

Compliance Alert

October 7, 2005

Compliance Alert, provided by Group Benefit Services, gives you the most up to date information regarding industry news as well as legislation and regulatory activities affecting your health plan.

Topic: Extended Benefit Time Frames for Individuals Affected by Hurricane Katrina

The DOL and IRS release Federal Register Notice 05-1746-NAT providing extensions to several time frames/deadlines related to health care coverage (COBRA, HIPAA and Claims Processing) for those affected by Hurricane Katrina.

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.

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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. If a plan provides a longer period, such as 31 days, these dates will be extended accordingly.

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 provided below are all directly affected by 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).

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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 submitted. 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.

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The Department of Health and Human Services has released a special bulletin explaining how the HIPAA Privacy Rule allows covered entities to share protected health information in a disaster.

We have included the following attachments with this Alert:

- Fact Sheet from the DOL
- Federal Register 29 CFR Parts 2560 and 2590
- The Department of Health and Human Services special bulletin

In addition, it is important to note that some fully-insured carriers, such as Aetna, are modifying Pharmacy requirements and procedures in areas affected by the Hurricane. Some of the procedures include waiving prescription refill restrictions (prior to 30 days), waiving preauthorization and step-therapy procedures, the mail-order pharmacy is replacing lost or damaged prescriptions without additional charges/copays, etc., and Specialty Pharmacy prescriptions are allowed to be refilled early, following the same guidelines established for the retail pharmacy. If you are interested in considering modifications to the Pharmacy Benefit portion of your Plan, your Group Benefits Services' Account Manager can further assist you with coordinating with your Pharmacy Benefit Manager.

Please Note: If you have an eligible employee or participant directly affected by Hurricane Katrina, you MUST amend your plan to include these rulings. Contact your Group Benefits Services' Account Manager for further assistance. You may also want to consider including provisions for waiving pre-certification requirements and penalties as well as penalties for utilizing out-of-network providers/facilities within this amendment.

If you have any questions regarding this information, please contact your Group Benefits Services' Account Manager at 1.800.638.6085.

This communication is not intended to be legal advice and should not be construed as legal advice. If you have any legal questions or concerns about your plan, GBS recommends seeking counsel from an ERISA attorney.

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Fact Sheet

U.S. Department of Labor
Employee Benefits Security Administration
September 2005



Extension of Time Frames to Help Plans and Individuals Affected by Hurricane Katrina

As a result of Hurricane Katrina, a number of participants and beneficiaries covered by group health plans, disability or other welfare plans, and pension plans may encounter problems in exercising their health coverage portability or continuation coverage rights, or in filing or perfecting their benefit claims. Similarly, employers in affected areas may face difficulties in fulfilling their notice obligations to participants and beneficiaries. Recognizing the numerous challenges already facing affected participants and beneficiaries and plan sponsors, the Employee Benefits Security Administration (EBSA) and the Internal Revenue Service (IRS) are taking steps to minimize the possibility of individuals losing benefits because of a failure to comply with certain pre-established time frames.

For participants, beneficiaries, and plans 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 because of the devastation caused by Hurricane Katrina), the time frames for the following provisions are tolled for the period between August 29, 2005 and January 3, 2006. The effect is to freeze the application of the time periods through January 3, 2006.

Extended Time Frames

- The Health Insurance Portability and Accountability Act (HIPAA) provides portability of group health coverage by, among other things, giving people credit for prior health coverage. Under the general HIPAA rules, prior credit may be disregarded if a person goes without coverage for 63 days. Under the Agencies' relief, this time period has been extended to allow Katrina victims more time to secure health coverage without losing coverage for preexisting health conditions.
- HIPAA also requires special enrollment rights upon certain events, such as loss of other coverage, but only if an individual requests enrollment within 30 days of the loss. Relief has also been provided to allow Katrina victims more time to request enrollment in other group health coverage.
- The Consolidated Omnibus Budget Reconciliation Act (COBRA) permits qualified beneficiaries who lose coverage under a group health plan to elect continuation health coverage. The general COBRA rules allow 60 days to request COBRA coverage. This time frame has also been extended to give Katrina victims more time to request continuation coverage.
- The COBRA rules also govern timing of premium payments. A grace period has been added to give victims more time to make their COBRA payments.
- The benefit claim procedure rules require employee benefit plans to establish and maintain reasonable procedures for the determination and appeal of benefit claims. EBSA is requiring plans to extend time frames for affected individuals to file a benefit claim and to file an appeal.
- Plans must provide certain notices in connection with the HIPAA portability and COBRA continuation provisions within certain time frames. The agencies are extending these time frames for plans that cannot make their disclosures on time due to the hurricane.

