

2017 Employee Benefits Webinar Series
Back to Basics: Mid-Year Plan Changes
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Agenda



- Brief ACA / Repeal & Replace Update
- HIPAA Special Enrollment Events
- Change in Status Events
- Cost or Coverage Changes
- Judgments, Decrees or Court Orders
- Entitlement to Medicare or Medicaid
- COBRA Events
- FMLA Leave
- Change in Status Rules for Exchange Coverage & Changes to Part-Time
- Domestic Partner Considerations

American Health Care Act Introduced



- March 6, 2017 – House Republicans introduce AHCA to repeal the ACA
- **If signed into law**, the AHCA would:
 - Repeal the individual & employer mandate penalties as of 1/1/2016;
 - Delay the 40% “Cadillac tax” until 2025;
 - Make significant changes to the ACA insurance coverage and marketplace stabilization provisions;
 - Enhance HSAs and provide a monthly tax credit;
 - Provide relief from many of the ACA’s taxes and fees; and
 - Curtail Medicaid reforms
- Many ACA reforms would remain, including: OOP limits, prohibition on annual limits, prohibition on pre-ex. conditions, “age 26” rule, guaranteed availability and renewability of coverage, Section 1557 nondiscrimination

Cafeteria Plan Election Changes



- Plan sponsors are not required to adopt all the changes permitted under the regulations, so the cafeteria plan documents should be reviewed carefully to determine whether a change is permitted under the plan as well as under the law
- Consequently, employers who wish to provide participants in their cafeteria plans with the greatest latitude to change elections must revise their plan documents to incorporate all of the circumstances enumerated in the regulations
- Special rules apply to employers that offer benefits to domestic partners

- HIPAA special enrollment rights permit an employee, spouse or dependent to enroll in an employer's health plan if:
 - the individual was covered under another health plan at the time coverage under the employer's health plan was previously offered to the individual;
 - if required by the employer or insurance carrier, the employee states in writing that coverage under another plan was the reason that coverage under the employer's health plan was declined; and
 - the employee's, spouse's, or dependent's other health coverage is exhausted (COBRA) or is terminated as a result of loss of eligibility, or employer contributions to the other coverage ceases

- Examples of loss of coverage include:
 - death
 - divorce or legal separation
 - employment termination
 - dependent no longer eligible for coverage under another plan
 - change in eligibility requirements so individual is no longer eligible under another plan
 - change in the benefits offered under another plan with no alternative coverage
 - relocation out of service area of another plan
 - involuntary loss of Marketplace or individual market coverage

HIPAA Special Enrollment Events



- Special enrollment rights also apply if the employee participates under the employer's health plan (or is eligible to be enrolled) and acquires a new dependent through marriage, birth, adoption or placement for adoption
- Employee must request special enrollment within 30 days of triggering event

- Special rules relating to Medicaid and CHIP permit an employee, spouse or dependent to enroll in an employer's health plan if:
 - The employee or dependent loses eligibility under Medicaid or a state children's health insurance plan (CHIP) and requests coverage within 60 days; or
 - The employee or dependent becomes eligible for premium assistance under Medicaid or CHIP and requests coverage under the employer's health plan within 60 days

- **Permitted Election Changes**

- Enroll in the cafeteria plan (e.g., no coverage to family coverage) and make initial health contribution and health FSA elections for employee, spouse, and dependents
- Increase amount of health contribution and health FSA elections for employee, spouse and dependents, as applicable
- Change health benefits coverage option(s) for employee, spouse and dependents, as applicable, and make new contribution elections

Changes in Status



- Elections changes for change in status events are permitted only if the proposed change is **because of** and **on account of** such event

- Change in **legal marital status**
 - Marriage
- **Permitted Election Changes**
 - Enroll in cafeteria plan (e.g., no coverage to family coverage) and make initial contribution and FSA elections for employee, spouse and dependents
 - Change coverage option(s) under health and welfare plans for employee, spouse and dependents, and make new contribution elections
 - Increase amount of contribution and FSA elections if new spouse and new spouse's dependents join coverage
 - Decrease amount of contribution and FSA elections for employee and/or employee's dependents, but only if employee and/or dependents are eligible for and elect coverage under spouse's applicable benefit plan(s)

- Change in **legal marital status**
 - Death of spouse
 - Divorce, Legal separation, Annulment
- **Permitted Election Changes**
 - Enroll in cafeteria plan (e.g., no coverage to family coverage) and make initial contribution and FSA elections, if coverage is lost under spouse's benefit plan(s) for employee and dependents
 - Increase amount of contribution and FSA elections to add dependents that lose coverage under spouse's applicable benefit plan(s)
 - Decrease amount of contribution and FSA elections to drop coverage of spouse only

