Are Special Enrollment Rights Triggered When Employees Who Previously Dropped Group Health Coverage Due to Obtaining Other Coverage Subsequently Lose That Other Coverage?

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QUESTION: One of our employees enrolled in our company's group health plan when first eligible but later dropped the coverage after obtaining other group health coverage through her spouse's new employer. Now the spouse's employment has terminated, and both of them are losing their coverage. Does the loss of that coverage trigger special enrollment rights under our plan?

ANSWER: HIPAA requires a group health plan to provide special enrollment opportunities to certain employees and dependents who—

- lose eligibility for other group health coverage or health insurance coverage;
- lose eligibility for Medicaid or a state Children's Health Insurance Program (CHIP), or become eligible for a state premium assistance subsidy under Medicaid/CHIP; or
- acquire a new spouse or dependent by marriage, birth, adoption, or placement for adoption.

For the first special enrollment trigger to apply, an employee or dependent of an employee must be eligible for coverage but not currently enrolled, and the employee or dependent must have had other health coverage when enrollment was offered and declined. For this purpose, dependent is defined as any individual who is or may become eligible for coverage under the terms of the group health plan because of the relationship to the employee, as defined under the eligibility provisions of each group health plan.

A special enrollment right arises when the other coverage is lost because of a loss of eligibility, cessation of employer contributions, or exhaustion of COBRA coverage. "Loss of eligibility" includes a loss resulting from termination of employment—and employees are not required to elect COBRA coverage to retain their special enrollment right. Special enrollment rights are available to eligible employees, dependents of eligible employees, and dependents of COBRA qualified beneficiaries. (An employer may require its employees to state in writing at the time coverage was declined that the reason for declining coverage was the existence of other health coverage. We will assume that your plan does not impose such a requirement.)

It seems that special enrollment rights would apply in your employee's circumstance. The requirements for special enrollment are that the employee was previously offered and declined coverage at a time when other health coverage was in place. In our view, even though dropping coverage after enrollment is not directly addressed in the regulations, it should not matter whether the employee had coverage and then dropped it or never enrolled for coverage because, in either case, the reason was the existence of other coverage. The special enrollment right for loss of other coverage should apply to permit the employee and spouse to re-enter your plan midyear. For more information, see EBIA's HIPAA manual at Section X ("Special Enrollment Rights").

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