

Special
points of interest:

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MEDICARE DRUG SUBSIDY APPLICATION DEADLINE EXTENDED UNTIL OCTOBER 31, 2005

The following is an excerpt from Spencer Research Reports:

The Centers for Medicare and Medicaid Services (CMS) has extended from Sept. 30 until Oct. 31, 2005, the deadline for retiree medical plan sponsors to apply for the Medicare prescription drug subsidy. Plan sponsors do not need to apply for the deadline extension. The Medicare Prescription Drug, Improvement, and Modernization Act provides for a subsidy for sponsors of retiree medical plans that provide prescription drug benefits that are comparable to the new Medicare drug benefit beginning in 2006. Retiree medical plan sponsors applying for the subsidy for plan years ending in 2006 must submit to the CMS the sponsor's completed application and a list of their retirees by Oct. 31, 2005.

In a September 2 notice posted on the CMS's Retiree Drug Subsidy (RDS) Web site, the agency explains that as of Sept. 1, 2005, the RDS Web site will begin issuing conditional approvals of retiree medical plan sponsors' applications for the drug subsidy. Applications for the subsidy must include a list of retirees, and that list may be submitted via the RDS Web site beginning Sept. 26, 2005.

Although the filing deadline has been extended by one month, the CMS urges retiree plan sponsors to submit their applications and retiree lists as soon as possible and communicate to their retirees how their retiree medical prescription drug coverage compares with the Medicare Part D prescription drug benefit. Plan sponsors may use the retiree communications materials on the CMS's Employer/Union Partnership Web page at <http://www.cms.hhs.gov/medicarerereform/pdbma/employer.asp>. Finally, plan sponsors may access applications, instructions, and other information regarding the retiree drug subsidy on the RDS Web site at <http://rds.cms.hhs.gov>.

HURRICANE KATRINA & PRIVACY DISCLOSURES

The following is an excerpt from EBIA Weekly Newsletters:

HHS Hurricane Katrina Bulletin: HIPAA Privacy and Disclosures in Emergency Situations (Sept. 2, 2005);

HHS Hurricane Katrina Bulletin #2: HIPAA Privacy Rule Compliance Guidance and Enforcement Statement for Activities in Response to Hurricane Katrina (Sept. 9, 2005)]

For a copy: <http://www.hhs.gov/ocr/hipaa/EnforcementStatement.pdf>

outlined how the HIPAA privacy rule allows a health plan or a health care provider to share protected health information (PHI) for disaster relief efforts and to assist patients in receiving care. For example, health plans may disclose PHI to health care providers at shelters to facilitate treatment of evacuees. In the second bulletin, HHS emphasized that business associates (BAs) may make the same disclosures that a covered entity

In the first of these bulletins, HHS

could make, but only if there is a contract in place between the covered entity and the BA permitting those disclosures. In addition, if a BA uses an agent to assist in making disclosures of PHI, the BA must ensure that a contract is in place by which the agent agrees to the same privacy restrictions and conditions that apply to the BA and that permits the agent to make the disclosures in question. The second bulletin also provides information on HHS's enforcement approach when dealing with action taken by covered entities in response to Hurricane Katrina. When considering a complaint arising from disclosures of PHI that would have been permissible had a BA contract been in place, HHS will not take enforcement action if a covered entity and its BA were unable to formalize the necessary contract because of the urgency of the circumstances arising from the hurricane, so long as the parties execute the required contract as soon as practicable.

The flexibility presented in the second bulletin will be appreciated by health plans and BAs serving those affected by Katrina. The second bulletin also is an important reminder of the need for BA contracts (and contracts between BAs and their agents) that accurately reflect the intent of both parties. In particular, because a BA's obligations are governed largely by the terms of the BA contract, the contract should accurately define the scope of disclosures that the BA is permitted to make and it should prohibit additional disclosures.

DOL & IRS EXTEND BENEFIT TIME FRAMES FOR INDIVIDUALS AFFECTED BY HURRICANE KATRINA

The following is an excerpt from an SPBA ALERT:

Group Health Plans need to change their benefit procedures if they have one plan participant who is impacted by Katrina.