The complete notice is to be published in the September 21, 2005 Federal Register. Other Hurricane Katrina disaster relief can be accessed on the Internet at www.dol.gov and www.irs.gov.



Federal Register

Wednesday,
September 21, 2005

Part V

Department of Labor

Employee Benefits Security
Administration

29 CFR Parts 2560 and 2590

Department of the Treasury

Internal Revenue Service

26 CFR Part 54

Extension of Certain Time Frames for
Employee Benefit Plans Affected by
Hurricane Katrina; Final Rule

DEPARTMENT OF LABOR**Employee Benefits Security Administration****29 CFR Parts 2560 and 2590****DEPARTMENT OF THE TREASURY****Internal Revenue Service****26 CFR Part 54****Extension of Certain Time Frames for Employee Benefit Plans Affected by Hurricane Katrina**

AGENCIES: Employee Benefits Security Administration, Department of Labor; Internal Revenue Service, Department of the Treasury.

ACTION: Extension of time frames.

SUMMARY: This document announces the extension of certain time frames under the Employee Retirement Income Security Act and Internal Revenue Code for group health plans, disability and other welfare plans, pension plans, participants and beneficiaries of these plans, and group health insurance issuers directly affected by Hurricane Katrina.

EFFECTIVE DATES: September 21, 2005.

FOR FURTHER INFORMATION CONTACT: Amy Turner, Employee Benefits Security Administration, Department of Labor, at 202-693-8335; or Russ Weinheimer, Internal Revenue Service, Department of the Treasury, at 202-622-6080.

SUPPLEMENTARY INFORMATION:**I. Purpose**

As a result of Hurricane Katrina, a number of participants and beneficiaries covered by group health plans, disability or other welfare plans, and pension plans may encounter problems in exercising their health coverage portability or continuation coverage rights, or in filing or perfecting their benefit claims. Recognizing the numerous challenges already facing affected participants and beneficiaries, it is important that plans and the Agencies take steps to minimize the possibility of individuals losing benefits because of a failure to comply with certain pre-established time frames. Similarly, the Agencies recognize that affected plans also may have difficulty in complying with certain notice obligations related to a participant's health coverage portability or continuation coverage rights.

Accordingly, under the authority of section 518 of the Employee Retirement Income Security Act of 1974 (ERISA), 29

U.S.C. 1148, and section 7508A of the Internal Revenue Code of 1986 (Code), 26 U.S.C. 7508A, the Agencies are extending certain time frames otherwise applicable to group health plans, disability and other welfare plans, pension plans, their participants and beneficiaries, and group health insurance issuers, under ERISA and the Code.¹

The Agencies believe that such relief is immediately needed to preserve and protect the benefits of participants and beneficiaries in affected plans. Accordingly, the Agencies have determined, pursuant to section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b) and (d), that there is good cause for making the relief provided by this notice effective immediately upon publication and that notice and public participation may result in undue delay and, therefore, be contrary to public interest.

The relief provided by this Notice supplements other Hurricane Katrina disaster relief, which can be accessed on the Internet at <http://www.dol.gov> and <http://www.irs.gov>.

II. Background

Title I of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) provides portability of group health coverage by, among other things, placing limitations on the ability of a group health plan or group health insurance issuer to impose a preexisting condition exclusion and by requiring special enrollment rights. ERISA section 701 and Code section 9801. Title X of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) permits qualified beneficiaries who lose coverage under a group health plan to elect continuation health coverage. ERISA section 601 and Code section 4980B. Section 503 of ERISA and the Department of Labor's claims procedure regulation at 29 CFR 2560.503-1 require employee benefit plans subject to Title I of ERISA to establish and maintain reasonable procedures governing the determination and appeal of claims for benefits under the plan. All of the

¹ ERISA section 518 and Code section 7508A generally provide that, in the case of an employee benefit plan, sponsor, administrator, participant, beneficiary, or other person with respect to such a plan, affected by a Presidentially declared disaster, notwithstanding any other provision of law, the Secretaries of Labor and the Treasury may prescribe (by notice or otherwise) a period of up to one year that may be disregarded in determining the date by which any action is required or permitted to be completed. Section 518 of ERISA and section 7508A of the Code further provide that no plan shall be treated as failing to be operated in accordance with the terms of the plan solely as a result of complying with the postponement of a deadline under those sections.

foregoing provisions include timing requirements for certain acts in connection with employee benefit plans, some of which are being modified by this notice.

