

# CHECKLIST | HIPAA Special Enrollment

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The Health Insurance Portability and Accountability Act (HIPAA) requires health plans to provide **special enrollment opportunities** for employees and their dependents outside the plans' regular enrollment periods in certain situations. Employees and dependents may have special enrollment rights when an individual:

- loses eligibility for other health coverage;
- becomes a new dependent through marriage, birth, adoption or placement for adoption;
- loses eligibility for coverage under a state Children's Health Insurance Program (CHIP) or Medicaid; or
- becomes eligible to receive premium assistance under CHIP or Medicaid for group health coverage.

Special enrollees must be offered all the benefits packages available to similarly situated individuals who enroll when first eligible. Employees must receive a description of special enrollment rights on or before the date they are first offered the opportunity to enroll in the group health plan.

This checklist outlines steps for determining certain factors to assist employers in complying with HIPAA's special enrollment rules.

## Step 1: Is the Plan Subject to HIPAA's Special Enrollment Rules?

Covered Plans	Yes	No
<p><b>Is the plan required to provide HIPAA special enrollment opportunities?</b></p> <p>HIPAA's special enrollment rules broadly apply to health plans and health insurance issuers offering group health insurance coverage. However, certain categories of coverage, called excepted benefits, are not subject to HIPAA's special enrollment rules. Excepted benefits include, for example, the following:</p> <ul style="list-style-type: none"><li>• Benefits that are generally not health coverage (such as automobile coverage, liability insurance, workers' compensation, disability income coverage, and accidental death and dismemberment coverage);</li><li>• Limited-scope dental or vision benefits; and</li><li>• Health flexible spending accounts.</li></ul> <p>HIPAA's special enrollment rules also do not apply to a health plan that, on the first day of the plan year, has fewer than two participants who are current employees.</p> <p><b>If you select "No," you can stop here. The plan is not subject to HIPAA's special enrollment rules.</b></p>	<input type="checkbox"/>	<input type="checkbox"/>

## Step 2: Has a HIPAA Special Enrollment Event Occurred?

To be eligible for special enrollment rights, a special enrollment event must have occurred. In general, employees and dependents may have special enrollment rights when they:

- Lose eligibility for other health coverage;
- Acquire a new dependent through marriage, birth, adoption or placement for adoption;
- Lose eligibility for coverage under CHIP or Medicaid; or
- Become eligible to receive premium assistance under CHIP or Medicaid for group health coverage.

More information on each of these special enrollment events is provided below.

Loss of Eligibility for Other Health Coverage	Yes	No
<p><b>Has an employee or dependent lost eligibility for other health coverage?</b></p> <p>To be eligible for special enrollment due to a loss of eligibility for other health coverage, all the following conditions must be satisfied:</p> <ul style="list-style-type: none"> <li>• The employee and dependents are otherwise eligible to enroll in the employer's health plan;</li> <li>• The employee (or dependent seeking special enrollment) had other health coverage when coverage under the plan was previously offered; and</li> <li>• The employee or dependent lost eligibility for the other coverage because:               <ul style="list-style-type: none"> <li>○ The coverage was provided under COBRA, and the entire COBRA coverage period was exhausted;</li> <li>○ The coverage was non-COBRA coverage, and the coverage was terminated because of loss of eligibility for coverage; or</li> <li>○ The coverage was non-COBRA coverage and employer contributions to the coverage were terminated.</li> </ul> </li> </ul> <p>See below for more information on what a loss of eligibility for coverage means for HIPAA special enrollment.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>More Information:</b> A loss of eligibility for coverage includes but is not limited to the following:</p> <ul style="list-style-type: none"> <li>• Loss of eligibility for coverage as a result of legal separation, divorce, cessation of dependent status (such as attaining the maximum age to be eligible as a dependent child under the plan), death of an employee, termination of employment, reduction in the number of hours of employment, and any loss of eligibility for coverage after a period that is measured by reference to any of these events;</li> </ul>		

- In the case of coverage offered through a health maintenance organization (HMO) in the individual market that does not provide benefits to individuals who no longer reside, live or work in a service area, loss of coverage because an individual no longer resides, lives or works in the service area (whether or not within the choice of the individual);
- In the case of coverage offered through an HMO in the group market that does not provide benefits to individuals who no longer reside, live or work in a service area, loss of coverage because an individual no longer resides, lives or works in the service area (whether or not within the choice of the individual), and no other benefits package is available to the individual; and
- A situation where a plan no longer offers any benefits to the class of similarly situated individuals that includes the individual.

A loss of eligibility for coverage also occurs if an individual loses eligibility for coverage in the individual market (including coverage purchased through an Exchange), regardless of whether the individual may enroll in other individual market coverage.

Loss of eligibility does not include a loss resulting from the failure of the employee or dependent to pay premiums on a timely basis or a termination of coverage for cause (such as making a fraudulent claim or an intentional misrepresentation of a material fact in connection with the plan).

