



HIPAA Special Enrollment Rights

Under the Health Insurance Portability and Accountability Act (HIPAA), certain employer-sponsored health plans must provide special enrollment opportunities outside of the plan's normal enrollment periods. Unlike the mid-year election change rules under Section 125 of the Internal Revenue Code, HIPAA's enrollment opportunities – referred to as special enrollment rights – are mandated. Consequently, employers that sponsor applicable health plans must ensure that these special enrollment rights are provided and properly administered.

Applicable Plans

Group health plans and health insurance issuers subject to HIPAA's portability rules are required to provide special enrollment rights to eligible employees and their dependents. This includes group medical plans that provide benefits to active employees and their families, expatriate health plans, health reimbursement arrangements, and employee assistance and wellness programs that provide medical care. Dental and vision coverage, disability plans, life insurance, excepted benefit health flexible spending arrangements, and retiree-only plans are generally not subject to the portability rules and, as a result, are not required to offer special enrollment rights.

Plans Generally Subject to HIPAA's Portability Rules:

- ✓ **Group Medical***
- ✓ **Expatriate Health Plans**
- ✓ **HRAs**
- ✓ **EAPs**
- ✓ **Wellness Programs****

*Group medical plans that provide benefits to active employees and their families.

**Wellness Programs that provide medical care.

Qualifying Events

Special enrollment rights are triggered upon the occurrence of a qualifying event. Under HIPAA, there are three types of qualifying events:



Loss of Other Health Coverage

A group health plan is required to permit employees and their eligible dependents to enroll in the plan without regard to the plan's normal enrollment periods if the employee or dependent loses eligibility for other health coverage. The other coverage must have been under another group health plan, Medicaid, or a children's health insurance program (CHIP) (a voluntary termination of coverage does not constitute a loss of coverage). The enrollment opportunity may extend to the employee, the employee's dependents, or both.



Becoming Eligible for State Premium Assistance

Special enrollment rights are available when an employee or dependent becomes eligible for premium assistance with respect to coverage under the plan through either Medicaid or CHIP. The employee or

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dependent who is eligible under the terms of the plan but not enrolled may enroll mid-plan-year upon gaining eligibility for the state-provided premium assistance.



The Acquisition of a New Dependent

The third event recognized under HIPAA is the employee's acquisition of a new dependent through marriage, birth, adoption, or placement for adoption. Special enrollment rights extend only to the employee, the spouse, and the newly acquired dependents, not to pre-existing dependents. In the case of birth or adoption, coverage is made effective retroactively to the date of the birth, adoption, or placement for adoption.

Enrollment Opportunity

In most cases, HIPAA requires that the length of the special enrollment period be at least **30 days** from the date of the qualifying event, though employers have the option of providing for a longer period. However, in the event of gaining eligibility for state premium assistance, employers must provide an enrollment period of no fewer than **60 days**.

Upon timely requesting a special enrollment opportunity, the enrollee is entitled to select any benefit package under the plan. This means that special enrollees must be offered all the benefit options available to similarly situated individuals who enroll when first eligible. Thus, a group health plan that offers more than one medical coverage option must make all medical options available to an eligible special enrollee.

Disclosures and Related Considerations

Employer-sponsors of group health plans must furnish a notice of special enrollment rights to all eligible employees at or before the time the employee is first offered an opportunity to enroll. Importantly, this notice requirement falls upon the group health plan, not the insurer. Therefore, employers may find it most efficient to include the disclosure in initial enrollment materials and open enrollment materials on an annual basis, as well as the Summary Plan Description.

Employers should consider whether additional forms of notification may help avoid claims from employees that they weren't made aware of their rights or the deadlines. Additionally, employers may want to lengthen the duration of the special enrollment periods in order to better accommodate employees. Employers should also consider whether additional forms of notification may help avoid claims from employees who may claim that the employer did not inform them of their rights or the deadlines

Employers who choose to provide enrollment rights that are more generous than what HIPAA requires must first ensure that insurance carriers (including stop-loss carriers) agree to honor those terms.

Finally, employers who choose to provide enrollment rights that are more generous than what HIPAA requires must first ensure that insurance carriers (including stop-loss carriers) agree to honor those terms. This may be

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the case when an employer chooses to lengthen the duration of the special enrollment periods, or when an employer wishes to apply the same enrollment opportunities to benefits not subject to the HIPAA portability rules, such as dental and vision coverage. Without carrier approval, an employer will be unable to follow through on expanded enrollment opportunities.

HELPFUL RESOURCES



HIPAA Special Enrollment Rights

<https://www.law.cornell.edu/cfr/text/26/54.9801-6>



FAQ on HIPAA Portability and Nondiscrimination Requirements for Workers (DOL / EBSA)

<https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/hipaa-consumer.pdf>



HIPAA Helpful Tips (CMS)

https://www.cms.gov/regulations-and-guidance/health-insurance-reform/healthinsreformforconsume/downloads/hipaa_helpful_tips_rev_1.pdf

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