

LEGISLATIVE BRIEF



Brought to you by Clark-Mortenson Insurance

Compliance Checklist for HIPAA Special Enrollment Rules

HIPAA requires group health plans to provide a special enrollment opportunity outside of the plan's initial enrollment period or annual open enrollment period in certain situations. Special enrollment must be made available in the following three situations:

- A loss of eligibility for other health coverage;
- The acquisition of a new spouse or dependent by marriage, birth, adoption or placement for adoption; and
- Becoming eligible for a premium assistance subsidy under Medicaid or a state Children's Health Insurance Program (CHIP), as required under the Children's Health Insurance Program Reauthorization Act (CHIPRA).

The Department of Labor (DOL) issued the following checklist to help plans and issuers comply with HIPAA's special enrollment requirements. **If you answer "no" to any of the questions below, the group health plan is in violation of HIPAA's special enrollment rules.**

HIPAA Special Enrollment Rules	Yes	No	N/A
<p>QUESTION 1—SPECIAL ENROLLMENT UPON LOSS OF OTHER COVERAGE</p> <p>Does the plan provide full special enrollment rights upon loss of other coverage?</p> <p>A plan must permit loss-of-coverage special enrollment upon: (1) loss of eligibility for group health plan coverage or health insurance coverage; and (2) termination of employer contributions toward group health plan coverage. <i>ERISA section 701(f)(1); 29 CFR 2590.701-6(a).</i></p> <ul style="list-style-type: none">• When a current employee loses eligibility for coverage, the plan must permit the employee and any dependents to special enroll. <i>29 CFR 2590.701-6(a)(2)(i).</i>• When a dependent of a current employee loses eligibility for coverage, the plan must permit the dependent and the employee to special enroll. <i>29 CFR 2590.701-6(a)(2)(ii).</i> <p>Examples: Examples of reasons for loss of eligibility include legal separation, divorce, death of an employee, voluntary or involuntary termination or reduction in the number of hours of employment (with or without electing COBRA), exhaustion of COBRA, reduction in hours, "aging out" under other parent's coverage, and moving out of an HMO's service area. Loss of eligibility for coverage does not</p>			

Compliance Checklist for HIPAA Special Enrollment Rules

<p>include loss due to the individual’s failure to pay premiums or termination of coverage for cause, such as for fraud. <i>29 CFR 2590.701-6(a)(3)(i)</i>.</p> <ul style="list-style-type: none"> When employer contributions toward an employee’s or dependent’s coverage terminates, the plan must permit special enrollment, even if the employee or dependent did not lose eligibility for coverage. <i>29 CFR 2590.701-6(a)(3)(ii)</i>. <p>Plans must allow an employee a period of at least 30 days to request enrollment. <i>29 CFR 2590.701-6(a)(4)(i)</i>.</p> <p>Coverage must become effective no later than the first day of the first month following a completed request for enrollment. <i>29 CFR 2590.701-6(a)(4)(ii)</i>.</p> <div style="border: 1px solid black; padding: 5px; text-align: center;"> <p>TIP</p> <p>Ensure that the plan permits special enrollment upon all of the loss of coverage events described above.</p> </div>			
<p>QUESTION 2—DEPENDENT SPECIAL ENROLLMENT</p> <p>Does the plan provide full special enrollment rights to individuals upon marriage, birth, adoption and placement for adoption?</p> <ul style="list-style-type: none"> Plans must generally permit current employees to enroll upon marriage and upon birth, adoption or placement for adoption of a dependent child. <i>ERISA section 701(f)(2); 29 CFR 2590.701-6(b)(2)</i>. Plans must generally permit a participant’s spouse and new dependents to enroll upon marriage, birth, adoption and placement for adoption. <i>ERISA section 701(f)(2); 29 CFR 2590.701-6(b)(2)</i>. Plans must allow an individual a period of at least 30 days to request enrollment. <i>29 CFR 2590.701-6(b)(3)(i)</i>. <p>In the case of marriage, coverage must become effective no later than the first day of the month following a completed request for enrollment. <i>29 CFR 2590.701-6(b)(3)(iii)(A)</i>.</p> <p>In the case of birth, adoption, or placement for adoption, coverage must become effective as of the date of the birth, adoption or placement for adoption. <i>29 CFR 2590.701-6(b)(3)(iii)(B)</i>.</p> <div style="border: 1px solid black; padding: 5px; text-align: center;"> <p>TIP</p> <p>Remember to allow all eligible employees, spouses and new dependents to enroll upon these events. Also, ensure that the effective date of coverage complies with HIPAA, keeping in mind that some effective dates of coverage are retroactive.</p> </div>			
<p>QUESTION 3—SPECIAL ENROLLMENT RIGHTS PROVIDED THROUGH CHIPRA</p> <p>Does the plan provide full special enrollment rights as required under CHIPRA?</p> <p>Under the following conditions a group health plan must allow an employee or dependent (who is otherwise eligible) to enroll,</p>			

This Legislative Brief is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice.

