



New HIPAA Special Enrollment Rules

The Children's Health Insurance Program Reauthorization Act of 2009 created two additional special enrollment rights for employees and their dependents who are eligible, but not enrolled in coverage with their employer's group health plan. HIPAA Special Enrollment Rights give eligible employees or dependents the right to request enrollment in an employer's group health plan outside the initial eligibility date as a new hire or open enrollment.

These two new special enrollment rights are listed below:

1. If the employee or dependent loses eligibility for Medicaid or CHIP, they may request enrollment in the employer's group health plan. Enrollment must be requested within 60 days after the termination of Medicaid or CHIP coverage.
2. If the employee or dependent becomes eligible for premium assistance through Medicaid or CHIP, they may request enrollment in the employer's group health plan. Enrollment must be requested within 60 days after eligibility is determined.

One major difference with these two new special enrollment rights is that the employee or dependent has 60-days to request their enrollment in contrast to the 30-day requirement under the original HIPAA Special Enrollment rules. The original special enrollment rules remain at the 30-day request requirement. Loss of other health coverage (excluding #1 above) and acquisition of a new dependent by marriage, birth or adoption remain at the 30-day request requirement.

In addition, states may elect to offer a premium assistance subsidy the help CHIP and Medicaid eligible children obtain qualified employer sponsored coverage. The subsidy may be provided as a reimbursement directly to the employee or as a direct payment to the employer. Employers can opt out of direct payments. Employer group health plans in states that provide Medicaid or CHIP premium assistance subsidies must give notice to employees of the availability of the subsidy. The Department of Health and Human Services is required to develop model notices by 2/4/2010. The notice requirement is effective for plan years beginning after the date the model notices are issued. We will continue to monitor this issue and provide further guidance as it becomes available.

ACTION STEPS

Effective immediately we recommend you replace your current Notice of HIPAA Special Enrollment Rights with the attached revised version. It is important that all employees eligible for the health plan receive a copy of this notice regardless if they are enrolled or not. If they are enrolled they should complete the "Employee Confirmation of Receipt of HIPAA Special Enrollment Rights" on the Notice of HIPAA Special Enrollment Rights form. If they are not enrolled or waive coverage for some eligible dependents in addition to completing the "Employee Confirmation of Receipt of HIPAA Special Enrollment Rights" they should also complete the "Employee Declination Statement". The employer should keep a copy of the signed document and also give the employee a copy for their records.

If you would like review additional information about the original HIPAA Special Enrollment Rights, please refer to our Legislative Update 2004 01 HIPAA Special Enrollment located at www.conestoga.biz. Click on Reference Center on the left and the select Legislative Updates.

Attached is a sample revised notice for your use. If you would like this in a Word document that would be easily edited for your use, please contact Fredonna Smith at 610-889-9500, extension 103 or e-mail at fredonna.smith@conestoga.biz.

The Conestoga Group is an insurance, investment and employee benefits broker and consulting firm based in Frazer, PA. Conestoga specializes in providing financial products and services to small businesses and their owner/executives and other employees. Founder and President Brad Palmer is an Investment Advisory Representative of Commonwealth Financial Network-a Registered Investment Adviser and member firm of the FINRA/SIPC. Brad can be reached at 610-889-9500 extension 101 or at brad.palmer@conestoga.biz.

NOTICE

These legislative comments are our interpretations of information provided to us by various legal and other resources as of 11/19/09. It is possible the information was presented incorrectly or that we have misunderstood the presentation. The purpose of this communication is to provide you with basic summary information on the subject matter to assist you in determining if you may need to seek legal or other professional assistance. This update and its attachments should not be construed as legal, tax, investment, or other advice and does not take into consideration specific factors unique to the reader's situation.

NOTICE OF HIPAA SPECIAL ENROLLMENT RIGHTS

Our records show that you are eligible to participate in «Company»'s Group Health Plan. Federal law (HIPAA) requires we notify you of your right to enroll in the plan in the future under the plan's "Special Enrollment Provisions", if you acquire a new dependent, or if you decline coverage for yourself or an eligible dependent while other coverage is in effect and later lose that coverage for a qualifying reason.

