

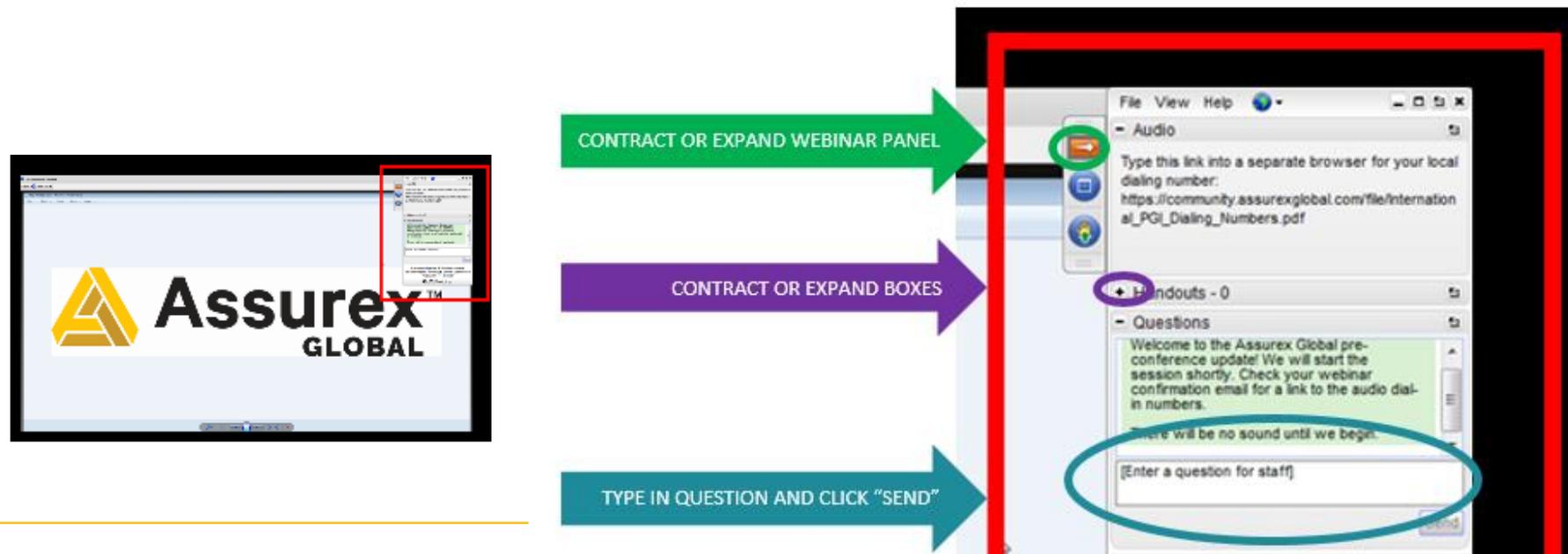
2020

# Properly Administering HIPAA Special Enrollments

Presented by Benefit Comply

## Properly Administering HIPAA Special Enrollments

- Welcome! We will begin at 3 p.m. Eastern
- There will be no sound until we begin the webinar. When we begin, you can listen to the audio portion through your computer speakers or by calling into the phone conference number provided in your confirmation email.
- You will be able to submit questions during the webinar by using the “Questions” or “Chat” box located on your webinar control panel.
- Slides can be printed from the webinar control panel – expand the “Handouts” section and click the file to download.



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## HIPAA Special Enrollments – General Requirements

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# HIPAA Special Enrollment Rights

- Typical Opportunities for Benefit Enrollment
  - When first eligible (e.g. upon hire) or upon a change in employment status (e.g. part-time to full-time)
  - Annual open enrollment
  - HIPAA special enrollment
- HIPAA Special Enrollment Rights
  - When a HIPAA special enrollment event occurs, plans are *required* to permit mid-year enrollment for the special enrollee(s)
  - Not to be confused with *permitted* election change events under §125
  - Special enrollees must be eligible for the plan and make their request for coverage within the required notification timeframes

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# HIPAA Special Enrollment Rights - Triggering Events