A. HIPAA Time Frames

The HIPAA portability provisions generally provide that a group health plan or group health insurance issuer may disregard a period of creditable coverage if there is a subsequent 63-day break in coverage. ERISA section 701(c)(2)(A) and Code section 9801(c)(2)(A). Also, 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. ERISA section 701(d) and Code section 9801(d).

The HIPAA special enrollment provisions generally provide that employees must request enrollment within 30 days of a special enrollment trigger (including loss of eligibility of coverage or loss of employer contributions) to be eligible for special enrollment. ERISA section 701(f) and Code section 9801(f).

The HIPAA certification rules prescribe time periods for the provision of certificates of creditable coverage upon loss of coverage. Under the regulations, plans and issuers subject to the COBRA continuation coverage provisions are required to provide an automatic certificate no later than the time for providing a COBRA election notice. Plans and issuers not subject to COBRA are required to provide the automatic certificate within a reasonable time after coverage ceases. 29 CFR 2590.701-5(a)(2)(ii) and 26 CFR 54.9801-5(a)(2)(ii).

B. COBRA Time Frames

The COBRA continuation coverage provisions generally provide a qualified beneficiary a period of at least 60 days to elect COBRA continuation coverage under a group health plan. ERISA section 605 and Code section 4980B(f)(5).

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. ERISA section 602(3) and Code section 4980B(f)(2)(C). Under the COBRA rules, a premium is considered paid timely if it is made not later than 30 days after the first day in the period for which payment is being made. ERISA section 602(2)(C) and Code section 4980B(f)(2)(B)(iii), 26 CFR 54.4980B-8 Q&A-5(a).

Notice provisions prescribe time periods for individuals to notify the plan of a qualifying event or determination of disability and for plans to notify qualified beneficiaries of their rights to elect COBRA continuation coverage. ERISA section 606 and Code section 4980B(f)(6), 29 CFR 2590.606-3.

C. Claims Procedure Time Frames

Section 503 of ERISA and the Department of Labor's claims procedure regulation at 29 CFR 2560.503-1 require employee benefit plans to establish and maintain a procedure governing the filing and initial disposition of benefit claims, and provide claimants with a reasonable opportunity to appeal an adverse benefit determination to an appropriate named fiduciary. Under the regulation, plans cannot have provisions that unduly inhibit or hamper the initiation or processing of claims for benefits. Further, group health plans and disability plans must provide claimants at least 180 days following receipt of an adverse benefit determination to appeal (60 days in the case of pension plans and other welfare benefit plans).

III. Relief

A. Relief for Affected Plan Participants, Beneficiaries, Qualified Beneficiaries, and Claimants

With respect to plan participants, beneficiaries, qualified beneficiaries, or claimants directly affected by Hurricane Katrina (as defined in paragraph III.C.(1)), group health plans, disability and other welfare plans, pension plans, and health insurance issuers subject to part 7 of ERISA, must disregard the period from August 29, 2005 through January 3, 2006 when determining any of the following time periods and dates—

(1) The 63-day break in coverage period under ERISA section 701(c)(2)(A) and Code section 9801(c)(2)(A),

(2) The 30-day period to secure creditable coverage without a preexisting condition exclusion for certain children under ERISA section 701(d) and Code section 9801(d),

(3) The 30-day period to request special enrollment under ERISA section 701(f) and Code section 9801(f),

(4) The 60-day period to elect COBRA continuation coverage under ERISA section 605 and Code section 4980B(f)(5),

(5) The date for making COBRA premium payments pursuant to ERISA section 602(2)(C) and (3) and Code section 4980B(f)(2)(B)(iii) and (C),

(6) The date for individuals to notify the plan of a qualifying event or

determination of disability under ERISA section 606(a)(3) and Code section 4980B(f)(6),

(7) The date within which individuals may file a benefit claim under the plan's claims procedure pursuant to 29 CFR 2560.503-1, and

(8) The date within which claimants may file an appeal of an adverse benefit determination under the plan's claims procedure pursuant to 29 CFR 2560.503-1(h).

B. Relief for Group Health Plans

With respect to group health plans, their sponsors and administrators, and health insurance issuers subject to part 7 of ERISA, that are directly affected by Hurricane Katrina (as defined in paragraph III.C.(3)), the period from August 29, 2005 through January 3, 2006 shall be disregarded when determining the following dates—

(1) The date for providing an automatic certificate of creditable coverage under 29 CFR 2590.701-5(a)(2)(ii) and 26 CFR 54.9801-5(a)(2)(ii), and

(2) The date for providing a COBRA election notice under ERISA section 606 and Code section Code section 4980B(f)(6).

