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Thank you for joining us.



Status Changes and HIPAA Special Enrollments

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*Presented by the Regulatory and
Legislative Strategy Group*



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HIPAA Special Enrollments

A Coverage Issue



HIPAA Special Enrollments

A HIPAA Special Enrollment event allows an individual to require a group health plan to provide coverage.

Special Enrollment does not apply to:

- Stand-alone dental and vision plans
- Retiree-only plans
- Insured specific disease policies
- Most health FSAs

“Excepted Benefits”

Loss of Other Coverage

Loss of Coverage Under Another Group Health Plan

- The employee, spouse or dependent was covered under the other group health plan when the employer's plan was first offered, **and;**
- The employee, spouse or dependent indicated the other group health coverage when waiving coverage, **and;**
- The employee, spouse or dependent's other coverage was terminated because:
 - » COBRA has been exhausted **or**
 - » The other coverage was ended due to:
 - Divorce, death, termination of employment, reduction of hours, cessation of dependent status, all contributions by the other employer cease, the person no longer lives/works in an HMO service area

Coverage: Who Is Eligible to Enroll

- Employee may elect coverage for themselves, their spouse and their children
 - » Employee may elect coverage just for the employee only and not cover any dependents
 - » Employee who covered themselves but not their spouse and children may elect coverage for spouse and children
- Must allow at least **30 days** for individual to request enrollment
- Plans will require employee to be covered in order to cover dependents



Other Special Enrollments



- Marriage
- Birth, adoption, placement for adoption or foster care
- Must allow at least **30 days** for individual to request enrollment
- Who can be covered?
 - » Employee, spouse and any newly-acquired dependents may be enrolled
 - » Plans may allow tag-along of other existing dependents, but not required
- Retroactive to the date of birth or adoption

Additional Special Enrollments

- Loss of eligibility in the individual market
- Loss of eligibility for Medicaid or CHIP coverage
- Gaining eligibility under Medicaid or CHIP subsidy for employer-provided coverage
 - » Individual must request enrollment within **60 days** of becoming eligible
 - » Plan must allow at least **60 days** for individual to request enrollment



When Must Coverage Begin?



**Birth, adoption, placement for
adoption or foster care**

The date of the event



Marriage or loss of other coverage

No later than the first of the month
following the date of the request

What Coverage Can Be Elected?

- For HIPAA Special Enrollments, coverage option change may be made by the participant for any benefit package offered to participants at open enrollment

HIPAA Special Enrollments do not allow employees to drop coverage (unless there is an intervening status change).

Cafeteria Plan Status Changes



Cafeteria Plans – IRC 125

- Must be in writing
- Must offer a choice between a qualified benefit or taxable cash
 - » Qualified benefit = health plan, dependent care FSA, health FSA, etc.
 - » Taxable cash = the employee's regular, non-reduced taxable wages
- Annual elections are made before the benefit becomes available
 - » Annual open enrollment or upon hire
 - » Mid-year pre-tax changes are prohibited – unless there is a qualifying status change

Election Rules

- Benefit elections are irrevocable except for a change in status
- Only the employee is allowed to make, revoke or change elections
- Elections are not required to be on paper documents - electronic media may be used



Status Changes: The General Rules

- A plan is not required to allow any pre-tax election change, or a plan may be selective in which changes are allowed
- Status changes must be prospective – except for birth or adoption
- Consistency rule
 - » Participants may make changes to their elections for legitimate changes in status meaning “on account of and corresponding with” a change in status that affects eligibility for coverage
- Plan terms can require election changes be made within a specified period
 - » The 31-day status quo is not mandated
- Exceptions:
 - » HIPAA Special Enrollments (30 days minimum) and COBRA-prescribed election periods (60 days minimum)
 - » Must allow for a **60-day** notice period after loss of eligibility for Medicaid or Children’s Health Insurance Program coverage, or a gain of eligibility under Medicaid or Children’s Health Insurance Program for subsidy of employer-provided coverage

Status Changes: The General Rules

Tag-Along Rule

- The preamble to the final regulations indicates that dependents directly affected by the status change event plus other dependents may be added on a pre-tax basis, if allowed under the terms of the applicable benefit plan
- Remember HIPAA Special Enrollments? This rule has an impact



Status Changes: The General Rules

- The status changes affecting group health plans generally apply to the medical, dental and vision plan
 - » These all provide coverage for medical issues per IRC 213(d)
- HIPAA Special Enrollments generally apply only to the group medical plan
 - » Most dental and vision plans are “excepted benefits” under HIPAA



Remember: Status Changes are all about changing pre-tax elections.