- Loss of other coverage
- Marriage, birth or adoption
- Eligibility for Medicaid or CHIP subsidy

# Comparison to §125 Recognized Events

HIPAA Special Enrollment Rights – Triggering Events	§125 Events Permitting an Election Change
Loss of other coverage	Change in status – change in legal status or employment status, change in number of dependents, change in residence
Marriage, birth or adoption	Change in cost of benefits or benefit coverage
Eligibility for Medicaid or CHIP subsidy	Change under another employer’s plan
	HIPAA special enrollment rights
	COBRA qualifying events
	Medicare/Medicaid entitlement
	FMLA
	Exchange open enrollment and special enrollment

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# Notice of HIPAA Special Enrollment Rights

- Notice Requirements
  - Provides those who are eligible for coverage information about what events may trigger a HIPAA special enrollment right and how to request special enrollment
  - Must be provided to all eligible employees at or before the time the employee is eligible to enroll in the group health plan
    - May be delivered by hand, by mail, or electronically in accordance with the DOL safe harbor
    - Often included as part of the enrollment packet
  - Information about special enrollment rights should also be in the summary plan description (SPD)
  - Model notice - <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/publications/compliance-assistance-guide-appendix-c.pdf>

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# What Coverage Must be Offered?

- Likely only Medical Coverage
  - HIPAA applies to group health plans, but not excepted benefits (e.g. limited-scope dental or vision, health FSA)
  - Special Enrollee may select from any available benefit package
- COBRA Participants
  - Must be treated like similarly situated active employees, including special enrollment rights

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# What Does “Any Available Benefit Package” Mean?

- In general, a special enrollee is entitled to select any benefit package under the plan
  - Regulations state that special enrollees be permitted “to be enrolled for coverage in a benefit package **under the terms of the plan**”
  - But regulations also state that special enrollees be offered **all benefit packages** available to similarly situated individuals who enroll when first eligible
- Whether there is one plan or multiple plans depends on plan documentation and how benefits are structured
  - One Plan with two benefit options (e.g., HMO and PPO)
    - Special enrollee can select from either benefit option
  - Two Plans, each with one benefit option (e.g., an HMO plan and a PPO plan)
    - Less clear in this case
    - Conservative approach is to allow special enrollee to enroll in either plan, subject to carrier approval

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## Loss of Coverage

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# Loss of Coverage

- Loss of Coverage
  - Includes loss of coverage under a group health plan, individual health plan, Medicaid or CHIP
    - Does not include loss of coverage under TRICARE or Medicare
  - Loss of coverage = (i) loss of eligibility; (ii) exhaustion of the COBRA maximum coverage period; or (iii) complete termination of employer contributions (not including COBRA)
    - Does NOT include voluntary termination of coverage, including terminating COBRA early, terminations due to fraud, reductions in benefits, or an increase in the cost of benefits

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# Loss of Coverage

- Other Coverage Rule
  - Except for loss of Medicaid/CHIP, individual seeking special enrollment must have had other coverage when coverage was previously offered under the plan
  - Individual must have had coverage during any previous offer of coverage (not necessarily the FIRST time coverage was offered)
- Individual seeking special enrollment must be eligible under terms of the plan

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# Loss of Coverage – General Requirements

- Notification Timeframe
  - Request for enrollment must be made within 30 days of the date of the loss of coverage (60 days for loss of Medicaid/CHIP coverage)
  - Employers can choose to be more generous subject to carrier approval
- Effective Date of Coverage
  - Coverage must be effective no later than the 1<sup>st</sup> of the month following the date the special enrollment request is received
  - If coverage is made effective retroactively (e.g. to coincide with the date of the loss of coverage), retroactive employee contributions should be after-tax as §125 rules require prospective election changes to pre-tax contributions

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# Loss of Coverage – Special Enrollees

- Special Enrollees upon Loss of Coverage
  - If employee loses coverage, employee and all eligible dependents are special enrollees
  - If a dependent loses coverage, employee and eligible dependent(s) who lost coverage are special enrollees
- Dependents include the following (assuming they are eligible under the plan):
  - Spouses (opposite- and same-sex)
  - Domestic partners
  - Children of spouses or domestic partners
  - Parents
  - Stepchildren

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# Loss of Coverage Examples

Employer A offers two medical plans (an HMO and PPO), as well as a dental and vision plan. Employees, spouses, and children are eligible for coverage.

