

COMMONWEALTH OF MASSACHUSETTS
Office of Consumer Affairs and Business Regulation
DIVISION OF INSURANCE

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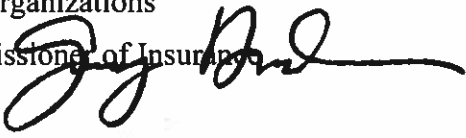
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LIEUTENANT GOVERNOR

BULLETIN 2023-09

To: Commercial Health Insurers, Blue Cross and Blue Shield of Massachusetts, Inc., and Health Maintenance Organizations

From: Gary D. Anderson, Commissioner of Insurance 

Date: April 10, 2023

Re: Special Open Enrollment Related to the End of Federal Medicaid Maintenance of Effort Protections and the Federal Public Health Emergency

The Massachusetts Division of Insurance (the “Division”) issues this Bulletin 2023-09: Special Enrollment Period Related to the End of Federal Medicaid Maintenance of Effort Protections and the Federal Public Health Emergency (“PHE”) to Commercial Health Insurers, Blue Cross and Blue Shield of Massachusetts, Inc., and Health Maintenance Organizations (“Carriers”). This Bulletin is effective immediately for eligible individuals in the Commonwealth whose health coverage may be impacted by the end of the federal COVID-19 Public Health Emergency.

The Division has collaborated with the Commonwealth Health Insurance Connector Authority (the “Connector”) in developing the special enrollment period requirements within this Bulletin. H.R. 2617, the Consolidated Appropriations Act, 2023, Enacted as Public Law 117-328 on December 29, 2022, ends the Medicaid Maintenance of Effort (“MOE”) protections imposed by the Families First Coronavirus Response Act, Pub. L. No. 116-127 (2020) as of March 31, 2023. Those MOE protections had allowed many individuals and families receiving MassHealth (Medicaid) in Massachusetts to remain enrolled in those MassHealth programs and plans for the duration of the federal COVID-19 Public Health Emergency (PHE). As of April 1, 2023, MassHealth members will begin to transition from their MassHealth protected benefit, and many will become eligible for other coverage.

Additionally, on January 30, 2023, the Biden Administration announced its intent to end both the PHE and the National Emergency on May 11, 2023. As a result, COBRA flexibilities issued by the Department of Labor, in conjunction with Health and Human Services, the Treasury Department, and the Internal Revenue Service (See 85 FR 26351, 26352), and later modified by statute (See American Rescue Plan Act of 2021, Pub. L. 117-2, H.R. 1319, 117th Cong., §§6432 & 9501), will end 60 days after May 11, 2023. Loss of these COBRA flexibilities will similarly contribute to individuals experiencing loss of health insurance coverage and churn in the marketplace for individual and group health insurance.

In the interest of facilitating a smooth transition back to non-emergency, “normal” commercial health insurance dynamics after three years of the COVID-19 pandemic, Carriers are expected to take the following actions consistent with those being taken by the Connector:

- (1) for any individual who experiences a loss of COBRA coverage, including loss due to voluntary termination or termination for non-payment, Carriers are to consider this to be an event that triggers special open enrollment rights, and Carriers shall permit individuals up to 60 days prior and after the date of their loss of COBRA to request the special enrollment period;
- (2) for any individual who, when seeking comprehensive health insurance, was misled into purchasing a product other than comprehensive health insurance, Carriers are to consider this to be an event that triggers special open enrollment rights. The triggering event will apply to any individual enrolled in such non-comprehensive product during the year of 2023, up through November 23, 2023; and
- (3) Carriers are to extend all special enrollment periods granted as the result of any valid triggering event to November 23, 2023 for coverage becoming effective in 2023.

Carriers are to take all necessary steps to facilitate the implementation of special open enrollment rights as noted through November 23, 2023. The Connector has informed the Division that the Connector's Massachusetts special open enrollment period for eligible individuals will also last through November 23, 2023.

If you have any questions about this Bulletin, please contact Kevin Beagan, Deputy Commissioner, Health Care Access Bureau, at (617) 521-7323 or at Kevin.beagan@mass.gov.