



Employers Encouraged to Expand Access to Group Health Plans

July 31, 2023

In a letter dated July 20, 2023, from the Center for Medicare and Medicaid Services (CMS) to employers, plan sponsors and issuers, the Biden-Harris Administration (the Administration) is encouraging those entities to expand mid-year enrollment opportunities in group health plans for employees and their dependents who are losing coverage under Medicaid. In addition, the Administration is encouraging employers to provide information to employees about Medicaid and the Children's Health Insurance Program (CHIP) and to encourage individuals to update their contact information with applicable state agencies. It is important to note that none of these actions is mandatory on the part of an employer. However, employers wishing to aid employees and their dependents who may have recently lost eligibility for Medicaid or CHIP may wish to take action in response to the Administration's plea.

As background, the Administration claims the U.S. is in the single largest health coverage transition event since the implementation of the Patient Protection and Affordable Care Act (ACA). Because of the COVID-19 public health emergency, most Medicaid coverage verifications and terminations were paused to minimize coverage loss during the pandemic. This continuous enrollment condition expired on March 31, 2023, under the terms of the Consolidated Appropriations Act, 2023. Accordingly, state Medicaid agencies are currently in the process of resuming regular eligibility and enrollment operations, which includes renewing coverage for eligible individuals enrolled in Medicaid and CHIP and terminating coverage for individuals who are no longer eligible.

According to a Department of Health & Human Services [report](#) cited by the Administration in its announcement, approximately 3.8 million of the individuals who lose Medicaid eligibility would otherwise be eligible for employment-based coverage. The Administration claims that the exceptional circumstances surrounding the resumption of Medicaid and CHIP renewals for the first time in three years will mean 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 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 help address this concern, the Centers for Medicare & Medicaid Services (CMS) has announced a [temporary special enrollment period](#) on HealthCare.gov, through which Marketplace-eligible consumers who lose Medicaid or CHIP coverage and come to HealthCare.gov any time between March 31, 2023, and July 31, 2024, will be able to enroll. CMS also previously announced a [Medicare Special Enrollment Period \(SEP\)](#) to help individuals who did not sign up for Medicare on time and lose Medicaid coverage. The Administration is encouraging employers and other plan sponsors to match the steps taken by HealthCare.gov. Any changes to expand the current special enrollment period for individuals losing Medicaid or CHIP coverage beyond 60 days would require a plan amendment. Although there is no legal barrier to expanding the special enrollment deadlines, such amendments will require approval of the insurance carrier, including any stop loss carrier for self-insured plans.

Employers wishing to expand coverage or take other actions to promote continuity of coverage for employees and their dependents losing Medicaid or CHIP coverage should consider the following actions recommended by the Administration.

- Provide information about the Medicaid and CHIP renewals and encourage employees who are covered under Medicaid or CHIP to update their contact information with their state agency. Employers can:
 - Utilize CMS resources to help with messaging available at www.medicaid.gov/unwinding
 - Review the employer fact sheet available at www.medicaid.gov/resources-for-states/downloads/employee-coverage-loss-factsheet.pdf
 - Direct employees to www.medicaid.gov/renewals for more information
- Ensure that eligible employees can easily enroll in their employment-based plan after losing Medicaid or CHIP coverage, including by ensuring human resources staff and others involved in health plan administration are prepared to assist employees with transitioning to employment-based coverage outside of open enrollment.
- Remind employees that they may be eligible for free or low-cost health coverage through the Marketplace if they are not eligible for employer-sponsored or other employment-based coverage that is affordable and meets minimum standards. Employees can visit <https://www.healthcare.gov/medicaid-to-marketplace> for more information. Of course, applicable large employers under the ACA will want to review their coverage offers to employees to evaluate any penalty exposure due to subsidized marketplace enrollment.

The letter from CMS outlines voluntary actions that employers may take and does not impose any new legal requirements to expand mid-year enrollment opportunities relating to the Medicaid and CHIP transition back to normal enrollment eligibility requirements. However, employers may want to discuss these options with their plan advisors and adopt some or all of the Administration's recommendations to assist employees and their dependents impacted by the transition.



This information has been prepared for UBA by Fisher & Phillips LLP. It is general information and provided for educational purposes only. It is not intended to provide legal advice. You should not act on this information without consulting legal counsel or other knowledgeable advisors.