



Date: November 14, 2024

From: Ellen Montz, Deputy Administrator and Director, Center for Consumer Information & Insurance Oversight

Title: Insurance Standards Bulletin Series—INFORMATION

Subject: **Guidance and Relief under the Public Health Service Act for Non-Federal Governmental Plans and Health Insurance Issuers Offering Health Insurance Coverage Impacted by Hurricane Helene, Tropical Storm Helene, and Hurricane Milton**

Markets: Group and individual markets; non-federal governmental plans and health insurance issuers

Purpose

This Bulletin provides guidance and relief under Titles XXII and XXVII of the Public Health Service Act (PHS Act) related to the major disasters declared by President Biden under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act¹ with respect to Hurricane Helene (including Tropical Storm Helene²) and Hurricane Milton³ (referred to collectively in this Bulletin as Covered Disasters). The guidance applies to non-federal governmental plans and health insurance issuers offering group or individual health insurance coverage impacted by the Covered Disasters.

Background

The Department of Labor, the Department of the Treasury, and the Internal Revenue Service released a joint notice in the Federal Register to announce an extension of a number of deadlines so that plan participants, beneficiaries, employers and other plan sponsors affected by the Covered Disasters have additional time to make critical health coverage and other decisions

¹ 42 U.S.C. § 5121, *et seq.*

² To include Virginia Tropical Storm Helene (DR 4831-VA), Florida Hurricane Helene (DR 4828-FL), South Carolina Hurricane Helene (DR 4829-SC), North Carolina Tropical Storm Helene (DR 4827-NC), Georgia Hurricane Helene (DR 4830-GA), Tennessee Tropical Storm Helene (DR 4832-TN) and any other Hurricane Helene related major disaster declaration.

³ Florida Hurricane Milton (DR-4834-FL).

affecting benefits.⁴ For group health plans subject to the Employee Retirement Income Security Act (ERISA) or the Internal Revenue Code (Code), the relief allows additional time for participants, beneficiaries, qualified beneficiaries, and claimants to comply with certain deadlines affecting continuation coverage under the Title X of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), special enrollment periods, claims for benefits, appeals of denied claims, and external review of certain claims, as well as for plans to provide a COBRA election notice.

The Department of Labor also issued EBSA Disaster Relief Notice 2024-01 providing additional guidance and relief for ERISA-covered employee benefit plans impacted by the Covered Disasters.⁵ The relief, among other things, announces an extension of deadlines for furnishing certain required notices or disclosures to plan participants, beneficiaries, and other persons so that employers, plan fiduciaries, and plan sponsors have additional time to meet their obligations under Title I of ERISA as a result of the Covered Disasters.

Guidance and Relief for Plans and Issuers under the PHS Act

The Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS) concurs with the relief specified in the joint notice and in EBSA Disaster Relief Notice 2024-01 in the application of the laws under its jurisdiction. Non-federal governmental plans and health insurance issuers offering group or individual health insurance coverage are encouraged to extend otherwise applicable timeframes under Titles XXII and XXVII of the PHS Act⁶ for participants, beneficiaries, enrollees, qualified beneficiaries, and claimants affected by the Covered Disasters, in a manner consistent with the relief specified in the joint notice.

In addition, consistent with the relief provided in EBSA Disaster Relief Notice 2024-01, CMS will exercise enforcement discretion for non-federal governmental plans and health insurance issuers offering group or individual health insurance coverage subject to the PHS Act in a county, tribal area, or other geographic area identified for individual assistance by the Federal Emergency Management Agency (FEMA) because of the devastation caused by the Covered

⁴ 89 FR 88642 (Nov. 8, 2024).

⁵ U.S. Department of Labor, EBSA Disaster Relief Notice 2024-01 (Nov. 7, 2024), available at <https://www.dol.gov/sites/dolgov/files/EBSA/employers-and-advisers/plan-administration-and-compliance/disaster-relief/disaster-relief-notice202401.pdf>. See also FAQs for Participants and Beneficiaries Impacted by Hurricane Helene or Hurricane Milton (Nov. 7, 2024), available at <https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/our-activities/resource-center/faqs/helene-and-milton-faqs-for-participants-and-beneficiaries.pdf>.

