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CMS Encourages Group Health Plans to Extend the Special Enrollment Period during Medicaid Unwinding

On July 20, 2023, the Centers for Medicare & Medicaid Services (CMS) issued a [letter](#) to employers, plan sponsors, and insurance issuers encouraging them to extend the special enrollment period for a loss of Medicaid or CHIP coverage under their group health plans beyond the required minimum 60-day special enrollment period. This is consistent with the approach taken by the federal public health insurance marketplace ("[HealthCare.gov](#)") allowing qualified individuals losing Medicaid and CHIP coverage to enroll during the annual Medicaid redetermination process.

This Alert summarizes the Medicaid continuous enrollment provision, its recent expiration and the effects of such expiration on Medicaid recipients, CMS's request to employers and other plan sponsors, and our recommendations going forward.

Background

Medicaid eligibility is an annual renewal process. As a condition to receive increased federal funding during the COVID-19 public health emergency, state Medicaid programs generally could not terminate coverage for participants who enrolled on or after March 18, 2020 (referred to as the "Medicaid continuous enrollment provision").¹ This continuous enrollment requirement also applied to CHIP programs in a number of states.

The purpose of the Medicaid continuous enrollment provision was to minimize coverage loss during the COVID-19 pandemic. As a result, Medicaid enrollment grew since March 18, 2020.

¹ See our [Guide for the End of the COVID-19 Public Health Emergency and Outbreak Periods](#) for additional information on the end of the Medicaid continuous enrollment provision.

Highlights

Expiration of Medicaid continuous enrollment

- The Medicaid continuous enrollment provision expired on March 31, 2023.
- This will cause many individuals to lose Medicaid or CHIP coverage, which is a special enrollment right.
- Some employees may not realize they or their dependent(s) lost Medicaid or CHIP coverage until after the special enrollment period ends.

CMS's request to employers

No action is required. However, CMS issued a [letter](#) encouraging employers/plan sponsors to:

- Amend their group health plans to extend the special enrollment period for those losing Medicaid or CHIP coverage and assist with enrollment;
- Inform employees of the Medicaid and CHIP annual redetermination process; and
- Remind ineligible employees of Marketplace coverage options.

Employers wanting to extend special enrollment should get approval from their insurance carrier(s) (including stop-loss), if applicable.

Unwinding of the Medicaid continuous enrollment provision

The Medicaid continuous enrollment provision expired on March 31, 2023, under the terms of the [Consolidated Appropriations Act, 2023](#). This unwinding allows states accepting federal funding to resume eligibility testing and drop coverage for those who are no longer eligible for Medicaid or CHIP coverage. Although estimates vary, around 15 to 18 million individuals are expected to lose coverage, including roughly one-third who are eligible for employer-sponsored medical coverage.²

The loss of Medicaid/CHIP eligibility is a HIPAA special enrollment right and was subject to the Outbreak Period relief that officially ended on July 10, 2023.³ However, CMS acknowledged many individuals might need more than the minimum 60-day special enrollment period following the loss of Medicaid or CHIP coverage (including any additional relief due to the Outbreak Period) to enroll in other coverage. In its [letter](#), CMS indicates that some individuals may not realize they have lost Medicaid or CHIP coverage until they attempt to access benefits. In many instances, this may be after the individual missed an opportunity to enroll in other coverage.

On January 27, 2023, CMS released [Frequently Asked Questions \(FAQs\)](#) where it announced a temporary special enrollment period on HealthCare.gov for individuals losing Medicaid or CHIP coverage due to the unwinding of the Medicaid continuous enrollment provision. Individuals who are eligible for Healthcare.gov coverage and who lose Medicaid or CHIP coverage anytime between **March 31, 2023 and July 31, 2024** are permitted to enroll outside of the annual open enrollment period, referred to as the unwinding special enrollment period (the “Unwinding SEP”).⁴ A state-run marketplace can choose to adopt its own special enrollment period.

CMS’s request and our recommendations

While CMS encourages employers and plan sponsors to amend their group health plans to extend the special enrollment period for individuals losing Medicaid or CHIP coverage, consistent with the approach taken by Healthcare.gov, employers/plan sponsors do not have to take this step.

Federal agencies noted in recent FAQs that there is nothing in the Internal Revenue Code (Code) or ERISA that would prevent a group health plan from allowing a special enrollment period beyond the minimum 60-day statutory requirement.⁵ Therefore, in the interest of ensuring employees have access to coverage for themselves and their families, CMS requests employers/plan sponsors to allow those who lose Medicaid or CHIP coverage to enroll in employment-based coverage anytime during the annual redetermination process through **May 31, 2024**. An employer could choose to expand the number of fixed days to allow this special enrollment rather than leaving it open-ended for anytime during the redetermination process period.

Note: An election change to enroll in employment-based coverage due to a loss of Medicaid or CHIP coverage should be prospective, generally no later than the first day of the following month or as soon as administratively practical thereafter.

² [Medicaid and CHIP Eligibility, Enrollment, and Renewal Policies as States Prepare for the Unwinding of the Pandemic-Era Continuous Enrollment Provision](#), Kaiser Family Foundation, April 4, 2023; [Unwinding the Medicaid Continuous Enrollment Provision: Projected Enrollment Effects and Policy Approaches](#), Assistant Secretary for Planning and Evaluation, August 19, 2022.

³ See our [Guide for the End of the COVID-19 Public Health Emergency and Outbreak Periods](#) for more information.

⁴ Q1 of the [Temporary Special Enrollment Period FAQs](#) outlines the announcement of the Unwinding SEP.

⁵ Q6 of the [Temporary Special Enrollment Period FAQs](#) outlines the special enrollment period following the expiration of the Medicaid continuous enrollment provision. In that FAQ, the IRS oddly omits discussion of its own rule that a pre-tax election change must reasonably correspond to a permitted election change event. This acts as a sort of limiting factor on how long a plan can allow changes after an event occurs. We usually recommend not allowing more than 90 days for pre-tax election changes, but that does not seem applicable here given the specific request of employers/plan sponsors to provide generous additional time for enrollments due to a loss of Medicaid or CHIP.

Given CMS has encouraged employers to make this change, employers who choose not to extend the special enrollment period for individuals losing Medicaid or CHIP coverage may have to defend their decision. Employers who do choose to extend their special enrollment period for individuals losing Medicaid or CHIP coverage should work with their fully insured or stop loss carrier when making these changes and should amend their plan(s).

As outlined in its [letter](#), CMS also encourages employers and plan sponsors to:

- Inform employees of the upcoming Medicaid and CHIP annual redetermination process and encourage employees to ensure their contact information is current with their state agency (otherwise, they may miss notices);⁶
- Ensure that assistance is available for eligible employees who need help enrolling in employment-based coverage midyear as a result of their loss of Medicaid or CHIP coverage; and
- Remind employees that they may be eligible for free or low-cost coverage through the Marketplace if not eligible for affordable, minimum value employer-sponsored coverage following their loss of Medicaid or CHIP coverage.

Additional resources

- [CMS fact sheet for employees addressing Medicaid/CHIP unwinding, losses of coverage, and coverage options](#)
- [CMS Medicaid/CHIP unwinding communications toolkit](#)

⁶ Employers can direct employees to [Medicaid.gov/renewals](https://www.Medicaid.gov/renewals) for more information.

About the author



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