Special Election Rule for New Employees

- A cafeteria plan may provide new employees 30 days after their hire date to make an election
 - » The election is effective as of hire date
 - » However, salary reduction amounts used to pay for such an election must be from compensation not yet currently available on the date of the election
 - » This rule would not apply to an employee who is terminated and rehired within 30 days or to one who returns from an unpaid leave of absence within 30 days (not considered new employees)



Status Changes: The General Rules

HIPAA Special Enrollments

- Loss of other coverage
 - » Loss of eligibility; exhaustion of COBRA; employer ceases contributions
- Gaining eligibility under Medicaid or CHIP subsidy for employer-provided coverage
- New dependent
 - » Marriage
 - » Birth or adoption
 - May allow entire family to avail themselves of this status change (tag-along rule)

Special Enrollments provide the right to mid-year coverage enrollment – but also satisfy the status change requirements for mid-year pre-tax premium changes.

The Status Changes



Change in Marital Status

- Events that change an employee's marital status including:
 - » Marriage
 - » Death of a spouse
 - » Divorce, legal separation or annulment



Change in Number of Dependents

- Events that change an employee's number of dependents, including:
 - » Birth
 - » Death
 - » Adoption and placement for adoption

The Status Changes

Change in Employment Status that Affects Eligibility for the Plan or Benefit:

- Change in employment status of the employee, or a spouse or dependent of the employee, that affects the individual's eligibility under a cafeteria plan including:
 - » Commencement or loss of employment
 - » Reduction in hours
 - » Increase in hours
 - » Changing from salary to hourly or hourly to salary
 - » Strike or lockout
 - » Commencement of, or return from, an unpaid leave of absence

The Status Changes



Gain or Loss of Dependent Status

- Event causing an employee's dependent to satisfy or cease to satisfy the eligibility requirements for coverage
- An increase or decrease in the number of family members or dependents who may benefit from coverage under the plan

The Status Changes

A change in the place of residence of the employee, spouse or dependent

- Example: Moving out of an HMO service area affecting eligibility

Adoption

- Commencement or termination of an adoption proceeding may be recognized as a status change

Judgment, decree or order

- Changes may be made pursuant to court orders or a Qualified Medical Child Support Order
 - » A Participant can drop coverage for a dependent only if the Participant's spouse, former spouse or other individual provides accident or health coverage for the child

The Status Changes

COBRA Qualifying Events

- If an employee, spouse, or dependent becomes eligible for COBRA continuation coverage under the group health plan of the employee's employer or any similar state law
 - » Cafeteria plan may permit the employee to elect to increase payments in order to pay for the continuation coverage.

FMLA

- Commencement of FMLA leave:
 - » Make same election changes as permitted for employees on non-FMLA leave
 - » If employee is on unpaid FMLA the employer must allow employee to revoke coverage or continue coverage but discontinue employee share of payment (employer may recover share upon employee's return to work)
 - » Employer may require employee on paid FMLA to continue coverage if same rule applies to non-FMLA leave
- Return from leave
 - » Employee may make a new election if coverage terminated while on FMLA leave
 - » Employer can require reinstatement of election if same rule applies to return from non-FMLA leave

The Status Changes

Medicare and Medicaid

- A change in entitlement of employee, employee's spouse or employee's dependent will allow the employee to change health coverage
 - » **Loss** of entitlement allows employee to add coverage
 - » **New** entitlement allows employee to cancel or reduce coverage

Other Government Health Programs

- A plan may permit an Eligible Employee to add coverage for the employee, spouse or dependent, if the Eligible Employee, spouse or dependent **loses** coverage under any group health plan sponsored by a governmental or educational institution.

