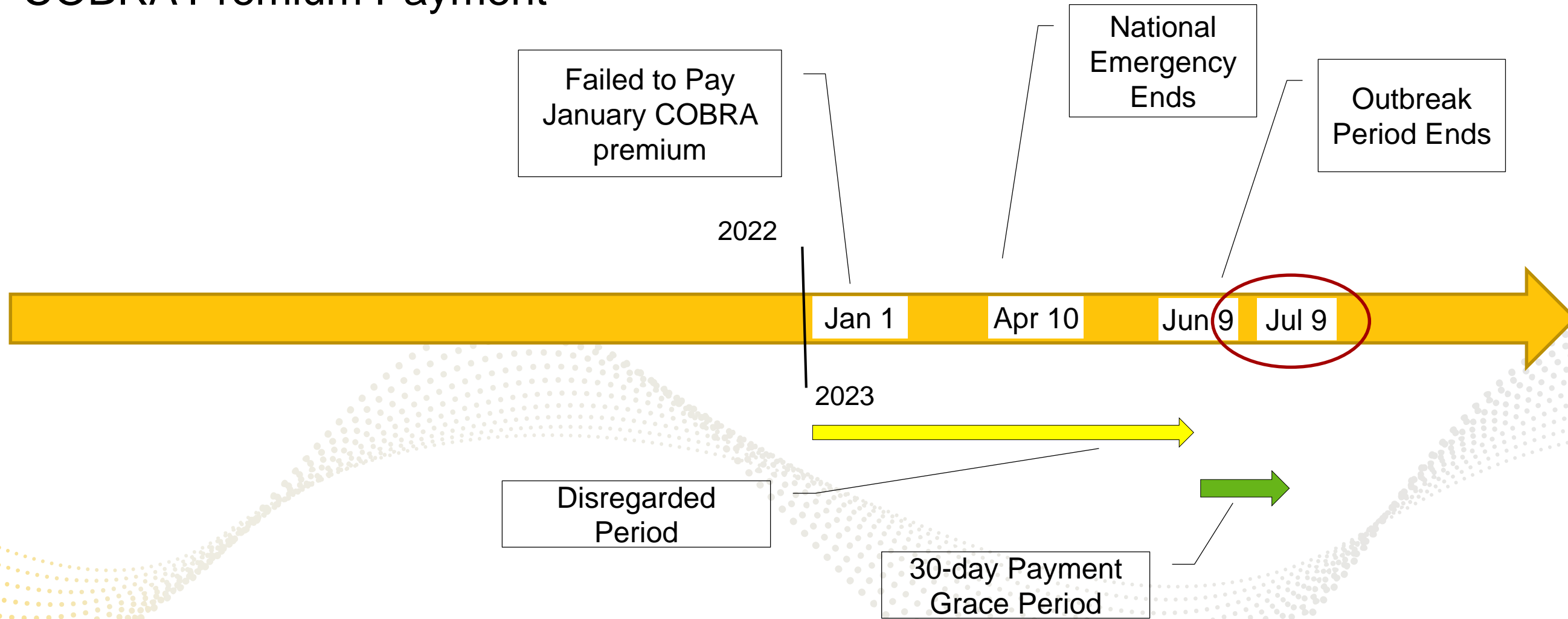
Deadline Suspension Example

COBRA Election



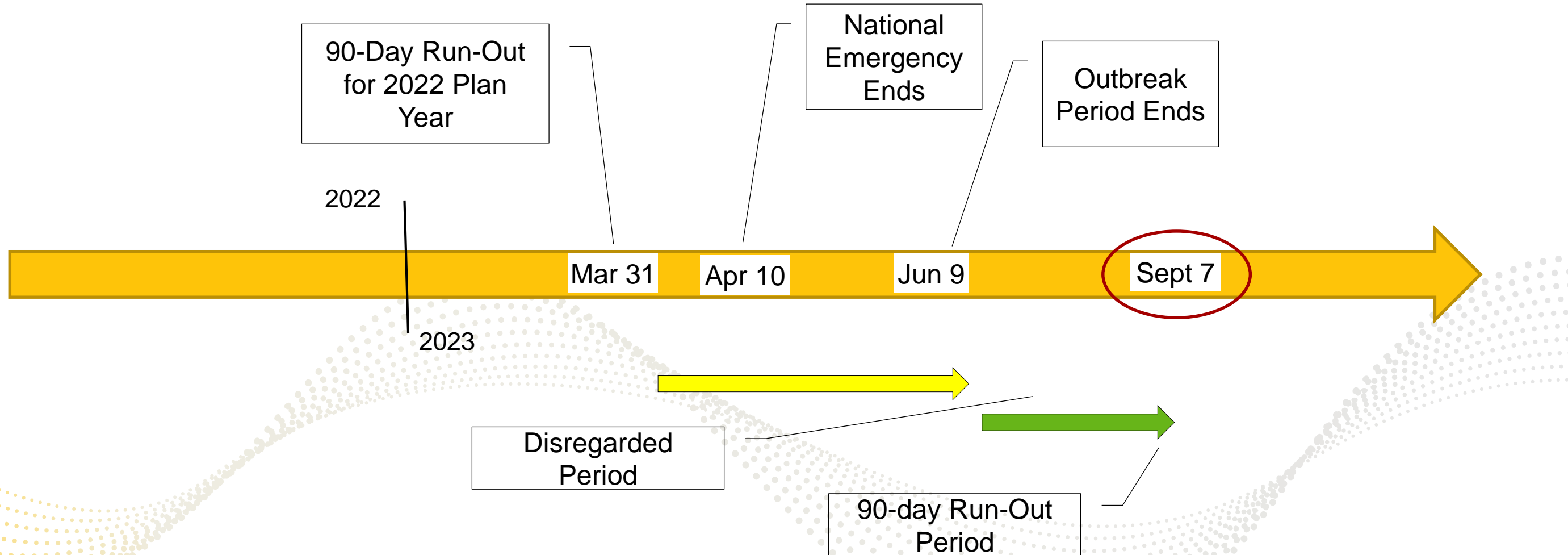
Deadline Suspension Example

COBRA Premium Payment



Deadline Suspension Example

Health FSA Claims Run-Out



Employer Action Steps



Modify initial COBRA notices and COBRA election notices



Adjust Health FSA / HRA runout periods



Adjust policies and procedures around special enrollment



Amend Plan Documents, if necessary (often not)

Employer Action Steps



Notice

- Unclear to what extent employer is required to provide notice to affected individuals of end of Outbreak Period. Official DOL FAQ does not seem to require such advance notice, other informal guidance suggests it is at least encouraged.
- Employer will need to decide whether to provide notice based on number of individuals to be notified, expenses of providing notice, what employer/vendors have previously communicated, and potential risks if notice is not provided.



Three Categories of Notice Recipients

- *HIPAA Special Enrollment* – All employees eligible for coverage whether enrolled or not.
- *ERISA Claims and Appeals* – All employee enrolled in Health FSA or HRA for a plan year that ended during the Outbreak Period and has a run out period
- *COBRA Deadlines* – Any qualified beneficiary with a qualifying event or missed payment since April 2022

Public Health Emergency

Coverage for Diagnostic Testing

During PHE, health plans were required to cover the cost of COVID19 diagnostic tests at no cost.

Obligation will end on May 11, 2023

Many fully-insured carriers have already indicated they intended to discontinue such coverage as soon as PHE ends

Employer Action Steps



Fully-insured employers – determine if carrier intends to continue testing coverage beyond end of PHE



Self-funded employers – decide whether to continue testing coverage beyond end of PHE



Plan documents may need to be amended



Eliminating testing coverage is likely a material reduction which requires SMM within 60 days (but no need to duplicate efforts of carrier/TPA)

Coverage for Vaccines

During PHE, health plans were required to cover the cost of COVID19 vaccines at no cost.

Plans must continue to cover vaccines at no cost in-network; as of May 11, 2023 plans may charge normal cost sharing for vaccines obtained out of network.

Many fully-insured carriers have already indicated they intended to discontinue no cost vaccines out of network as soon as PHE ends

Employer Action Steps



Fully-insured employers – determine if carrier intends to continue no cost vaccines out of network beyond end of PHE



