HURRICANE KATRINA RELIEF
FEDERAL LAW EXTENDS COBRA, HIPAA AND ERISA TIME PERIODS

Under federal law, plans must disregard the time period from August 29, 2005 through February 28, 2006 when determining whether various COBRA, HIPAA and ERISA time periods are met by plans and members affected by Hurricane Katrina. The following gives examples of how these federal time period extensions may apply to employer plans and plan members. Additional information about this federal rule may be found on the Department of Labor’s web site at http://www.dol.gov/opa/media/press/ebsa/EBSA20051746-fs.htm.

Members and Plans Affected by Hurricane Katrina

Federal time period extensions apply to members who resided, lived, or worked in a federal disaster zone at the time of Hurricane Katrina, as well as to members who were covered by a plan that was directly affected by Hurricane Katrina. A plan is considered directly affected if the plan sponsor’s principal place of business, the plan administrator, or plan record keeper was located in a federal disaster zone. This means, for example, that if a plan affected by Hurricane Katrina covers members located both within and outside a federal disaster zone, all of the plan members are entitled to the federal time period extensions, not just those members located in the federal disaster zone at the time of the hurricane.

The federal disaster zones include only the specific counties in Alabama and Mississippi or parishes in Louisiana that the Federal Emergency Management Agency (FEMA) designates as eligible for “individual assistance” as a result of Hurricane Katrina. You can find these federal disaster zones at http://www.fema.gov/news/disasters.fema?year=2005.

Extension of Time to Pay Monthly COBRA Premiums

Generally, monthly COBRA premiums are due on the first day of the month, with a 30-day grace period. However, the federal time period extensions apply when determining whether COBRA premiums are timely paid by COBRA beneficiaries affected by Hurricane Katrina. COBRA beneficiaries affected by Hurricane Katrina have up to March 1, 2006 to pay past due August premiums and up to March 30, 2006 to pay all past due premiums for September, 2005 through March, 2006.

During the August 29, 2005 through March 30, 2006 time period, COBRA contracts may not be cancelled for nonpayment of premiums. However, we will not process or pay any claims for benefits for any month for which payment is not received. If all COBRA premiums for the months of August through March are not timely paid on or before March 30, 2006, we will retroactively cancel the affected COBRA contracts back to the date for which premiums were last received.

For example, assume a COBRA beneficiary residing in a federal disaster zone at the time of Hurricane Katrina did not pay the August premium due on August 30. Thereafter, this COBRA beneficiary also fails to pay COBRA premiums for the months of September, October, November, December, January and February. This COBRA beneficiary has up to March 1, 2006 to pay past due August premiums and up to March 30, 2006 to pay all past due premiums for September through March. If, by March 30, 2006, the COBRA beneficiary pays COBRA premiums only for the months of August, September and October, 2005, we will retroactively cancel this COBRA contract effective October 31, 2005.
Extension of Time to Pay Initial COBRA Premium

The federal time period extension also applies to payment of the initial COBRA premium. Under COBRA, the initial COBRA premium is due 45 days after the election of COBRA. Assume an affected qualified beneficiary elects COBRA during the August 29, 2005 through February 28, 2006 time period, the affected qualified beneficiary’s last day to pay the initial COBRA premium (from the date COBRA coverage began) is 45 days after February 28, 2006.

If Blue Cross and Blue Shield of Alabama handles the COBRA billing for your group, when you have a member affected by Hurricane Katrina that is subject to this COBRA premium payment extension, please write the statement “Hurricane Katrina” across the top of the COBRA application and send this COBRA application form to your Customer Accounts Representative.

Extension of Time to Elect COBRA and Give Other COBRA Notices

The federal time period extensions also apply in determining whether (1) a plan affected by Hurricane Katrina timely sends a COBRA election notice, (2) an affected beneficiary timely elects COBRA coverage, and (3) an affected beneficiary timely gives notices of an initial qualifying event, second qualifying event or determination of disability.

You should ensure that you have procedures in place to identify affected COBRA beneficiaries and to take into account these federal time period extensions when you determine whether an affected COBRA beneficiary timely provides these notices and timely makes a COBRA election.

Example - Notices of Qualifying Events

To be eligible for COBRA, qualified beneficiaries must notify the plan administrator of a qualifying event that is a divorce or loss of dependent status under the plan within 60 days from the later of the date of the qualifying event or the date of the loss of coverage under the plan due to the event. However, in determining whether an affected qualified beneficiary timely provides this notice, the period from August 29, 2005 through February 28, 2006 is disregarded.

Assume that a plan provides that loss of coverage under the plan occurs on the date of the divorce. Further, assume that a divorce occurs on June 30, 2005. The 60th day to notify the plan administrator of the divorce to be eligible for COBRA is August 29, 2005. Because the period from August 29, 2005 through February 28, 2006 must be disregarded with respect to qualified beneficiaries affected by Hurricane Katrina, the last day for an affected qualified beneficiary to notify the plan administrator of the divorce is 1 day after February 28, 2006. If the divorce occurred on July 1, 2005, the last day for an affected qualified beneficiary to notify the plan administrator of the divorce is 2 days after February 28, 2006.

