

Administrative Information Bulletin 02-23

Guidance Regarding Special Enrollment Periods Due to the End of the Medicaid Maintenance of Effort (MOE) and the Federal COVID-19 Public Health Emergency (PHE) and National Emergency

March 17, 2023

Pursuant to federal regulations at 45 C.F.R. § 155.100 et seq. and state authority at M.G.L. c.176Q, s.2, the Commonwealth Health Insurance Connector Authority (the “Health Connector”) is issuing this Administrative Information Bulletin (“Bulletin”) to provide guidance in connection with the closed enrollment period for enrolling in non-group Health Connector plans. This Bulletin provides (a) administrative information regarding an additional circumstance that would allow a person to enroll in a Health Connector plan during closed enrollment, which for 2023 is between January 23, 2023 and December 31, 2023, and (b) clarification on the parameters of this special enrollment period. Once open enrollment closes, a person may only enroll in or make changes to their health insurance plan if they experience a triggering event. See 45 C.F.R. § 155.410. Triggering events include, but are not limited to, the following: birth or adoption of a child, marriage, loss of insurance through a job, recently moved to Massachusetts, certain changes in income, or gained an eligible immigration status. See 45 C.F.R. § 155.420; 956 CMR 12.10(5).

The Consolidated Appropriations Act, 2023, Pub. L. 117–328 (2022) was enacted into law on December 29, 2022, and 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). Therefore, on April 1, 2023, MassHealth members will begin to transition from their MassHealth protected benefit and many will become eligible for other coverage through the Health Connector. As these members transition to their next coverage, it is possible they may be vulnerable to the misleading marketing of products that are not comprehensive health insurance, including by fraudulent actors who may claim to represent the Health Connector. The Health Connector is aware of several news stories of high-profile investigations into such entities, and of further anecdotal accounts reported by individuals who report these actions to the Health Connector. The Health Connector is aware of and concerned about the possibility that individuals will enroll in coverage that is both unaffordable and which leaves them without comprehensive coverage during this time of significant movement in the market. Additionally, on January 30, 2023, the Biden Administration announced its intent to end both the PHE and 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 a number of individuals experiencing loss of health insurance coverage and will contribute to churn in the marketplace for individual and group health insurance.

Therefore, in the interest of facilitating the smooth transition back to normal commercial health insurance dynamics after three years of the COVID-19 pandemic, the Health Connector is taking the following actions, starting April 1, 2023:

- (1) the Health Connector is designating a temporary triggering event for any individual who experiences a loss of COBRA coverage, including loss due to voluntary termination or termination for non-payment. Individuals will have 60 days from the date of their loss of COBRA to qualify for this triggering event and can request the special enrollment period up to 60 days prior to their loss of COBRA;
- (2) The Health Connector is designating a temporary triggering event for any individual who, when seeking comprehensive health insurance, was misled into purchasing a product other than comprehensive health insurance, including through fraud, intentional misrepresentation, or other similar scam. 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) the Health Connector will extend all special enrollment periods granted as the result of any valid triggering event to November 23, 2023.

The Health Connector is designating this temporary triggering event and special enrollment period extension in accordance with its authority pursuant to federal regulations at 45 C.F.R. § 155.420(d).

In order to take advantage of the triggering event for individuals losing COBRA coverage and the triggering event for individuals misled into enrolling into non-comprehensive health insurance, affected individuals should contact Health Connector Customer Service (1-877-623-6765, TTY: 1-877-623-7773) and state a request for a special enrollment period on the grounds that they lost COBRA coverage within the past 60 days, or will lose it in the next 60 days. Individuals with valid triggering events will automatically be granted the special enrollment period extension to November 23, 2023.

The Health Connector reserves the right to request additional documentation to verify eligibility for any special enrollment period.

This Bulletin takes effect immediately.