Compliance Checklist for HIPAA Special Enrollment Rules

<p>regardless of any late enrollment provisions, if enrollment is requested within 60 days:</p> <ul style="list-style-type: none"> • <i>When an employee's or dependent's Medicaid or CHIP coverage is terminated.</i> When an employee or dependent is covered under a Medicaid plan under title XIX of the Social Security Act or under a state child health plan under title XXI of the Social Security Act and coverage of the employee or dependent is terminated as a result of loss of eligibility, a group health plan must allow special enrollment. The employee or dependent must request special enrollment within 60 days after the date of termination of Medicaid or CHIP coverage. <i>ERISA section 701(f)(3).</i> • <i>Upon eligibility for employment assistance under Medicaid or CHIP.</i> When an employee or dependent becomes eligible for assistance, with respect to coverage under the group health plan or health insurance coverage under a Medicaid plan or state CHIP plan, the group health plan must allow special enrollment. The employee or dependent must request special enrollment within 60 days after the employee or dependent is determined to be eligible for assistance. <i>ERISA section 701(f)(3).</i> <p>NOTE: In addition, employers that maintain a group health plan in a state with a CHIP or Medicaid program that provides for premium assistance for group health plan coverage must provide a written notice (referred to as the Employer CHIP Notice) to each employee to inform them of possible opportunities available in the state in which they reside for premium assistance for health coverage of employees or dependents. A model notice is available at www.dol.gov/ebsa.</p>			
<p>QUESTION 4—TREATMENT OF SPECIAL ENROLLEES</p> <p>Does the plan treat special enrollees the same as individuals who enroll when first eligible, for purposes of eligibility for benefit packages and?</p> <p>If an individual requests enrollment while he or she is entitled to special enrollment, the individual is a special enrollee, even if the request for enrollment coincides with a late enrollment opportunity under the plan. <i>29 CFR 2590.701-6(d)(1).</i></p> <p>Special enrollees must be offered the same benefit packages available to similarly situated individuals who enroll when first eligible. (Any difference in benefits or cost-sharing requirements for different individuals constitutes a different benefit package.) In addition, a special enrollee cannot be required to pay more for coverage than a similarly situated individual who enrolls in the same coverage when first eligible. <i>29 CFR 2590.701-6(d)(2).</i></p>			
<p>QUESTION 5—NOTICE OF SPECIAL ENROLLMENT RIGHTS</p> <p>Does the plan provide timely and adequate notices of special enrollment rights?</p> <p>On or before the time an employee is offered the opportunity to enroll in the plan, the plan must provide the employee with a description of special enrollment rights.</p>			

This Legislative Brief is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice.

Compliance Checklist for HIPAA Special Enrollment Rules

<p style="text-align: center;">TIP</p> <p>Ensure that the special enrollment notice is provided at or before the time an employee is initially offered the opportunity to enroll in the plan. This may mean breaking it off from the summary plan description (SPD). The plan can include its special enrollment notice in the SPD if the SPD is provided at or before the initial enrollment opportunity (for example, as part of the application materials). If not, the special enrollment notice must be provided separately to be timely. A model notice is provided in the EBSA publication Health Benefits Coverage under Federal Law.</p>				
--	--	--	--	--

MORE INFORMATION

Please contact Clark-Mortenson Insurance for these additional compliance checklists:

- Compliance Checklist for HIPAA Nondiscrimination Rules;
- Compliance Checklist for HIPAA Wellness Program Rules;
- Compliance Checklist for Mental Health Parity;
- Compliance Checklist for Newborns’ and Mothers’ Health Protection Act;
- Compliance Checklist for the Women’s Health and Cancer Rights Act (WHCRA);
- Compliance Checklist for the Genetic Information Nondiscrimination Act (GINA); and
- Compliance Checklist for Michelle’s Law.

Source: Department of Labor

This Legislative Brief is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice.

Design © 2015 Zywave, Inc. All rights reserved. 11/13; 12/14