



March 25, 2021

# Status Changes and HIPAA Special Enrollments



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# **HIPAA Special Enrollments**

A Coverage Issue

# HIPAA Special Enrollments

A HIPAA Special Enrollment is an event that allows an individual to require a group health care plan 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 participant was covered under the other group health plan when the employer's plan was first offered, **and**;
- The participant indicated the other group health coverage when waiving coverage, **and**;
- The participant'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 his or herself, their spouse, and their children
  - Employee may elect coverage just for his or herself and not cover any dependents
  - Employee who covered his or herself 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 SCHIP coverage
- Gaining eligibility under Medicare or SCHIP 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

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**The date of the event**



Marriage or loss of other coverage

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**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

# Status Changes: The General Rules

- 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 Medicare or State 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

## HIPAA Special Enrollments

- Loss of other coverage
  - Loss of eligibility; exhaustion of COBRA; employer ceases contributions
- Gaining eligibility under Medicare or SCHIP 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 actually provides accident or health coverage for the child

# 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
  - **Gain or loss** of eligibility for a government subsidy toward the cost of employer-sponsored coverage under Medicaid or CHIPRA

## 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



# The Status Changes

## Significant Cost and Coverage Changes

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

## Significant Curtailment of Coverage

### 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

## Dependent Care

- In addition to the previously listed status changes, the following status changes apply to election changes under the Dependent Care FSA:
  - When one dependent care provider replaces another dependent care provider, whether or not dependent care provider is related to the employee
  - When a dependent care provider changes the cost for services
    - But cost change rules **do not** apply if dependent care provider is a relative of the employee making the election
  - Divorce or legal separation – the custodial parent may elect new coverage; non-custodial parent may drop existing election

# 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

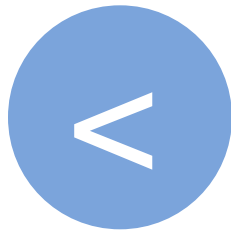
# The Status Changes

## 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

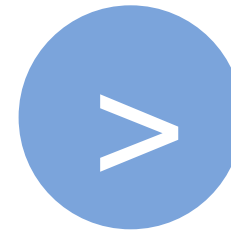
# The Status Changes

## Termination & 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 a 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

# Continuing Education Credits

- This Program, **ID No. 553872**, has been approved for 1.00 HR (General) recertification credit hours toward aPHR™, aPHRi™, PHR®, PHRca®, SPHR®, GPHR®, PHRi™ and SPHRi™ recertification through HR Certification Institute® (HRCI®).
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**Thank you!**



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