If the divorce occurs during the time period from August 29, 2005 through February 28, 2006, the last day for an affected qualified beneficiary to notify the plan administrator of the divorce is 60 days after February 28, 2006.

Example - Election of COBRA

Assume that an affected qualified beneficiary is given a COBRA election notice on July 31, 2005. To be eligible for COBRA, qualified beneficiaries must elect COBRA within 60 days of the date of the COBRA election notice. However, because the period from August 29, 2005 through February 28, 2006 must be disregarded, the last day for the affected qualified beneficiary to elect COBRA is 32 days after February 28, 2006.
For COBRA election notices provided to an affected qualified beneficiary during August 29, 2005 through February 28, 2006, the last day for the affected qualified beneficiary to elect COBRA is 60 days after February 28, 2006.

**Extension of Time to File Claims and Appeals**

Under the federal time period extensions rule, plans must also disregard the period from August 29, 2005 through February 28, 2006 when determining whether a benefit claim or an appeal of an adverse benefit determination is timely filed by or on behalf of members affected by Hurricane Katrina. Although Blue Cross and Blue Shield of Alabama may handle the claims and appeals process for your plan, you should still be aware of how these extended claims and appeals time periods apply to any affected members.

For example, assume a plan requires benefit claims to be filed within 365 days of the member’s receipt of medical services.

→ If a member affected by Hurricane Katrina received medical treatment on August 29, 2004, but a claim relating to the treatment was not yet submitted, the affected member’s last day to file this benefit claim is one day after February 28, 2006. This is so because on August 29, 2005, the affected member had one day left to file this benefit claim.

→ If treatment is received during August 29, 2005 through February 28, 2006, the affected member’s last day to file these benefit claims is 365 days after February 28, 2006.

→ If treatment is received on or after March 1, 2006, the plan’s normal benefit claim filing procedures will apply.

The federal time period extension rule works the same for calculating timely appeals of adverse benefit determinations.

**Extensions of Certain HIPAA Time Periods**

*Calculating 63-day break in Creditable Coverage*

If your plan contains a pre-existing condition exclusion period, the federal time period extension rule applies when calculating whether an affected person incurred a 63-day break in creditable coverage. If Blue Cross does not handle creditable coverage determinations for your plan, you should ensure you have procedures in place to identify affected persons and to take into account the federal time period extensions when you calculate whether that person has incurred a 63-day break in credible coverage for purposes of applying your plan’s pre-existing condition exclusion period.

Under HIPAA, if a plan contains a pre-existing condition exclusion period, the plan must credit the time a member was covered by another plan to reduce the pre-existing condition exclusion period if the member did not have a 63-day or greater break in coverage and the member’s last coverage was creditable coverage (such as coverage under an individual or group health plan). Additionally, pre-existing condition exclusions do not apply to newborns enrolled in the plan within 30 days of birth or children who are enrolled in the plan within 30 days of placement for adoption, or adoption.
Under the federal time period extensions rule, when calculating these HIPAA time periods, plans must disregard the period from August 29, 2005 through February 28, 2006. For example, assume an affected person loses eligibility for plan coverage on August 29, 2005 and wishes to join a group health plan that contains a pre-existing condition exclusion. Under the federal rule, this affected person would not incur a 63-day break in coverage until 63 days after February 28, 2006. If the affected person had lost eligibility for plan coverage on August 14, 2005, the last day of this person’s 63-day break in coverage is 49 days after February 28, 2006 (because this person had been without coverage for 14 days before August 29, 2005).

**HIPAA Special Enrollment Rights**

The federal time period extension rule also applies when determining whether an affected person has timely requested and is eligible for special enrollment under HIPAA. You should ensure that you have procedures to identify affected persons and to take into account these HIPAA time period extensions when you determine that person’s eligibility for HIPAA special enrollment under your plan.

Under HIPAA, an employee or dependent who does not enroll in a group health plan when first eligible because of other group health coverage, but who subsequently loses eligibility for that other coverage, may enroll in the plan if requested within 30 days of the loss of eligibility for the other coverage. In this case, coverage is effective no later than the first day of the calendar month beginning after the date the plan receives the request for special enrollment.

Additionally, if an employee acquires a new dependent as a result of marriage, birth, placement for adoption, or adoption, the employee may enroll himself and/or his spouse and new dependent in the plan provided that this special enrollment is requested within 30 days of the event. The effective date of coverage will be the date of birth, placement for adoption, or adoption. In the case of a dependent acquired through marriage, the effective date will be no later than the first day of the first calendar month beginning after the date the plan receives the request for special enrollment.

When calculating these HIPAA special enrollment periods with respect to an affected person, the federal time period extensions rule requires plans to disregard the period from August 29, 2005 through February 28, 2006. For example, assume an affected person loses eligibility for other plan coverage on August 29, 2005. The last day of the HIPAA special enrollment period for this affected person under any available group health plan is 30 days after February 28, 2006. Coverage is effective no later than the first day of the calendar month beginning after the date the plan receives the request for special enrollment.

Additionally, assume that an affected member has a child on August 14, 2005. The last day of the HIPAA special enrollment period is 16 days after February 28, 2006 (because the child was born 14 days before August 29, 2006). The effective date of coverage will be the date of birth, if all premiums for coverage from the date of birth are paid.