

# Compliance Bulletin

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## 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 coverage.

### Medicaid Continuous Enrollment

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 ends on March 31, 2023. While some individuals who lose Medicaid eligibility will enroll in subsidized coverage through an Exchange, federal regulators estimate that **5 million people will seek coverage under employer-sponsored health plans**.

### HIPAA Special Enrollment

The Health Insurance Portability and Accountability Act (HIPAA) requires group health plans to provide special enrollment opportunities in certain situations, including when employees or their dependents lose eligibility for Medicaid coverage. Employees normally have 60 days to request special enrollment, but this deadline is extended during the COVID-19 outbreak period, which is scheduled to end on July 10, 2023.

### Action Steps

Employers should allow employees (and dependents) who lose Medicaid 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 should note that HIPAA's 60-day deadline for requesting special enrollment is extended during the COVID-19 outbreak period.

### 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 Children's Health Insurance Program (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; and
- 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. According to CMS, states could begin their 12-month unwinding period and initiate the first Medicaid renewals that may result in disenrollment as early as Feb. 1, 2023.

## 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 outbreak period began in March 2020 and continues until 60 days after the end of the COVID-19 national emergency. On Jan. 30, 2023, the Biden administration announced its plan to end the COVID-19 national emergency on May 11, 2023. Under this timeline, the outbreak period will end on **July 10, 2023**.

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, on July 10, 2023, 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. For example, if an individual loses Medicaid eligibility on April 1, 2023, the outbreak period is disregarded, and the 60-day period to request special enrollment would begin on July 10, 2023.

## 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.

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