Example 1:

*Nadia started working at Employer A in 2018. When coverage was first offered to Nadia, she waived it because she had other coverage through her spouse's employer. In 2019, her spouse lost their job and their coverage terminated.*

*Since Nadia experienced an involuntary loss of coverage due to loss of eligibility and had other coverage at the time coverage was previously offered by Employer A, she and her spouse are eligible for a HIPAA special enrollment with Employer A. They may enroll in either the HMO or PPO but do not need to be offered enrollment in the dental or vision plans.*

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## Loss of Coverage Examples (Cont.)

Employer A offers two medical plans (an HMO and PPO), as well as a dental and vision plan. Employees, spouses, and children are eligible for coverage.

Example 2:

*Kristen started working at Employer A in 2015. When coverage was first offered to Kristen, she waived even though she did not have other coverage (Kristen was a young invincible). However, Kristen subsequently married and obtained coverage through her spouse's employer. In 2019, her spouse lost their job and their coverage terminated.*

*Since Kristen experienced an involuntary loss of coverage due to loss of eligibility and had other coverage the time coverage was previously offered (even though she didn't have other coverage when coverage was first offered by Employer A), she (and her spouse) are eligible for a HIPAA special enrollment with Employer A. They must be allowed to enroll in the HMO or PPO but need not be offered coverage in the dental or vision plans.*

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## Loss of Coverage Examples (Cont.)

### Example 3:

*When coverage through Employer B was first offered to John, he waived because he had individual coverage in place. In late 2019, after Employer B's annual open enrollment period had already ended, John learned his individual premiums would be increasing significantly for 2020.*

*Since John was not actually losing eligibility for coverage, this did not constitute a HIPAA special enrollment event that would have permitted him to enroll in Employer B's plan midyear.*

### Example 4:

*When coverage through Employer C was first offered to Alex, he waived because he had coverage through his spouse's employer. In mid-2019, his spouse's employer announced that premiums would be increasing significantly.*

*While a change in the cost of coverage is a recognized election change event under §125, this would not give rise to a HIPAA special enrollment since the spouse's employer is not completely ceasing employer contributions towards coverage. If Employer C wishes to allow Alex to enroll in coverage midyear, it will be necessary to ensure that the carrier/stop-loss vendor agrees to this change.*

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## Marriage, Birth or Adoption

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# Marriage, Birth, or Adoption

- Marriage
  - Includes same-sex marriage
  - Does not include domestic partnerships, civil unions, or other relationships that are not a legal marriage
- Birth, Adoption or Placement for Adoption

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# Marriage, Birth, or Adoption – General Requirements

- Notification Timeframe
  - Request for enrollment must be made within 30 days of the date of the marriage, birth, or adoption
  - Employers can choose to be more generous subject to carrier approval
- Effective Date of Coverage
  - Coverage in the case of marriage must be effective no later than the 1<sup>st</sup> of the month following the date the special enrollment request is received
    - If coverage is made effective retroactively (e.g. to coincide with the date of marriage), retroactive employee contributions should be after-tax as §125 rules require prospective election changes to pre-tax contributions
  - Coverage in the case of birth/adoption must be made effective back to the date of birth/adoption
    - §125 rules allow retroactive pre-tax election changes for a birth/adoption (an exception to the general rule)

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# Marriage, Birth, or Adoption – Special Enrollees

- In General
  - Employee, spouse and newly acquired child dependent(s) who are eligible under the plan
- Marriage
  - Spouse
  - New children of employee (including stepchildren)
- Acquisition of Dependent by Birth/Adoption
  - Spouse
    - Domestic partners, other non-marital partners, not eligible for special enrollment even if their children are
  - Newly born or adopted child
    - Includes child(ren) of a domestic partner, if the employee is considered the parent under applicable law

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## Marriage, Birth, or Adoption – Special Enrollees (Cont.)

