

HIPAA Special Enrollment Rights – Birth



EMPLOYEE BENEFITS: Compliance FYI

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One of the most common questions we get outside of open enrollment season is – what enrollment rights trigger following the birth or adoption of a child?

The Health Insurance Portability and Accountability Act of 1996 (HIPAA), requires that in certain cases “special enrollees” must be allowed the opportunity to enroll in the employer’s health plan outside of the plans normal open enrollment periods. One of those cases is the birth or adoption of a child.

Assuming that the employee and dependents would otherwise be eligible for coverage under the employer’s plan, following the birth or adoption of a child, special enrollment would allow the employee, his or her spouse, and their new dependents to all enroll under the plan. To qualify, the employee must notify the plan of the birth or adoption within 30 days of the occurrence. For birth or adoption, coverage will begin retroactively to when the event occurred.

Example 1: New Family

Joe and Jane are married and expecting their first child. When Joe first started with AnyCo he declined coverage under the group health plan as a new hire. Jane gives birth to their daughter Joy and Joe wants to bring the whole family onto the AnyCo plan. Who must AnyCo allow to become covered?

In this example, the HIPAA rules would require AnyCo to accept any of the following coverage combinations:

- Joe alone;
- Joe and Jane;
- Joe and Joy; or
- Joe, Jane, and Joy.

The circumstances are different however, if we were to change the example to add an existing non-covered dependent.

In June 2014, the Department of Labor (DOL) issued proposed regulations that would amend the definition of spouse by eliminating the “state of residence” rule and replacing it with the “place of celebration” rule. This would allow all individuals who are legally married under the laws of the state in which the marriage was entered into to be treated as spouses for purposes of FMLA administration, regardless of whether the state in which the employee resides recognizes same-sex marriage.

Example 2: Existing Family

Let's assume the same scenario as above, but add another child. Joe and Jane are married and have a two-year old, Jake, and expecting Joy as their second child. Again assume that when Joe first started he declined coverage as a new hire because they were all covered under Jane's health plan. When Joy is born, Joe decides he wants to move the whole family to his coverage so Jane can be a stay at home mom. Can he do it?

The answer here depends not just on HIPAA, but also on the cafeteria plan (Section 125) rules regarding mid-year election changes. The HIPAA rules require letting Joe add himself, Jane, and the new baby, but the rules do not require letting the employee add Jake (or any other children) at the same time as the new baby. However, most plans are also cafeteria plans which may offer enrollment opportunities that are more liberal than the HIPAA rules. The IRS rules for cafeteria plans allow letting the employee add other eligible children along with the new baby/spouse if the employer's plan includes this "tag along" provision. If the plan document allows for it then Joe may add his whole family to the AnyCo plan after Joy's birth.

Another circumstance may also be common with families following the birth of a second child. Assume that prior to Joy's birth all the family members are covered by Jane's health plan through OtherCo. Joe and Jane decide that after Joy is born she will take a reduced schedule (or quit) with OtherCo, but by doing so she will no longer be eligible for coverage under the plan. Joe decides that he will add the whole family to his coverage when Joy is born. Under this scenario, a different HIPAA special enrollment event is triggered—loss of existing coverage. In this instance, Joe could add his whole family according to the special enrollment rules.

Key takeaway:

Understanding the various enrollment options is important. Employers should review their plan documents and summary plan descriptions to ensure that they understand what election changes are permitted and how those impact various coverage options when employees wish to add dependents as their families grow.



The information in this Compliance FYI is a summary of laws and regulations relating to employee benefit plan compliance. This information should not be construed as legal advice. In all cases, employers should consult with their own legal counsel

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