

LEGAL UPDATE



Biden Administration Asks Employers to Extend Special Enrollment Period for Individuals Losing Medicaid Coverage

On July 20, 2023, the Departments of Labor, Health and Human Services and the Treasury (Departments) released a [letter](#) calling on employers who sponsor group health plans to extend their HIPAA special enrollment periods beyond 60 days for individuals who lose coverage under Medicaid or the Children's Health Insurance Program (CHIP).

In general, eligibility for Medicaid coverage must be renewed each year. However, during the COVID-19 pandemic, many states maintained continuous enrollment for individuals enrolled in Medicaid, despite any changes in eligibility status. Medicaid's continuous enrollment requirement ended on March 31, 2023. State Medicaid agencies are resuming regular eligibility and enrollment operations, which includes terminating Medicaid and CHIP coverage for individuals who are no longer eligible.

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 CHIP coverage. Employees must have **at least 60 days** after a loss of eligibility for Medicaid or CHIP coverage to request special enrollment.

According to the Departments, many individuals will need more than the typical 60-day window after losing Medicaid or CHIP coverage to apply for other coverage. For example, employees may not realize that they lost their Medicaid or CHIP coverage until they access care because they may have missed notices from their state agency and then missed the opportunity to enroll in other coverage.

To address this, a temporary special enrollment period was created in the federal [Marketplace](#) for individuals who lose Medicaid and CHIP coverage and apply for coverage by July 31, 2024. The Departments are encouraging employers to match these steps and extend their special enrollment periods for individuals losing Medicaid or CHIP coverage.

Action Steps

The Departments' request does not require employers to extend their HIPAA special enrollment windows beyond 60 days. However, employers may choose to do so to help ensure that employees who lose Medicaid or CHIP coverage have access to health coverage. Employers who extend their special enrollment periods should update their plan documents for the change and communicate the extended special enrollment period to employees through an updated summary plan description (SPD) or summary of material modifications (SMM). Employers with fully insured health plans should also confirm that the extended special enrollment window is consistent with any enrollment requirements imposed by their carriers.

RESOURCES

Federal agencies have provided resources to help employers navigate the end of Medicaid's continuous enrollment and inform employees about their coverage options. These resources include:

- A [fact sheet](#) for employers with employees who lose Medicaid or CHIP coverage. This fact sheet outlines steps that employers can take to help affected employees; and
- A [flyer](#) employers can share with employees who are enrolled in Medicaid or CHIP and may lose their coverage.