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On July 20, 2023, the Centers for Medicare & Medicaid Services (“CMS”) and the Departments of Labor (“DOL”) and the Treasury (collectively, “the Departments”) issued a letter to employers, plan sponsors and carriers encouraging that they allow additional time to enroll in employer-sponsored health plans for individuals who have lost Medicaid and Children’s Health Insurance Program (“CHIP”) coverage due to Medicaid resuming normal eligibility and enrollment procedures and operations.

Background

Typically, eligibility for Medicaid coverage must be renewed annually; however, during the COVID-19 Public Health Emergency, the eligibility rules for renewal were paused to minimize coverage loss for members. This termination pause expired on March 31, 2023, under the terms of the Consolidated Appropriations Act of 2023.

Medicaid agencies nationwide are now in the process of resuming normal eligibility and enrollment procedures and operations, which includes reviewing coverage eligibility for all individuals under Medicaid/CHIP. With this resumption of the “pre-COVID” process, many individuals are no longer eligible and will lose Medicaid or CHIP coverage. The Departments note that:

Given the exceptional circumstances surrounding the resumption of Medicaid and CHIP renewals for the first time in three years, many individuals will need more than the typical 60-day window after loss of Medicaid or CHIP coverage to apply for and enroll in other coverage. For example, employees may not realize that they lost their Medicaid or CHIP coverage until they access care, since they may have missed notices from their state agency, and then missed their opportunity to enroll in other coverage.

To offset this loss of coverage, CMS has implemented a temporary special enrollment period for individuals who lose Medicaid or CHIP coverage between March 31, 2023 and July 31, 2024 to enroll in individual coverage on Healthcare.gov. This special enrollment period only applies to enrollments on Healthcare.gov and does not apply to group health plans.

DOL Advisement to Employer Sponsored Plans

Normally, under the HIPAA Special Enrollment rules, participants have 60 days to notify their employer-sponsored group health plan of a loss of eligibility for Medicaid/CHIP.

However, as a result of this upcoming change, while not requiring it, the Departments are encouraging employer plan sponsors to also extend the additional time to participants and beneficiaries that have lost eligibility for Medicaid/CHIP to allow them to enroll in employer-sponsored health plans. Specifically, the Departments suggest that individuals who lose Medicaid and CHIP eligibility be able to enroll anytime during this annual redetermination process (March 31, 2023 – July 31, 2024) and highlight that there is no legal or regulatory barrier that would prevent a group health plan from allowing a special enrollment period beyond the minimum 60 days required by statute.

The Departments are also encouraging employers and other plan sponsors to:

- Inform employees about Medicaid and CHIP renewal and remind employees to update their information with their state agency. The letter includes links to additional information, including a Fact Sheet, <https://www.medicaid.gov/resources-for-states/downloads/employee-coverage-loss-factsheet.pdf>.
- Ensure HR and other staff members involved in health plan administration are prepared to assist employees.
- Remind employees that they may be eligible for health insurance through the Marketplace if they are not otherwise eligible for the employer-sponsored group health plan.

Employer Action

While encouraged by the Departments to do so, employers are not required to extend additional enrollment time for participants and beneficiaries who lose coverage under Medicaid and CHIP.

Employers considering adopting this extension should:

- Evaluate the potential cost impact on the plan.
- Work with their carriers to ensure that this additional time will be honored by the carriers (including stop loss) and the underlying plan. As this is not a requirement, carrier approval must be sought.
- Amend their plan documents to reflect this extension under HIPAA's special enrollment period rules, and communicate the change accordingly.

Employers that do not adopt this extension may consider providing additional information on the availability of health insurance coverage in the Marketplace if employees are not eligible for employer-sponsored coverage.

