

BenAlert

Benefit Trends and Legislative Updates



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Howitt Insurance Services is pleased to provide you with periodic updates on benefit trends and legislative updates. As part of our valuable services, we want to ensure that you are in compliance and well-informed of the ongoing changes in our industry.

HIPAA: Final and Proposed Regulations and Special Enrollment Rights Expanded

Action required before of next plan year to comply with Final and Proposed HIPAA Regulations
Employers and carriers will need to make changes to their health insurance plan materials and participant communications as of the start of their next plan year (January 1, 2006 for employers with calendar plan years), in order to comply with final regulations under HIPAA. These regulations pertain to rules about pre-existing condition exclusions, certificates of creditable coverage and special enrollment rights.

Background

HIPAA provides rules on the portability of health insurance coverage, including parameters relating to pre-existing condition exclusion periods, the creditable coverage assessment that is used to determine when a pre-existing condition exclusion may be applied, and the special circumstances where participant enrollment is allowed outside of ordinary enrollment periods. (Limited dental, vision and long-term care benefits that are provided under a separate policy are excepted from the HIPAA portability requirements.) The portability rules apply to all participants of an active employee group health plan, including former employees, retirees and dependents.

The final HIPAA portability regulations, effective as of July 1, 2005, replace the interim final regulations issued on April 1, 1997, and later clarified on December 29, 1997, but do not make significant changes. The final regulations clarify certain definitions and require new information to be included in participant notices and communications. Plans must comply with the final regulations as of their plan years beginning on or after July 1, 2005.

Notice of Pre-existing Conditions Limitations.

In brief, a plan cannot enforce a pre-existing condition limitation against a plan participant unless the participant has knowledge of the pre-existing condition limitation. The Final HIPAA Portability Regulations require the Plan Sponsor or insurer to provide a written general notice at time of initial enrollment and at open enrollment allowing the participant to change plans. The regulations provide specific guidance on the manner, content, timing, and delivery of these notices.

Notice of Determination of Creditable Coverage.

In the event that the certification of creditable coverage is not adequate for removing the pre-existing condition limitation in its entirety, the plan must notify the participant on the earliest date following such a determination that the limitation still applies; however it does not have to provide detail. If the certificate eliminates the pre-existing condition limitation, then the regulations do not require a notice.

Special Open Enrollment Rights Expanded.

- a. The final regulations provide for a special open enrollment right to any individual who exhausts their health care coverage by reaching the maximum benefit under the whole plan. For example, an individual has reached the policy's \$1,000,000 maximum. The new rule, however, does not apply to individuals reaching maximum inner limits such as \$25,000 on inpatient alcohol dependency treatment.
- b. A special enrollment right arises when an individual no longer resides or works in an HMO service area and there is no other access to any other benefit option of the employer.
- c. An employee and spouse who did not have other coverage when they initially declined coverage under the employer's plan, and who decline coverage again under subsequent open enrollment periods because of other coverage under the spouse's employer plan, have special enrollment rights upon the loss of the spouse's employer coverage.
- d. When an employee is enrolled under one of several coverage options (e.g., HMO) but his or her dependent declines coverage due to enrollment in other coverage and then loses that coverage, a special enrollment opportunity with special rules is triggered. The dependent has the right to enroll in the employee's plan. More importantly, the guidance states that upon that event, the employee may change his/her prior election and both the employee and dependent may enroll in any other option under the plan (e.g., indemnity) – not just the HMO option.

Proposed Rules for Special Enrollment.

With regard to special enrollment administration, if an employee or eligible family member loses other health plan coverage, employees may enroll themselves and/or their spouse and dependents in their employer's plan if they request enrollment not later than 30 days after their loss of eligibility, termination of employer contributions, or exhaustion of COBRA continuation coverage under the other

health coverage. If a HIPAA certificate is not issued upon termination of the other coverage, the proposed rules call for a 30-day HIPAA special enrollment period to begin at the earliest date the HIPAA certificate is provided or the date 44 days after the other coverage ceases.

Also, the proposed rules also clarify that individuals need only make an oral or written request for special enrollment during the 30-day window. In other words, plans may not require that individuals also complete enrollment applications during this time frame as a condition of eligibility. However, after timely receipt of a special enrollment request, plans may require applications to be completed within a reasonable deadline after the 30-day window ends.

Additionally, the proposed rules clarify that all medical care benefits available through an employer (or employee organization) are generally considered to be one group health plan. Under this default rule, there is no need to issue a HIPAA certificate when an employee merely switches among his or her employer's various health plan options. The need to issue a HIPAA certificate would only arise if the employer designates separate benefit packages as separate plans in the plan documents and the packages operate as separate health plans.

Conclusion

The HIPAA Final Portability Regulations pertaining to special enrollment rights are more generous than many employers may have believed. Consequently, plan sponsors will need to review their special enrollment procedures to make sure their notices, open enrollment materials and SPDs are up to date so that these types of situations are administered properly.

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