SPECIAL ENROLLMENT PROVISION

Loss of Coverage (excluding Medicaid or State Children's Health Insurance Program): If you are declining enrollment for yourself or your dependents (including your spouse) while other health insurance or group health plan coverage is in effect, you may be able to enroll yourself and your dependents in this plan if you or your dependents lose eligibility for that other coverage (or if the employer stops contributing toward your or your dependents' other coverage). However, you must request enrollment within 30 days after your or your dependents' other coverage ends (or after the employer stops contributing toward the other coverage).

Loss of Coverage for Medicaid or a State Children's Health Insurance Program: If you decline enrollment for yourself or for an eligible dependent (including your spouse) while Medicaid coverage or coverage under a state children's health insurance program is in effect, you may be able to enroll yourself and your dependents in this plan if you or your dependents lose eligibility for that other coverage. However, you must request enrollment within 60 days after your or your dependents' coverage ends under Medicaid or a state children's health insurance program.

New Dependent by Marriage, Birth, Adoption or Placement for Adoption: If you have a new dependent as a result of marriage, birth, adoption or placement for adoption, you may be able to enroll yourself and your new dependents. However, you must request enrollment within 30 days after the marriage, birth, adoption, or placement for adoption.

Eligibility for Medicaid or a State Children's Health Insurance Program: If you or your dependents (including your spouse) become eligible for a state premium assistance subsidy from Medicaid or through a state children's health insurance program with respect to coverage under this plan, you may be able to enroll yourself and your dependents in this plan. However, you must request enrollment within 60 days after your or your dependents' determination of eligibility for such assistance.

IMPORTANT WARNING

If you decline enrollment for yourself or for an eligible dependent, you must complete the "Employee Declination Statement" below. You are required to state that coverage under another group health plan or other health insurance coverage (including Medicaid or a state children's health insurance program) is the reason for declining enrollment, and you are asked to identify that coverage. If you do not complete the statement, you and your dependents will not be entitled to special enrollment rights upon a loss of other coverage as described above, but you will still have special enrollment rights when you have a new dependent by marriage, birth, adoption, or placement for adoption, or by virtue of gaining eligibility for a state premium assistance subsidy from Medicaid or through a state children's health insurance program with respect to coverage under this plan, as described above. If you do not gain special enrollment rights upon a loss of other coverage, you cannot enroll yourself or your dependents in the plan at any time other than the plan's annual open enrollment period, unless special enrollment rights apply because of a new dependent by marriage, birth, adoption, or placement for adoption, or by virtue of gaining eligibility for a state premium assistance subsidy from Medicaid or through a state children's health insurance program with respect to coverage under this plan.

To request special enrollment or obtain more information contact «Full_Name» at «Company», «Business_Address» or «Business_Phone».

EMPLOYEE CONFIRMATION OF RECEIPT OF HIPAA SPECIAL ENROLLMENT RIGHTS

I acknowledge that I have read and understand the Notice of HIPAA Special Enrollment Rights. I understand my obligations should I experience an event in the future that falls under the Special Enrollment Provision. If I am declining coverage for myself and/or my eligible dependents I will also complete the required information in the Employee Declination Section Statement below.

Print Name

Signature

Date

EMPLOYEE DECLINATION STATEMENT

I received and read a copy of the "Notice of HIPAA Special Enrollment Rights", including the Important Warning section describing the requirements to decline coverage in writing if the reason I am declining coverage is because either my dependents or myself have other coverage. By signing this form, I hereby decline coverage under «Company»'s Group Health Plan for my dependents and/or myself. [If coverage is being declined for some, but not all, family members, please list here the individuals for whom coverage is being declined]:

The reason for declining coverage for my dependents and/or myself is that family members and/or myself for whom coverage is being declined have coverage under another group health plan or other health insurance coverage. [Please specify here the name(s) of the other coverage you have, and your subscriber number(s)]:

I also understand if I decline coverage for my dependents and/or myself and do not have other insurance coverage as noted above I will not be entitled to the special enrollment rights upon a loss of other coverage as described above. I will only have special enrollment rights if I have a new dependent by marriage, birth, adoption, or placement for adoption, or by virtue of gaining eligibility for a state premium assistance subsidy from Medicaid or through a state children's health insurance program. Otherwise I will wait until the plan's annual open enrollment period.

Print Name

Signature

Date