

When, How, and to Whom Must Group Health Plans Provide Notices of HIPAA Special Enrollment Rights?

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QUESTION: When and how must our company's group health plan provide notices of HIPAA special enrollment rights, and who should receive such a notice?

ANSWER: HIPAA regulations require group health plans to provide a notice of HIPAA special enrollment rights to all eligible employees at or before the time they are first offered the opportunity to enroll in the plan. The notice must describe special midyear enrollment opportunities for (1) employees or dependents who decline coverage because they have coverage under another group health plan, health insurance, Medicaid, or state Children's Health Insurance Program (CHIP) and who later lose eligibility for that other coverage; (2) employees or dependents who become eligible for a state premium assistance subsidy under Medicaid or a CHIP; and (3) employees who acquire a new spouse or dependent by marriage, birth, adoption, or placement for adoption. The notice must inform participants that they can enroll outside the plan's annual enrollment period, so long as they meet certain deadlines. Specifically, participants must request enrollment within 30 days of the special enrollment event (60 days for the loss of Medicaid or CHIP eligibility or new eligibility for state premium assistance), unless the plan specifies a longer period. The notice should further explain that missing the special enrollment deadline will likely mean having to wait until the next open enrollment period to enroll.

Because the special enrollment notice contains practical information that a participant might need in deciding whether to enroll in the plan, we recommend that group health plan sponsors include the notice with plan enrollment materials. While special enrollment information should also be included in the plan's summary plan description (SPD), that alone would likely be insufficient because employees who decline coverage are usually not given an SPD and therefore would not receive the required notice. If the conditions imposed by applicable DOL regulations are satisfied, the notice can be distributed through electronic methods (including email and other internet-based methods). If a plan neglects to timely furnish a notice of special enrollment rights, the plan could have difficulty limiting enrollment to the special enrollment period because participants may argue that they would have enrolled in a timely manner if they had received the notice. Additionally, the DOL can impose penalties for failures to provide the notice. Plans can avoid this liability exposure by furnishing complete, accurate, and timely special enrollment notices.

For more information, see EBIA's HIPAA Portability, Privacy & Security manual at Section X.F ("Disclosure Requirements for Special Enrollment Rights") and the manual's Sample Initial Notice of Special Enrollment Rights.

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