

EMPLOYEE BENEFITS

HIPAA Special Enrollments

From the Brown & Brown Regulatory and Legislative Strategy Group



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HIPAA Special Enrollments

NOTE: The timeframes for employee notification of HIPAA Special Enrollments applicable under ERISA plans are temporarily extended during the COVID-19 National Emergency. Applicable periods are tolled until the earlier of:

- a. 1 year from the date they were first tolled, or
- b. July 10, 2023 (which is the end of the Outbreak Period).

Loss of Other Coverage			
Special Enrollment event	Individual eligible for Special Enrollment ^{1,2}	Notification to employer or plan administrator ³	Enrollment date & pre-tax premium effective date
<p>The individual has lost <u>eligibility</u>⁴ for other coverage⁵ due to:</p> <ol style="list-style-type: none"> 1. Divorce/legal separation 2. Loss of dependent status 3. Death of spouse 4. Termination of employment 5. Reduction in hours of employment 6. Exhaustion of COBRA 7. Employer contributions for non-COBRA coverage are terminated (current or former employer) 8. The individual no longer resides, lives or works in the service area and no other benefit package is available to the individual 9. A situation in which an individual incurs a claim that would meet or exceed a lifetime limit on all benefits⁶ 10. A situation in which a plan no longer offers any benefits to the class of similarly situated individuals that includes the individual 	<ol style="list-style-type: none"> 1. If the employee loses other coverage, add coverage for: <ol style="list-style-type: none"> a. The employee b. The employee and any dependent(s)⁸ also losing coverage (including the employee's spouse⁷) 2. If a spouse/dependent loses other coverage, add coverage for: <ol style="list-style-type: none"> a. The employee b. The spouse/dependent (if the employee is already enrolled) c. The employee and the spouse/dependent 	<p>Within 30 days of occurrence of the event.</p>	<p>Enrollment – No later than the 1st day of the month following notification to employer/plan administrator of the event.</p> <p>Pre-tax premium – Must be <u>prospective</u>, even if the plan allows coverage to be retroactive.</p>

New Dependent

Special Enrollment event	Individual eligible for Special Enrollment	Notification to employer or plan administrator ³	Enrollment date & pre-tax premium effective date
Birth, adoption, placement for adoption	<ol style="list-style-type: none"> 1. Add coverage for the new dependent(s) (if employee is already enrolled) 2. Add coverage for a spouse (if employee is already enrolled) 3. Add coverage for employee only 4. Add coverage for employee and spouse 5. Add coverage for employee and new dependent(s) 6. Add coverage for employee, spouse and new dependent(s) <p>Not pre-existing dependents (however, the plan may allow enrollment of pre-existing dependents)</p>	Within 30 days of occurrence of the event.	<p>Enrollment – Coverage is retroactive to date of event.</p> <p>Pre-tax premium – If provided in cafeteria plan, pre-tax premiums also can be <u>retroactive</u>. This is the only event that allows for retroactive pre-tax premium.</p>



Marriage

Special Enrollment event	Individual eligible for Special Enrollment	Notification to employer or plan administrator ³	Enrollment date & pre-tax premium effective date
Marriage ⁷	<ol style="list-style-type: none"> 1. Add coverage for spouse (if employee is already enrolled) 2. Add coverage for new dependent(s) (if employee is already enrolled) 3. Add coverage for employee only 4. Add coverage for employee and spouse 5. Add coverage for employee and new dependent(s) 6. Add coverage for employee, spouse and any new dependent(s) <p>Not pre-existing dependents (however the plan may allow enrollment of pre-existing dependents)</p>	Within 30 days of occurrence of the event.	<p>Enrollment – No later than the 1st day of the month following notification to employer/plan administrator of the event.</p> <p>Pre-tax premium – Must be <u>prospective</u>, even if the plan allows coverage to be retroactive.</p>

Children’s Health Insurance Program Reauthorization Act (CHIPRA)

Special Enrollment event	Individual eligible for Special Enrollment	Notification to employer or plan administrator ³	Enrollment date & pre-tax premium effective date
<ol style="list-style-type: none"> 1. Losing eligibility for coverage under a State Medicaid or CHIP program 2. Becoming eligible for State premium assistance under Medicaid or CHIP 	<p>Add employee, spouse and/or dependent(s) losing eligibility or becoming eligible for assistance</p> <p>Unclear if spouse or dependent who is not experiencing event is eligible for special enrollment.</p>	The employee or dependent must request coverage within 60 days of being terminated from Medicaid or CHIP coverage or within 60 days of being determined to be eligible for premium assistance.	<p>Enrollment – No later than the 1st day of the month following notification to employer/plan administrator of the event.</p> <p>Pre-tax premium – Must be <u>prospective</u>, even if the plan allows coverage to be retroactive.</p>

Note About Coverage Changes

When exercising HIPAA special enrollment rights, employees have the right to elect coverage under any coverage option that is part of the plan sponsor's group medical plan. This includes the right to change coverage options. It is not entirely clear whether this rule applies when there are multiple medical plans instead of a single plan with multiple coverage options.

Endnotes

- 1 Individuals must be otherwise eligible for coverage and must have had other coverage at the time coverage under the employer's plan was previously offered. If required by the employer's plan, the individual also must have stated in writing that the employer's coverage was being waived for that reason.*
- 2 The plan is not required to allow other dependents to enroll. Under the cafeteria plan status change rules (§1.125-4(b)(2)), a special "tag along" rule provision allowing other dependents to enroll with the special enrollee(s) may be adopted at the option of the plan sponsor.*
- 3 HIPAA establishes the minimum amount of time the plan must allow to request enrollment. A plan may use a longer time period.*
- 4 Does not apply due to failure of employee or dependent to pay premiums on a timely basis, a termination of coverage for cause (such as making a fraudulent claim or an intentional misrepresentation of a material fact in connection with the plan), or a voluntary cancellation of coverage.*
- 5 Other coverage includes only coverage under a group health plan or health insurance. Not included are Medicare, Medicaid, TRICARE and other government-provided plans. Note: However, that the loss of Medicaid or CHIP coverage is a separate special enrollment event.*
- 6 Under the Patient Protection and Affordable Care Act (PPACA) of 2010, annual and lifetime limits on essential health benefits are prohibited.*
- 7 Special enrollment rights based on marriage or that are extended to spouses apply only with respect to legally-recognized marriages (including same-sex marriages). Marriage does not include the formation of a domestic partnership and domestic partners are not treated as spouses for purposes of these rules. However, plans providing domestic partner coverage may, by plan design, extend special enrollment-like rights to domestic partners. See also footnote 8.*
- 8 Dependent for purposes of this HIPAA special enrollment event is defined by reference to the group medical plan's eligibility provisions. For example, if domestic partners are eligible for dependent coverage, then a domestic partner's loss of other coverage can be a HIPAA special enrollment event for the employee and the domestic partner.*

Resources

[Department of the Treasury](#) - Internal Revenue Service 26 CFR Parts 54 and 602 (§ 54.9801–6 Special enrollment periods) (§ 146.117 Special enrollment periods)

[Department of Labor](#) - Employee Benefits Security Administration 29 CFR Part 2590 (§ 2590.701–6 Special enrollment periods)

[Department of Health and Human Services](#) - Centers for Medicare & Medicaid Services 45 CFR Parts 144 and 146



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