C. Definitions

For purposes of this notice—

(1) 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 (as defined in paragraph III.C.(2)) at the time of the hurricane; or if the employee benefit plan providing the individual's coverage was directly affected (as defined in paragraph III.C.(3)).

(2) The term disaster areas means 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 because of the devastation caused by Hurricane Katrina.

(3) 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, determined disregarding the rules of section 414(b) and (c) of the Code); 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, determined disregarding the rules of section 414(b) and (c) of the Code); the office of the plan or the plan administrator; or the office of the

primary recordkeeper serving the plan, was located in one of disaster areas (as defined in paragraph III.C.(2)) at the time of the hurricane.

D. Any later extension of the January 3, 2006 date by the Agencies will automatically apply for purposes of the deadlines addressed by this notice.

IV. Examples

The following examples illustrate the time frame for extensions required by this notice. In each example, assume that the individual described is directly affected by the hurricane.

Example 1. (i) *Facts.* 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.

(ii) *Conclusion.* In this *Example 1*, 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. (i) *Facts.* 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.

(ii) *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. (i) *Facts.* Individual B participated in a group health plan and lost eligibility for coverage on August 14, 2005.

(ii) *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. (i) *Facts.* 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.

(ii) *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. (i) Facts. Same facts as

Example 4. By February 2, 2006, a payment equal to two months' premium has been made for *C*.

(ii) *Conclusion.* *C* is entitled to COBRA continuation coverage for September and October 2005.

Example 6. (i) Facts. 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 submitted. Under the plan, claims must be submitted within 365

days of the participant's receipt of the medical treatment.

(ii) *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. (i) Facts. 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.

(ii) *Conclusion.* When determining the 180-day period within which *P*'s appeal 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.

Signed at Washington, DC, this 16th day of September, 2005.

Ann Combs,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

Signed this 16th day of September, 2005.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement, Internal Revenue Service, Department of the Treasury.

[FR Doc. 05-18901 Filed 9-19-05; 9:53 am]

BILLING CODE 4510-29-P; 4830-01-P



Director
Office for Civil Rights
200 Independence Ave., SW Rm 509F
Washington, DC 20201

September 2, 2005

U.S. Department of Health and Human Services Office for Civil Rights

**HURRICANE KATRINA BULLETIN:
HIPAA PRIVACY and DISCLOSURES IN EMERGENCY SITUATIONS**

Persons who are displaced and in need of health care as a result of a severe disaster – such as Hurricane Katrina – need ready access to health care and the means of contacting family and caregivers. We provide this bulletin to emphasize how the HIPAA Privacy Rule allows patient information to be shared to assist in disaster relief efforts, and to assist patients in receiving the care they need.

Providers and health plans covered by the HIPAA Privacy Rule can share patient information in all the following ways:

- ✓ **TREATMENT.** *Health care providers can share patient information as necessary to provide treatment.*
 - *Treatment* includes
 - sharing information with other providers (including hospitals and clinics),
 - referring patients for treatment (including linking patients with available providers in areas where the patients have relocated), and
 - coordinating patient care with others (such as emergency relief workers or others that can help in finding patients appropriate health services).
 - Providers can also share patient information to the extent necessary to seek payment for these health care services.

- ✓ **NOTIFICATION.** *Health care providers can share patient information as necessary to identify, locate and notify family members, guardians, or anyone else responsible for the individual's care of the individual's location, general condition, or death.*
 - The health care provider should get verbal permission from individuals, when possible; but, if the individual is incapacitated or not available, providers may share information for these purposes if, in their professional judgment, doing so is in the patient's best interest.
 - Thus, when necessary, the hospital may notify the police, the press, or the public at large to the extent necessary to help locate, identify or otherwise

notify family members and others as to the location and general condition of their loved ones.

- In addition, when a health care provider is sharing information with disaster relief organizations that, like the American Red Cross, are authorized by law or by their charters to assist in disaster relief efforts, it is unnecessary to obtain a patient's permission to share the information if doing so would interfere with the organization's ability to respond to the emergency.
- ✓ **IMMINENT DANGER.** Providers can share patient information with anyone as necessary to prevent or lessen a serious and imminent threat to the health and safety of a person or the public -- consistent with applicable law and the provider's standards of ethical conduct.
- ✓ **FACILITY DIRECTORY.** Health care facilities maintaining a directory of patients can tell people who call or ask about individuals whether the individual is at the facility, their location in the facility, and general condition.

Of course, the HIPAA Privacy Rule does not apply to disclosures if they are not made by entities covered by the Privacy Rule. Thus, for instance, the HIPAA Privacy Rule does not restrict the American Red Cross from sharing patient information.