The Department of Labor and the IRS have extended the time frames for complying with HIPAA, COBRA, claim regulations, and 5500 Form filings to participants, beneficiaries and plan sponsors in the disaster areas (the counties and parishes in Louisiana, Mississippi or Alabama that have been or are later designated as disaster areas eligible for Individual Assistance by the Federal Emergency Management Agency (FEMA) because of the devastation caused by Hurricane Katrina). The time frames for numerous employee benefit rules are tolled for the period between August 29, 2005 and January 3, 2006. The purpose of this agency action is to minimize the possibility of individuals losing benefits because of a failure to comply with certain pre-established time frames, as well as to

provide relief to employers who may be unable to meet timely notice deadlines.

Please note that this DOL and IRS notice applies specifically to Hurricane Katrina.

Below we summarize the notice and reproduce the examples from the Federal Register Notice. Please read the examples carefully.

To view the DOL/IRS notice, go to: www.dol.gov/ebsa/ It is at the top of the web page under New and Noteworthy. Or visit – www.fema.gov/news/disasters.fema Click on the designated counties icon for the applicable states (Louisiana, Alabama, Mississippi, Florida) for Hurricane Katrina. Remember you are looking for the areas eligible for Individual Assistance, and NOT public assistance. The areas are listed by name and not by zip code.

For purposes of this notice, a participant, beneficiary, qualified beneficiary or claimant directly affected by Hurricane Katrina means an individual who resided, lived or worked in one of the disaster areas at the time of the hurricane, or whose employee benefit plan providing the individual's coverage was directly affected. An employee benefit plan is directly affected by Hurricane Katrina if the principal place of business of the employer that maintains the plan (in the case of a single-employer plan); the principal place of business of employers that employ more than 50 percent of the active participants covered by the plan (in the case of a plan covering employees of more than one employer); the office of the plan or the plan administrator; or the office of the primary recordkeeper serving the plan, was located in one of the disaster areas.

HIPAA Break in Coverage - When determining whether a 63-day break in coverage has occurred, a group health plan must disregard the period from August 29, 2005 through January 3, 2006. What DOL and IRS mean by disregard is that the time period counts as zero days.

30-Day Period to Secure Creditable Coverage – Under HIPAA, a newborn, adopted child, or child placed for adoption may not be subject to a preexisting condition exclusion period if covered under creditable coverage within 30 days of birth, adoption, or placement for adoption. When determining whether a 30-day period has elapsed, a group health plan must disregard the period from August 29, 2005 through January 3, 2006.

30-Day Period to Request Special Enrollment – HIPAA requires that employees must request enrollment within 30 days of a special enrollment trigger to be eligible for special enrollment. When determining whether a 30-day period has elapsed, a group health plan must disregard the period from August 29, 2005 through January 3, 2006.

Automatic Certificates of Creditable Coverage -

HIPAA requires that group health plans subject to COBRA must provide automatic certificates no later than the time for providing a COBRA election notice. Plans not subject to COBRA are required to provide the automatic certificates within a reasonable time after coverage ceases. The time period from August 29, 2005 through January 3, 2006 will be disregarded when determining the deadline date for issuing an automatic certificate of creditable coverage.

COBRA Election Notice – The time period from August 29, 2005 through January 3, 2006 will be disregarded when determining the deadline date for providing a COBRA election notice.

COBRA 60-Day Election Period – When determining whether a 60-day election period has elapsed, a group health plan must disregard the period from August 29, 2005 through January 3, 2006.

COBRA Premium Payments - Under COBRA, plans are required to allow payers to pay premiums in monthly installments and plans cannot require payment of premiums before 45 days after the day of the initial COBRA election. A premium is considered timely if it is made not later than 30 days after the first day in the period for which payment is being made. When determining the due date for making COBRA premium payments, a group health plan must disregard the period from August 29, 2005 through January 3, 2006.

Notice to Plan of a Qualifying Event - The time period from August 29, 2005 through January 3, 2006 must be disregarded when determining the deadline date for individuals to notify the plan of a qualifying event or a determination of disability under ERISA.