The Status Changes

Cost Changes

- Do not apply to health FSA
- Automatic cost increase
- What is “significant?”

Significant Curtailment of Coverage

- A plan may permit an Eligible Employee to add coverage for the employee, spouse or dependent, if the Eligible Employee, spouse or dependent **loses** coverage under any group health plan

Without loss of coverage

- Example: Increase in deductible, co-pay or out-of-pocket cost-sharing limits
- Participants may not drop coverage even if no similar option is available

With loss of coverage

- Example: Elimination of benefits package or HMO ceasing to be available
- Participants may drop coverage if no similar option is available

The Status Changes

Addition or Improvement of a Benefit Package Option

- The plan may permit all Eligible Employees to elect coverage under the new or improved option
 - » This includes Eligible Employees who had not previously made an election under the Plan



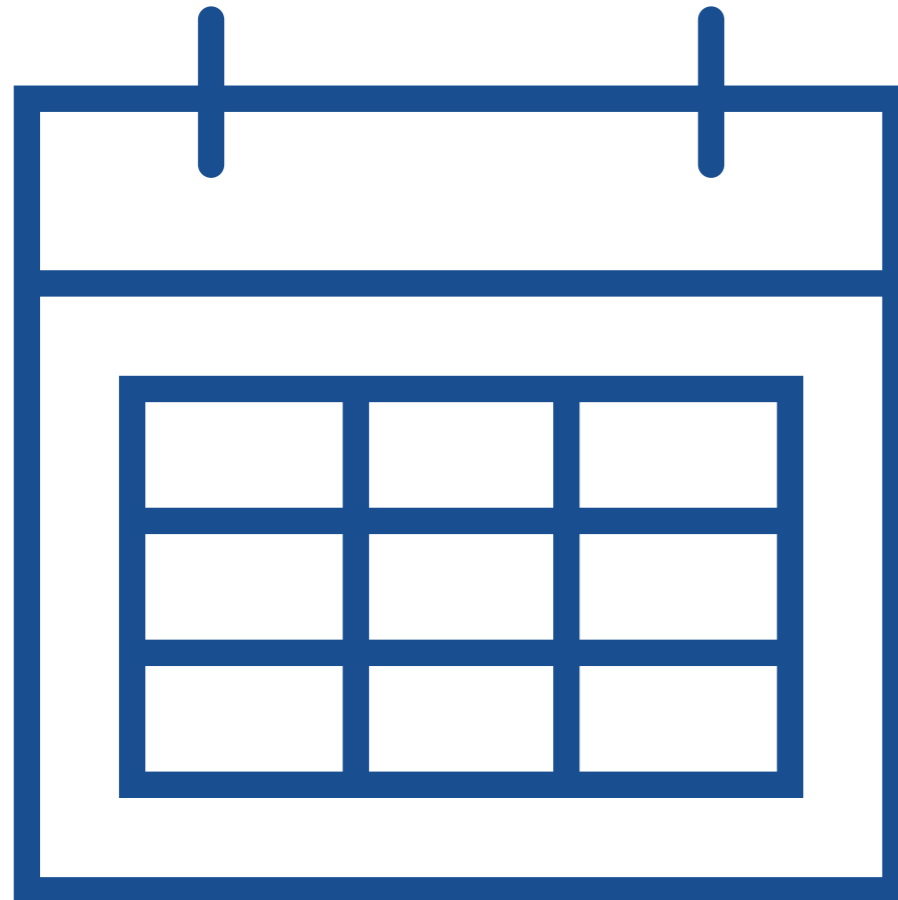
The Status Changes



Change in Coverage Under Another Employer-Sponsored Plan

- The plan may permit Eligible Employees to make an election change on account of, and corresponding with, a change made under another employer plan (including a plan of the same employer or another employer) if the other plan permits the status changes under that particular plan's rules