- Change in **number of dependents**
 - Change as the result of birth
 - Change as the result of adoption or placement for adoption
- **Permitted Election Changes**
 - Change coverage option(s) under health and welfare plans for employee, spouse and dependents, and make new contribution elections
 - Enroll in cafeteria plan (e.g., no coverage to family coverage) and make initial contribution and FSA elections for employee, spouse and dependents
 - Increase amount of contribution and FSA elections to add dependents

Changes in Status



- Change in *number of dependents*
 - Change as the result of death
- **Permitted Election Changes**
 - Change coverage option(s) under health and welfare plans for employee, spouse and dependents, and make new contribution elections
 - Decrease amount of contribution and FSA elections to drop dependent

Changes in Status



- Change in **employment status** affecting the employee, spouse or dependent due to:
 - termination
 - commencement of employment
 - strike or lockout
 - commencement of or return from unpaid leave of absence
 - change in worksite
 - individual becoming eligible or ceasing to be eligible for coverage

- Change in **employment status** of employee, with **gain** in eligibility under **his or her** employer's health and welfare plan(s)
- **Permitted Election Changes**
 - Enroll in cafeteria plan (e.g., no coverage to single or family coverage) and make initial contribution and FSA elections for employee, spouse and dependents
 - Increase amount of contribution elections to add newly enrolled benefits for employee, spouse and dependents

- Change in **employment status** of spouse or dependent, with **gain** in eligibility in **another employer's** health and welfare plan(s)
- **Permitted Election Changes**
 - Decrease amount of contribution and FSA elections to drop spouse and/or dependent, but only if spouse and/or dependent elect coverage under another employer's applicable benefit plan(s)
 - Revoke contribution and FSA elections for employee, but only if employee obtains coverage under another employer's applicable benefit plan(s)

Changes in Status



- Change in ***employment status*** of employee, with ***loss*** in eligibility under ***his or her*** employer's health and welfare plan(s)
- **Permitted Election Changes**
 - Revoke contribution and FSA elections for employee, spouse and dependents, except for COBRA coverage (to the extent applicable)

- Change in ***employment status*** of spouse or dependent, with ***loss*** in eligibility under ***another employer's*** health and welfare plan(s)
- **Permitted Election Changes**
 - Enroll in cafeteria plan (e.g., no coverage to family coverage) and make initial contribution and FSA elections for employee, spouse and/or dependents that lose coverage under another employer's applicable benefit plan(s)
 - Increase amount of contribution and FSA elections to add spouse or dependents that lose coverage under another employer's applicable benefit plan(s)

Changes in Status



- Dependent ***ceases to satisfy*** eligibility requirements because of attainment of age limit, student status or similar circumstance
- **Permitted Election Changes**
 - Change coverage option(s) under health and welfare plans for employee, spouse and dependents, and make new contribution elections
 - Decrease amount of contribution and FSA elections to drop dependent

- Change in **residence** for the employee, spouse, or dependent
- **Permitted Election Changes**
 - Enroll in cafeteria plan (e.g., no coverage to family coverage) and make initial contribution elections, if relocation triggers eligibility for employer's health and welfare plans for employee, spouse and/or dependents
 - Change contribution elections for new coverage, if relocation affects eligibility in then-current coverage option(s) for employee, spouse and dependents
 - Revoke all contribution elections if no other coverage is available

- **Insignificant** cost changes
- **Permitted Election Changes**
 - Plan Administrator automatically makes election changes to account for insignificant cost changes
 - Regulations do not quantify distinction between insignificant and significant; rather it is a facts and circumstances analysis

- **Significant cost increases**
- **Permitted Election Changes**
 - Revoke current elections and elect new coverage under a similar plan option at similar coverage level, or if no other similar plan is available, cease participation in such plan
 - Increase current contribution and/or FSA elections to account for increase in costs
 - For dependent care FSAs, election changes are not permitted if the dependent care provider is related to the employee
 - No changes are permitted under health FSAs

- **Significant cost decreases**
- **Permitted Election Changes**
 - Enroll in cafeteria plan (e.g., no coverage to family coverage) and make initial contribution elections for employee, spouse and dependents
 - Revoke current elections and elect new coverage under affected plan option(s)
 - Decrease current contribution and/or FSA elections to account for decrease in costs
 - For dependent care FSAs, election changes are not permitted if the dependent care provider is related to the employee
 - No changes are permitted under health FSAs

Cost or Coverage Changes



- Significant benefit curtailment *without* loss of coverage
- **Permitted Election Changes**
 - Revoke current elections and elect new coverage under a similar plan or plans

Cost or Coverage Changes



- Significant benefit curtailment with loss of coverage
- **Permitted Election Changes**
 - Revoke current elections and either
 - elect new coverage under a similar plan or plans, or
 - drop coverage if there is no similar plan offered by employer