Acquisition of New Dependent	Yes	No
<b>Has an employee acquired a new dependent through marriage, birth, adoption or placement for adoption?</b>  These special enrollment rights apply only if the health plan otherwise offers dependent coverage and only if the new dependent is acquired by marriage, birth, adoption or placement for adoption.	<input type="checkbox"/>	<input type="checkbox"/>

Termination of CHIP or Medicaid Eligibility	Yes	No
<b>Has an employee or dependent lost eligibility for CHIP or Medicaid coverage?</b>  To be eligible for special enrollment due to a loss of eligibility for CHIP or Medicaid coverage, all the following conditions must be satisfied: <ul style="list-style-type: none"> <li>• The employee or dependent is covered by CHIP or Medicaid;</li> <li>• The CHIP or Medicaid coverage of the employee or dependent is terminated as a result of loss of eligibility for the coverage; and</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>

Termination of CHIP or Medicaid Eligibility	Yes	No
<ul style="list-style-type: none"> <li>The employee and dependent are otherwise eligible to enroll in the employer's health plan.</li> </ul>		

Eligibility for Premium Assistance Subsidy	Yes	No
Has an employee or dependent become eligible for a premium assistance subsidy through CHIP or Medicaid for employer-sponsored group health coverage?	<input type="checkbox"/>	<input type="checkbox"/>

If you select "No" for all the questions under Step 2, you can stop at this step. HIPAA special enrollment rights are triggered only when a special enrollment event occurs.

### Step 3: Has a Timely Special Enrollment Request Been Made?

Deadlines for Special Enrollment Requests	Yes	No
<p><b>Was a special enrollment request made by the health plan's applicable deadline?</b></p> <p>A health plan must allow an enrollment period of at least <b>30 days</b> after a loss of eligibility for other health coverage or the acquisition of a new dependent.</p> <p>A health plan must allow an enrollment period of at least <b>60 days</b> after a loss of eligibility for CHIP or Medicaid coverage or after eligibility for a premium assistance subsidy is determined.</p> <p>If you select "No," you can stop at this step. Special enrollment requests should be made by the applicable deadline. Employers who want to allow exceptions to the plan's deadline should only do so after consulting with their insurance carrier (or stop-loss carrier for a self-insured health plan).</p>	<input type="checkbox"/>	<input type="checkbox"/>

### Step 4: Who Is Eligible for Special Enrollment?

Eligible Employees and Dependents	Complete
<p><b>For each special enrollment request, determine who has special enrollment rights.</b></p> <p>The eligibility rules vary based on the type of special enrollment event. See below for more information.</p>	<input type="checkbox"/>
<p><b>More Information:</b></p> <p><b>Loss of eligibility for other health coverage:</b> If the employee loses coverage, the employee and any dependents (including the spouse) who are eligible under the plan's terms may qualify as special</p>	

enrollees. If an eligible dependent loses coverage, that dependent and the employee may qualify as special enrollees. Other dependents do not have special enrollment rights in this situation.\*

**Acquisition of new dependent:** The employee, the employee's spouse and any dependents newly acquired through marriage, birth, adoption or placement for adoption have special enrollment rights. Other dependents (for example, siblings of a newborn child) do not have special enrollment rights in this situation.\*

**Termination of CHIP or Medicaid eligibility:** The employee who is eligible but not enrolled for coverage under the terms of the plan (or a dependent of such an employee if the dependent is eligible but not enrolled for coverage under such terms).

**Eligibility for premium assistance subsidy:** The employee who is eligible but not enrolled for coverage under the terms of the plan (or a dependent of such an employee if the dependent is eligible but not enrolled for coverage under such terms).

\*Some health plans go beyond what HIPAA requires and allow an employee's other dependents also to be enrolled in certain situations. Before implementing a plan design that provides greater enrollment rights, employers should consult with their insurance carriers (or stop-loss carriers for self-insured plans).

## Step 5: When Should Coverage Be Effective?

Coverage Effective Date	Complete
<p><b>Confirm that coverage will be effective by the required date for the special enrollment event.</b></p> <p>In general, the new coverage should begin no later than the first day of the first calendar month, beginning after the employer receives a timely special enrollment request.</p> <p>However, when a new dependent is acquired through birth, adoption or placement for adoption and special enrollment is timely requested, the new coverage should be effective retroactively to the date of birth, adoption or placement for adoption.</p>	<input type="checkbox"/>

## Step 6: Can Special Enrollees' Premiums Be Pre-tax?

Section 125 Rules	Complete
<p><b>Confirm whether employees can change their Section 125 elections to pay their health plan premiums on a pre-tax basis.</b></p> <p>Many employers sponsor cafeteria plans (or Section 125 plans) to allow employees to pay for their health coverage on a pre-tax basis. As a general rule, employees' elections under a cafeteria plan must be made on a prospective basis and cannot be changed until the beginning of the next plan year. However, cafeteria plans may recognize certain midyear election change events to allow employees to make election changes during a plan year.</p>	<input type="checkbox"/>

Section 125 Rules	Complete
A cafeteria plan may be designed to permit midyear election changes that correspond with HIPAA's special enrollment rules. This allows employees to pay for their health coverage on a pre-tax basis when they obtain coverage during a special enrollment period. If a cafeteria plan does not allow midyear election changes for HIPAA special enrollment events, eligible employees and dependents must still be allowed to enroll in health plan coverage and pay their premiums on an after-tax basis.	