The Status Changes



Open Enrollment Period of a Different Plan

- An Eligible Employee can make a mid-year election change corresponding with an open enrollment period change made by a spouse or dependent when the plan of that individual's employer has a different period of coverage than the employee's
 - » The change made by the employee must be “on account of” and must “correspond with” the change made under the other employer's plan

The Status Changes

Special Rule for Group-Term Life Insurance and Disability Coverage

- Participants may be allowed to increase or decrease group-term life insurance and disability coverage due to any status change
 - » Note: Unless permitted under the master group policy, increases in coverage will likely be subject to underwriter approval or evidence of insurability



The Status Changes

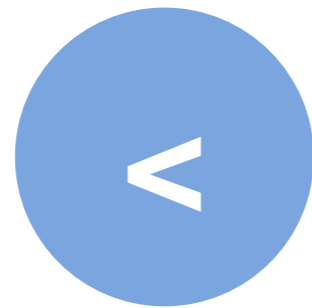
Health Savings Account (HSA)

- If pre-tax contributions to an HSA are included under the cafeteria plan, participants may prospectively change HSA contribution elections on a monthly basis
 - » Not subject to status change rules but must be noted in the plan document
 - » If the participant becomes ineligible to make HSA contributions, the participant may prospectively revoke their salary reduction election for HSA contributions

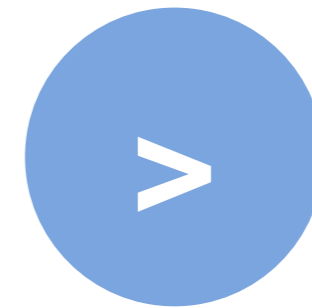


The Status Changes

Termination and Resumption of Employment (30-Day Rule)



- Employee is rehired less than **30 days after** termination of employment, then:
 - » Employer must reinstate prior election unless intervening status change event



- Employee is rehired more than **30 days after** termination of employment, then:
 - » Reinstate prior election, or
 - » Make election to same extent permitted as new hires, or
 - » No reinstatement until open enrollment

The Status Changes

For Employees in Stability Period, Employee May Prospectively Revoke Election If:

- Reasonably expected to average less than 130 hours per month because of a change in employment status; and
- The employee intends to enroll in other MEC with an effective date no later than the first day of the second month after the month in which coverage is revoked.

Employers may rely on an employee's reasonable representation that other coverage has been or will be obtained within the specified time frame.

The Status Changes

Employee May Prospectively Revoke Election If:

- Employee is eligible for special enrollment in an Exchange plan OR the employee wants to enroll in an Exchange plan during the Exchange's annual open enrollment
- The employee's revocation of election is due to their intended enrollment on the Exchange
 - » Exchange coverage must be effective beginning no later than the day immediately following the last day of the original coverage that is revoked
- Employers may rely on an employee's reasonable representation that Exchange coverage has been, or will be obtained within the specified time frame

The Status Changes

New for 2023 – Employee's Spouse/Dependent(s) Enrolls in Exchange

- Part of the “Family Glitch” fix, outlined in Notice 2022-41
- Election of family coverage under group health plan (not including health FSA) may be revoked when:
 - » One or more related individuals are eligible for a special enrollment period to enroll in a Qualified Health Plan (QHP) through an Exchange or one or more related individuals seek to enroll in a QHP during the Exchange's annual open enrollment period
 - » The revocation corresponds to the intended enrollment of the related individual(s) in a QHP through an Exchange
- QHP coverage must be effective no later than the day immediately following the last day of the original coverage that is revoked
- If the employee is not also enrolling in the QHP, they must elect self-only coverage (or family coverage including one or more already covered related individuals)

The Status Changes

New for 2023 – Employee's Spouse/Dependent(s) Enrolls in Exchange

- This new exception only applies to election changes on or after 1/1/23
- Plan sponsor may rely on the reasonable representation of an employee that the employee and/or related individuals have enrolled or intend to enroll in a QHP through an Exchange
- As with the other status change events, adoption by the employer is ***optional***
- If adopted the cafeteria plan must be amended by last day of plan year following the plan year in which the new election change is allowed (e.g., if effective in 2023 plan year, then it must be adopted by end of 2024 plan year)

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