Plan's Timely Claim Filing Limits - The time period from August 29, 2005 through January 3, 2006 must be disregarded when determining the deadline date for individuals to file a benefit claim under the plan's claim procedure guidelines.

Plan's Appeal Time Frame - The time period from August 29, 2005 through January 3, 2006 must be disregarded when determining the deadline date for individuals to file an adverse benefit determination under the plan's claim procedures.

The agency release provides a number of examples to demonstrate the application of the relief. These are provided below. The individuals in the examples below are all directly affected by the Hurricane Katrina.

Example 1. Individual A works for Employer X and participates in X's group health plan. On August 29, 2005, the day of Hurricane Katrina, X's business is destroyed

and the plan ceases to function. A has no other creditable coverage. Conclusion – When determining A's 63-day break in coverage period and special enrollment period, the period from August 29, 2005 through January 3, 2006 is disregarded. Accordingly, A would not incur a 63-day break in coverage until 63 days after January 3 (which is March 7, 2006) and the last day of any special enrollment period is 30 days after January 3 (which is February 2, 2006).

Example 2. Same facts as Example 1 and another employer that is part of the same controlled group as X continues to operate and sponsor a group health plan. A is provided a COBRA election notice on October 2, 2005. Conclusion – In this Example 2, the period from October 2, 2005 through January 3, 2006 is disregarded for purposes of determining A's COBRA election period. The last day of A's COBRA election period is 60 days after January 3, 2006 (which is March 4, 2006).

Example 3 – Individual B participated in a group health plan and lost eligibility for coverage on August 14, 2005. Conclusion – In this Example 3, B had been without coverage for 14 days before the day of the hurricane. When determining B's 63-day break in coverage period and special enrollment period, the period from August 29, 2005 through January 3, 2006 is disregarded. The last day of B's 63-day break in coverage period is 49 days after January 3 (which is February 21, 2006) and the last day of any special enrollment period is 16 days after January 3, 2006 (which is January 19, 2006).

Example 4 – Before the hurricane, Individual C was receiving COBRA continuation coverage under a group health plan. More than 45 days had passed since C had elected COBRA. Monthly premium payments were due by the first of the month. The plan does not permit qualified beneficiaries longer than the statutory 30-day grace period for making premium payments. C made a timely August payment, but not a September payment, before the hurricane. Conclusion – In this Example 4, the period from August 29, 2005 through January 3, 2006 is disregarded for purposes of making monthly COBRA premium installment payments. Premium payments made by 30 days after January 3, 2006 (which is February 2, 2006) for September, October, November, December and January are timely.

Example 5. Same facts as Example 4. By February 2, 2006, a payment equal to two months' premium has been made for C. Conclusion – C is entitled to COBRA continuation coverage for September and October 2005.

Example 6 – Individual D is a participant in a group health plan. On October 1, 2004, D received medical treatment for a condition covered under the plan, but a claim relating to the medical treatment was not yet sub-

mitted. Under the plan, claims must be submitted within 365 days of the participant's receipt of the medical treatment. Conclusion – For purposes of determining the 365-day period applicable to D's claim, the period from August 29, 2005 through January 3, 2006 is disregarded. Therefore, D's last day to submit a claim is 34 days after January 3, 2006, which is February 6, 2006.

Example 7 – Individual E received a notification of an adverse benefit determination from his disability plan on August 10, 2005. The notification advised E that there are 180 days within which to file an appeal. Conclusion – When determining the 180-day period within which P's appeals must be filed, the period from August 29, 2005 through January 3, 2006 is disregarded. Therefore, E's last day to submit an appeal is 162 days after January 3, which is June 14, 2006.

5500 Form Relief – 5500 Forms required to be filed between August 29, 2005 and January 3, 2006 are granted an extension until January 3, 2006. The extension applies to plan administrators, employers and other entities located in the areas directly affected, as identified by the Federal Emergency Management Agency. The extension also applies to firms located outside the affected areas who are unable to obtain the necessary information from service providers, banks or insurance companies whose operations were directly affected by the hurricane. Plan filers entitled to an extension of relief should check Part 1, Box D on the Form 5500 and attach a statement to the form.