- Additional or improved benefit option(s)
- **Permitted Election Changes**
 - Enroll in cafeteria plan (e.g., no coverage to family coverage) and make initial contribution elections for new or improved benefit option(s) for employee, spouse and dependents
 - Change current contribution elections to add new or improved benefit option(s) for employee, spouse and dependents
 - **No changes may be made to the health FSA elections**
 - In general, a decrease in the costs of benefit options would not be applicable here

- Change in coverage under another employer's plan
 - Includes a spouse's, former spouse's or dependent's employer's plan, or another plan of the same employer
- **Permitted Election Changes**
- Contribution election changes are permitted as long as the change is on account of the change made under another plan, and either
 - the election changes are permitted by the other plan, or
 - the plan years for the two affected plans are not the same ("election lock")

Cost or Coverage Changes



- Loss of coverage under other group health plan sponsored by a governmental or educational institution
- **Permitted Election Changes**
 - Enroll and make initial contribution elections in, or increase elections under, the cafeteria plan for affected employee, spouse and/or dependent

- Entitlement to Medicare or Medicaid, or loss of eligibility for Medicare or Medicaid for employee, spouse or dependent that had already been entitled to such coverage
- **Permitted Election Changes**
 - Decrease contribution and health FSA elections for health coverage for employee, spouse or dependent to the extent employee, spouse or dependent becomes entitled to Medicare or Medicaid
 - Enroll in cafeteria plan and make initial contribution and health FSA elections, or increase elections for health coverage, for employee, spouse or dependent to the extent employee, spouse or dependent loses eligibility for Medicare or Medicaid

- Judgment, Decree or Court Order
 - Resulting from a divorce, legal separation, annulment or change in legal custody that requires health coverage for employee's child who is a dependent, including QMCSO
- **Permitted Election Changes**
 - Increase amount of contribution and FSA elections to add dependent to be covered by court order
 - Decrease amount of contribution and FSA elections to drop dependent to be covered by another group health plan by court order

- COBRA Event
- **Permitted Election Changes**
 - Increase contribution elections to pay for COBRA contributions (which typically cost the employee more money than non-COBRA contributions)
- This election change has limited application because often employees are no longer working for the employer after a “qualifying event” that entitles the employee and his or her beneficiaries to elect COBRA, and consequently, the employee can no longer make elections under the employer’s cafeteria plan
- A decrease in an employee’s hours resulting in loss of group health plan coverage would be applicable here

- FMLA Leave
- **Permitted Election Changes**
 - For FMLA leave, employee may continue health coverage or revoke contribution and health FSA elections and drop group health plan coverage
 - Upon return from FMLA, employee is entitled to re-enroll in group health plan coverage and make new contribution and health FSA elections
 - Payment options are dictated by the plan documents
- This rule does not apply to non-health benefits under the cafeteria plan

- Two new situations where a cafeteria plan may allow revocation of an election (other than a health FSA election):
- Enrollment in the Exchange
 - Employee must enroll during Exchange open enrollment period or during a special enrollment period; and
 - Employee (and related individuals) must enroll in an Exchange plan effective immediately following the revocation
- Reduction in hours of service
 - Employee must change from FT (30+ hours) to PT status and be reasonably expected to remain PT; and
 - Must enroll in another plan no later than the 1st day of the 2nd full month following the revocation

Domestic Partner Issues



- Domestic partnerships are not recognized under federal law
- As a result, the only way for election changes to be made with respect to a domestic partner is if the domestic partner is a “dependent” for federal tax purposes

- A domestic partner is a dependent if he or she meets the following requirements:
 - the individual has the same principal residence as the employee and is a member of the employee's household;
 - the individual's gross income is less than \$4,050 per year (for 2016 and 2017, as adjusted from year to year);*
 - the employee provides over 50% of the individual's support for the year; and
 - the individual is not the dependent child of the employee or of any other person for the same year.

*The income limit is disregarded when determining whether a domestic partner is a "dependent" for group health plan coverage purposes; however, at this time, the income limit continues to apply under the regulations governing cafeteria plan election changes

- If the domestic partner is not a dependent for federal tax purposes, then no mid-year cafeteria plan election change is permitted with respect to the domestic partner.
- If the domestic partner is a dependent for federal tax purposes, then mid-year cafeteria plan election changes are permitted with respect to the domestic partner just as they do for any other dependent of the employee.

- If a domestic partner meets the definition of dependent, except for the income limit, it is possible that a domestic partner could be added to a group health plan as a dependent, but the employee would not be able to make a mid-year election change under the cafeteria plan
- In that instance, covering a domestic partner under a group health plan would be a taxable benefit to the employee for the remainder of the cafeteria plan year
 - At the end of the plan year, the employee could make new elections for the following year which would include coverage of the domestic partner on a non-taxable basis

Questions?



HR Professional Credits



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