- Only child dependents **newly acquired** as a result of the marriage, birth, or adoption are special enrollees. Preexisting dependents are NOT special enrollees
  - Compare to the “tag-along” rule under §125, which permits pre-existing dependents to join coverage for certain types of election events
  - Plans can choose to be more generous and permit pre-existing dependents to enroll subject to carrier approval

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## Marriage, Birth, or Adoption Examples

Employer D offers a single medical plan (HMO), as well as a dental and vision plan. Employees, spouses, and children are eligible for coverage.

Example 1:

*Sarah, her husband, and her daughter all have coverage through her husband's employer. Sarah gives birth to a baby in April and wants to move her entire family to Employer D's plan.*

*While Sarah, her husband, and her new baby are special enrollees and could enroll in the HMO, her older daughter would not have special enrollment rights. Unless Employer B chooses to be more generous (with permission from the carrier or stop loss vendor), it would be necessary to wait until Employer B's next open enrollment period to enroll the older daughter in the HMO.*

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## Marriage, Birth, or Adoption Examples (Cont.)

Employer D offers a single medical plan (HMO), as well as a dental and vision plan. Employees, spouses, and children (including stepchildren) are eligible for coverage.

Example 2:

*Carlos has single coverage with Employer D. Carlos marries Chris, who has one child from a previous marriage.*

*Assuming Carlos makes the request within the required timeframe, he can add both Chris and the child to the plan.*

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## Marriage, Birth, or Adoption Examples

Employer D offers a single medical plan (HMO), as well as a dental and vision plan. Employees, spouses, and children are eligible for coverage.

Example 3:

*Courtney has single coverage with Employer D. Courtney's domestic partner, Ashlee, has a baby girl on February 14. Under applicable state law, Courtney is considered the legal parent of the baby girl.*

*If Courtney makes the enrollment request within the required timeframe, she may add the baby girl to her plan, but Ashlee does not have special enrollment rights. Unless Employer D chooses to be more generous (with permission from the carrier or stop loss vendor), it would be necessary to wait until Employer D's next open enrollment period to enroll Ashlee in the plan (assuming the plan recognizes domestic partners as dependents).*

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## Eligibility for Medicaid/CHIP Subsidy

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# Eligibility for Medicaid/CHIP Subsidy

- Medicaid/Chip Subsidies
  - Some states offer premium assistance through Medicaid or the state children's health insurance program (CHIP)
  - Becoming eligible for such subsidies triggers a special enrollment right

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# Eligibility for Medicaid/CHIP Subsidy – General Requirements

- Notification Timeframe
  - Individuals have 60 days from the date eligibility for the subsidy is determined to make their special enrollment request
- Effective Date of Coverage
  - No effective date specified in statute
  - Generally assumption is coverage should be made effective no later than the 1<sup>st</sup> of the month following the date the special enrollment request is received

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# Eligibility for Medicaid/CHIP Subsidy – Special Enrollees

- Employee and any dependents eligible for the subsidy are special enrollees
  - Dependents as defined by the plan are special enrollees (e.g., spouses, children, same-sex spouses, domestic partners)

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## Eligibility for Medicaid/CHIP Subsidy – Examples

Employer E offers two medical plans (an HMO and PPO), as well as a dental and vision plan. Employees, spouses, domestic partners, and children are eligible for coverage.

Example 1:

*Madison is not enrolled in Employer E's medical plan. Madison becomes eligible for a Medicaid premium subsidy mid-year and requests enrollment within 60 days.*

*Employer E must permit Madison to enroll in the HMO or PPO, but not the dental or vision plans.*

Example 2:

*Aidan is enrolled in Employer F's PPO. Aidan's domestic partner becomes eligible for a Medicaid premium subsidy mid-year.*

*Employer E must permit Aidan's domestic partner to enroll in the PPO (and Aidan and his partner could switch to the HMO if desired), but not the dental or vision plans.*

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