⁶ The applicable PHS Act provisions are: (1) the 30-day period (or 60-day period, if applicable) to request special enrollment under PHS Act section 2704(f); (2) the 60-day election period for COBRA continuation coverage under PHS Act section 2205; (3) the date for making COBRA premium payments pursuant to PHS Act section 2202(2)(C) and (3); (4) the date for individuals to notify the plan of a COBRA qualifying event or determination of disability under PHS Act section 2206(3); (5) the date within which individuals may file a benefit claim under the plan's claims procedure pursuant to 45 CFR 147.136(b) (incorporating 29 CFR 2560.503-1); (6) the date within which claimants may file an appeal of an adverse benefit determination under the plan's claims procedure pursuant to 45 CFR 147.136(b) (incorporating 29 CFR 2560.503-1(h)); (7) the date within which claimants may file a request for an external review after receipt of an adverse benefit determination or final internal adverse benefit determination pursuant to 45 CFR 147.136(c)(2)(vi) and (d)(2)(i); and (8) the date within which a claimant may file information to perfect a request for external review upon a finding that the request was not complete pursuant to 45 CFR 147.136(d)(2)(ii).

Disasters.⁷ This exercise of enforcement discretion applies to the timing of furnishing of notices, disclosures, and other documents required by provisions of Title XXVII of the PHS Act (except for those notices required under PHS Act section 2799A-1(c))⁸ where CMS, on behalf of HHS, is responsible for enforcement.⁹ Under this exercise of enforcement discretion, CMS will not consider such a plan or issuer to be in violation of one or more provisions of Title XXVII of the PHS Act for a failure to timely furnish a notice, disclosure, or document that must otherwise be furnished under applicable provisions of Title XXVII of the PHS Act during the period beginning on the first day of the incident period¹⁰ (as established by FEMA for different affected areas) and ending May 1, 2025, if the plan or issuer acts in good faith and furnishes the notice, disclosure, or document as soon as administratively practicable under the circumstances. Under this standard, good faith acts include use of electronic alternative means of communicating with participants, beneficiaries, and enrollees who the plan or issuer reasonably believes have effective access to electronic means of communication, including email, text messages, and continuous access websites.

CMS encourages states with primary enforcement authority to adopt a similar approach with respect to health insurance issuers offering coverage impacted by the Covered Disasters. CMS will not consider a state to have failed to substantially enforce applicable provisions of Title XXVII of the PHS Act with respect to health insurance issuers because the state adopts such an approach.

Where to get more information:

If you have any questions regarding this Bulletin, please email CCIIO at marketreform@cms.hhs.gov.

⁷ For information on identified counties or areas, see FEMA’s website at <https://www.fema.gov/disasters>.

⁸ PHS Act section 2799A-1(c)(9) provides separate authority for HHS to modify or waive timing requirements specified under PHS Act section 2799A-1(c) and any modifications or waiver will be announced separately.

⁹ HHS is responsible for enforcement of the provisions of Title XXVII of the PHS Act with respect to group health plans that are non-federal governmental plans in all states, and with respect to health insurance issuers in states that are not substantially enforcing applicable provisions of Title XXVII of the PHS Act with respect to health insurance issuers in the state. See PHS Act sections 2723 and 2761; 45 CFR 150.101 *et seq.* See also <https://www.cms.gov/marketplace/private-health-insurance/consumer-protections-enforcement> and <https://www.cms.gov/marketplace/about/oversight/other-insurance-protections/consolidated-appropriations-act-2021-caa>. HHS has only advisory jurisdiction with respect to COBRA as it applies to state and local government employers and their group health plans (public sector COBRA); accordingly, the exercise of enforcement discretion discussed in this Bulletin does not apply with respect to the public sector COBRA provisions governed by Title XXII of the PHS Act, 42 U.S.C. §§ 300bb-1 through 300bb-8.

¹⁰ The incident period is the “time interval during which the disaster-causing incident occurs. . . . The incident period will be established by FEMA in the FEMA-State Agreement and published in the Federal Register.” 44 CFR 206.32(f). For disaster areas in Florida, the incident period for Hurricane Helene began on September 23, 2024, and for Hurricane Milton, the incident period began on October 5, 2024. For disaster areas in Georgia, the incident period began September 24, 2024. For disaster areas in North Carolina, South Carolina, and Virginia, the incident period began on September 25, 2024. For disaster areas in Tennessee, the incident period began on September 26, 2024.