

F. Special Enrollment Rights

HIPAA requires a group health plan to provide special enrollment opportunities to certain employees and their dependents in specified circumstances. Health care reform did not change the obligation of group health plans to provide special enrollment opportunities.

1. Loss of Other Coverage

Plans must provide a special enrollment right to employees and their dependents who did not enroll in the plan when previously eligible because they had other coverage, but who subsequently lose that other coverage because—

- if the coverage was under COBRA, the 18-, 29-, or 36-month COBRA period was exhausted; or
- if the coverage was not under COBRA, the individual lost his or her eligibility for the coverage under the plan or employer contributions for the other coverage ceased.

To enroll under the special enrollment right, the employee must request enrollment within 30 days after the loss of coverage or the employer's cessation of contributions for such coverage. Effective April 1, 2009, however, a longer period of 60 days applies in instances where the loss of coverage is under a Medicaid plan or a state's children's health insurance program. Coverage will begin on the first day of the month after the plan receives the enrollment request.

There is no requirement that a participant elect COBRA coverage when eligibility is lost under the other plan in order to preserve the special enrollment right. But if COBRA is elected, the entire COBRA period must be exhausted to preserve a special enrollment right when the COBRA period ends.

There is no special enrollment right if the other coverage ceases as a result of an individual's failure to pay premiums, or if the other coverage ceases for cause (such as filing fraudulent claims).

A plan may impose the additional requirement that participants provide a written statement when declining coverage, indicating that the reason they are declining coverage is the existence of other coverage. If this requirement is imposed, then the plan is not required to provide special enrollment to an employee who loses other coverage but who did not provide the written statement. However, if the plan wishes to impose this requirement, it must provide notice of the requirement to participants before they decline coverage.

2. Becoming Eligible for State Premium Assistance Subsidy

Effective April 1, 2009, a special enrollment right applies upon gaining eligibility for a premium assistance subsidy under a state's Medicaid plan or children's health insurance program. Enrollment must be requested within 60 days after such eligibility is determined.

60 days vs. 30 days. This 60-day special enrollment period is longer than the 30-day period that applies to the other special enrollment opportunities—loss of coverage under most group health plans and acquisition of a new dependent.

3. Acquisition of New Dependent

A group health plan that provides dependent coverage must permit a special enrollment when an employee acquires a new spouse or dependent by marriage, adoption, placement for adoption, or birth. The special enrollment right applies only to the employee, the employee's spouse, and the newly acquired dependent. Plans are not required under HIPAA to allow existing dependents to enroll at the same time, but many plans (and the cafeteria plans through which they are offered) do allow sibling “tag along” enrollment.

Example: Noncovered Employee Has a Newborn Child. Ed Employee is eligible for coverage under his employer's plan, but he is currently not enrolled, and neither are his spouse, Mary, and their children, Arthur and Betty. The plan provides that an employee can enroll himself, his spouse, and his dependents upon date of hire or during the annual open enrollment period. (Spouses and dependents cannot be enrolled unless the employee is enrolled.) Ed and Mary have a newborn child, Babe. Who can enroll upon the birth of Babe under HIPAA's special enrollment rules?

- Ed is entitled to enroll.
- Ed and Babe are entitled to enroll.
- Ed and Mary are entitled to enroll.
- Ed, Mary and Babe are entitled to enroll.

Note: HIPAA does not require the plan to offer Arthur and Betty special enrollment rights as a result of Babe's birth. They may be enrolled at the next open enrollment period, or the plan may permit earlier enrollment of Arthur and Betty even though it is not legally required to offer a special enrollment period to them.

To obtain coverage under HIPAA's special enrollment right, an employee must request enrollment within 30 days after the marriage, birth, adoption, or placement for adoption. (Note that state insurance laws may allow a longer period to request enrollment, so sponsors of insured plans should familiarize themselves with any applicable state laws and check with the insurer before communicating enrollment rights to employees.) Coverage resulting from marriage must be effective no later than the first day of the month after the plan receives the special enrollment request. Coverage resulting from the acquisition of a newborn or newly adopted child must be retroactively effective to the date of birth, adoption, or placement for adoption.

Note that same-sex spouses have the same special enrollment rights as opposite-sex spouses if the same-sex marriage was entered into in a state, territory, or country that recognizes same-sex marriage. In other words, the validity of the same-sex marriage is determined based on the law of the jurisdiction where the same-sex marriage was entered into rather than the state where the same-sex couple lives or works.

4. Notice Requirements

Plans must notify eligible individuals of their special enrollment rights at or before the time the individuals are initially given the opportunity to enroll in the plan. This information should also be included in the summary plan description (SPD). In addition, plan sponsors wishing to impose the written statement requirement described above under “Loss of Other Coverage” should clearly specify in the enrollment materials (a) the effect of declining coverage; (b) the requirement that the employee declining coverage specify in writing that enrollment is being declined because of the existence of other coverage; and (c) the consequences of failing to provide the written statement.

5. COBRA Qualified Beneficiaries Have Special Enrollment Rights

HIPAA's special enrollment rights also apply to COBRA qualified beneficiaries who are enrolled in COBRA coverage under the plan. This means that a COBRA qualified beneficiary has the same right to enroll family members as if the qualified beneficiary were an active employee participating in the plan.

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