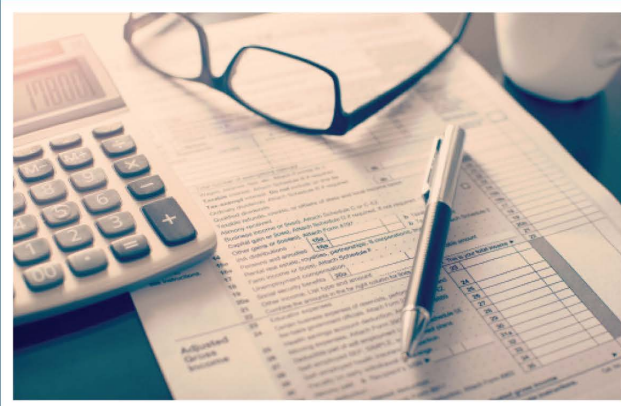


HIPAA SPECIAL ENROLLMENT DUE TO LOSS OF MEDICAID ELIGIBILITY

JULY 2023



HIPAA Special Enrollment Requests to Increase Due to Loss of Medicaid Eligibility

Beginning April 1, 2023, states that maintained continuous Medicaid enrollment during the COVID-19 pandemic may start terminating coverage for individuals who are no longer eligible. Employers will likely see an increase in midyear enrollment requests as individuals lose eligibility for Medicaid or Children's Health Insurance Program (CHIP) coverage.

To receive additional federal funding, many states maintained continuous enrollment for individuals enrolled in Medicaid during the COVID-19 pandemic, despite any changes in eligibility status. Medicaid's continuous enrollment requirement ended on March 31, 2023. While some individuals who lose Medicaid or CHIP eligibility will enroll in coverage through a Marketplace, federal regulators estimate that 5 million people will seek coverage under employer-sponsored health plans.

HIPAA requires group health plans to provide special enrollment opportunities in certain situations, including when employees or their dependents lose eligibility for Medicaid or CHIP coverage. Employees normally have 60 days to request special enrollment, but this deadline is extended during the COVID-19 outbreak period.

Action Steps

Employers should allow employees (and dependents) who lose Medicaid or CHIP eligibility to enroll in their group health coverage as special enrollees, assuming they are eligible under the terms of the plan and timely request enrollment. Employers can also encourage their employees who are enrolled in Medicaid or CHIP coverage to update their contact information with the state Medicaid or CHIP agency and respond promptly to any communication from the state.

HIPAA Special Enrollment

To make health coverage more portable, HIPAA requires group health plans to provide special enrollment opportunities outside of their regular enrollment periods in certain situations, including when there is a termination of eligibility for Medicaid or a state CHIP.

Employees and their dependents are eligible for special enrollment if:

- The employee or dependent is covered by a Medicaid plan or under a state CHIP
- The Medicaid/CHIP coverage of the employee or dependent is terminated as a result of loss of eligibility for the coverage
- The employee and dependent are otherwise eligible to enroll in the employer's group health plan

When an employee loses eligibility for Medicaid, the employee and any eligible dependents (including a spouse) may enroll during a special enrollment period. If an employee's dependent loses eligibility, then the dependent and the employee may qualify for special enrollment.

In general, health plan coverage should begin no later than the first day of the calendar month after the plan receives a timely special enrollment request.

Gradual Unwinding of Medicaid Continuous Enrollment

States that maintained continuous Medicaid enrollment during the COVID-19 pandemic must, over time, return to normal eligibility and enrollment operations. The Centers for Medicare and Medicaid Services (CMS) has [provided](#) states with up to 12 months following the end of continuous enrollment to initiate renewals for individuals currently enrolled in Medicaid in a process referred to as “unwinding.” This gradual unwinding means that not all ineligible employees will lose their Medicaid coverage on April 1, 2023; rather coverage will be lost over the span of approximately one year, depending on each state’s unwinding timeline.

Deadlines for Requesting Special Enrollment

Employees must have **at least 60 days** after a loss of eligibility for Medicaid or CHIP coverage to request special enrollment. However, various deadlines related to employer-sponsored group health plans have been extended during the COVID-19 pandemic, including the deadline for requesting special enrollment following a loss of Medicaid/CHIP eligibility.

These deadlines are extended by disregarding an “outbreak period.” The COVID-19-related deadline extensions end when the outbreak period is over or, if earlier, after an individual has been eligible for a specific deadline extension for one year. Thus, after the end of the outbreak period, health plans can go back to the normal 60-day deadline for requesting special enrollment following a loss of Medicaid/CHIP eligibility; however, any days during the outbreak period must be disregarded to determine the enrollment deadline that applies to a specific individual.

The outbreak period began in March 2020 and continues until 60 days after the end of the COVID-19 national emergency (or such other date as announced by the federal government). On Jan. 30, 2023, the Biden Administration announced its plan to end the COVID-19 national emergency on May 11, 2023. [FAQs](#) issued by the Departments of Labor, Health and Human Services, and the Treasury (Departments) provide that the outbreak period ends on July 10, 2023 (60 days after May 11, 2023).

On April 10, 2023, President Biden signed a bipartisan [resolution](#) ending the COVID-19 national emergency early. If the end of the outbreak period is based on the end to the COVID-19 national emergency, the outbreak period would end on June 9, 2023 (60 days after April 10, 2023). However, the Departments have informally indicated that the resolution does not affect the outbreak period’s end date, and that the end date of July 10, 2023, still applies. Formal guidance has not been issued and would be helpful in determining when the deadline extensions end.

Flyer for Employees

The Departments have provided a [Medicaid-CHIP SEP Options flyer](#) that employers can share with individuals who are enrolled in Medicaid or CHIP and may lose their coverage due the unwinding of continuous enrollment. The Departments are also encouraging employers to consider amending their plans to provide additional time for these individuals to exercise their special enrollment rights.

Section 125 Midyear Election Changes

Many employers sponsor cafeteria plans (or Section 125 plans) to allow employees to pay for their health coverage on a pre-tax basis. As a general rule, participant elections under a cafeteria plan must be made on a prospective basis and cannot be changed until the beginning of the next plan year. However, cafeteria plans may recognize certain midyear election change events to allow employees to make election changes during a plan year.

A cafeteria plan may be designed to permit midyear election changes that correspond with HIPAA’s special enrollment rules. This allows participants to pay for their health coverage on a pre-tax basis when they obtain coverage during a special enrollment period. If a cafeteria plan does not allow midyear election changes for HIPAA special enrollment events, eligible employees and dependents must still be allowed to enroll in health plan coverage and pay their premiums on an after-tax basis.

Marketplace Enrollment – Unwinding SEP

Individuals who lose Medicaid or CHIP coverage are eligible for a special enrollment period (SEP) for coverage offered through the federal health insurance [Marketplace](#) or their state’s Marketplace, as well as for individual health insurance coverage outside the Marketplaces, within 60 days before or 60 days after the date of the loss of coverage. In addition, there is a temporary SEP in federal Marketplace for qualified individuals and their families who lose Medicaid or CHIP coverage due to the unwinding of Medicaid’s continuous enrollment. This temporary SEP is called the “Unwinding SEP.” Marketplace-eligible consumers who submit a new application or update an existing application between March 31, 2023, and July 31, 2024, and attest to a last date of Medicaid or CHIP coverage within the same time period, are eligible for the [Unwinding SEP](#). Consumers who are eligible for the Unwinding SEP will have 60 days from the date they submit or update their application to select a Marketplace plan with coverage that starts the first day of the month after they select a plan.