Self-funded employers – decide whether to continue no cost vaccines out of network beyond end of PHE



Plan documents may need to be amended



Eliminating no cost coverage for vaccines out of network is likely a material reduction which requires SMM within 60 days (but no need to duplicate efforts of carrier/TPA)

Stand Alone Telehealth Plans

During PHE, employers could offer stand-alone telehealth plans to employees not eligible for major medical plan without violating the ACA.

This relief ends as of May 11, 2023

Stand alone coverage must either end or be modified to comply with ACA rules (e.g. by using HRA integration rules)

Employer Action Steps



Eliminate any stand-alone telehealth plans adopted under PHE relief or modify to comply with ACA

Telehealth Plans and Controlled Substances

During PHE, telehealth plans could prescribe controlled substances without initial in-person visit

This relief ends as of May 11, 2023 – predominantly impacts mental health services but applies to all controlled substances

DEA has proposed rules to modify but not eliminate this requirement but they are not final

Employer Action Steps



Check with telehealth provider how they intend to handle the in-person visit requirement.



Determine if employee communication on this issue is appropriate

Medicaid/CHIP Coverage Special Enrollment

During PHE, state Medicaid plans were not terminating Medicaid coverage or otherwise checking Medicaid eligibility

As of April 1, 2023 states were free to resume normal eligibility and disenrollment processes

Loss of Medicaid eligibility is a HIPAA Special Enrollment event

Employer Action Steps



Be prepared for potential influx of Medicaid special enrollment requests



Consider reminding employees they have 60 days from loss of Medicaid (or 60 days after end of Outbreak Period is loss occurs while Outbreak Period still in effect) to request special enrollment due to loss of Medicaid.



Will you provide flexibility for employees who are notified of loss of Medicaid late or after the fact?

QHDHPs and Coverage for Testing & Treatment

IRS permitted HSA QHDHPs to cover COVID19 testing and treatment below the deductible without losing qualified status

This relief does NOT end as of May 11, 2023 but IRS has indicated it is reviewing propriety of allowing this relief to continue now that emergencies have ended

Have promised that any change in guidance would not take effect until end of QHDHP plan year

Employer Action Steps



No action required at this time but monitor resources for any announcement from IRS ending this relief in the future

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