



Call in directly: (877) 668-4493

Code: 927 955 719

Open Enrollment – Rules and Strategies

September 2018





Introduction >

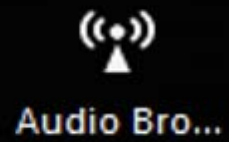
Today's Presenters

Erica Storm, Esq.

Erin Margerie, Esq.

- Employment and benefits attorneys
- Expertise in health and welfare plan requirements
 - Educate companies on compliance obligations
 - Create educational materials and compliance resources

Click the
question
mark



Call in directly: (877) 668-4493

Code: 927 955 719

➤ Agenda

Open enrollment is a good time to review:

- Enrollment periods
- Election methods
- Plan design changes
- Notices to plan participants



Enrollment Periods >

➤ Enrollment Periods



Initial Enrollment Period

Newly eligible employees enroll in coverage



Open Enrollment Period

Eligible employees may enroll in coverage for the upcoming plan year



Mid-year Enrollment Periods

Employees enroll for coverage during the plan year (often triggered by major life events, such as marriage or having a baby)



Initial Enrollment >

➤ Initial Enrollment Period (IEP)

The period of time when newly eligible employees can enroll in the health plan

Enrollment Opportunities

- If employees do not enroll during the IEP, they usually must wait until the next open enrollment period
- Unless they experience a mid-year enrollment event

Timing

- Timing of the IEP is flexible
 - Subject to legal restrictions and terms of insurance policy or collective bargaining agreements
-

➤ IEP – ACA Rules

Waiting Period Limits

- Affordable Care Act (ACA) imposes a 90-day limit on waiting periods
- Cannot require eligible employees to wait until open enrollment to enroll

Applicable Large Employers (ALEs)

- To avoid penalties, generally must offer coverage to full-time employees after the first three full calendar months of employment
 - Under look-back measurement method, must offer coverage to new variable hour and seasonal employees (determined to be full-time) for stability period following initial measurement period
-

➤ IEP – Section 125 Rules

Section 125 Rules

- Many employees pay health premiums on a pre-tax basis through a Section 125 plan (cafeteria plan)
- Section 125 elections generally must be prospective only
- Limited exception – Elections that new employees make within **30 days of hire date** can be retroactive

Eligible employee is hired on July 1



IEP begins on date of hire and lasts 30 days



Employee elects coverage on July 26, retroactively effective July 1

Initial Enrollment Notices >

› Notices for New Participants

Exchange Notice

- Must provide all **new hires** with a written notice about the Exchanges

SPD

- Must be provided within 90 days of when group health coverage begins

Summary of Benefits and Coverage (SBC)

- Must be provided with enrollment materials (issuer typically provides for fully insured plans)

Grandfathered Plan Notice

- Must be included in enrollment materials (only applies to grandfathered plans)
-

› COBRA Notice – General Notice

- Provides information to plan participants regarding COBRA and plan procedures
- Must be provided **within 90 days** after plan coverage begins
- May be included in plan's SPD



➤ Medicare Part D Notice



- Employers with group health plans that provide prescription drug coverage must notify Medicare Part D eligible individuals whether that coverage is creditable or non-creditable
- Notice must be provided prior to the effective date of coverage (and before Oct. 15 each year)



Open Enrollment >

➤ Open Enrollment Period

Time period each year when an eligible employee may:

- Enroll for coverage, even if coverage was previously declined
- Change coverage elections (if employer offers more than one benefit package option)
- Change enrollment for dependents (drop or add coverage for eligible dependents)



➤ Open Enrollment Period

Is an open enrollment period required?

ACA

- To avoid penalties, ALEs must provide full-time employees with an annual opportunity to accept or decline coverage
- If health plan does not meet affordability or minimum value standards, employees must be able to decline coverage at least once per year

Section 125

- If employees can pay premiums on a pre-tax basis, Section 125 rules generally require that they have a period of time to make their elections each year

Other

- Open enrollment periods may be required by health insurance contracts or collective bargaining agreements

➤ Open Enrollment Period – Timing Rules



- Takes place prior to beginning of plan year for which elections are made
- Elections for pre-tax benefits must be effective on a prospective basis
- Ends well in advance of upcoming plan year to provide time for:
 - Confirming elections
 - Administering enrollment
 - Preliminary nondiscrimination testing



Mid-year Enrollment >

➤ Mid-year Enrollment Periods

Special enrollment periods

- Employers must allow employees to enroll during a plan year if they experience a HIPAA special enrollment event

Other enrollment periods

- Other mid-year enrollment opportunities may be permitted, depending on plan design
 - For fully insured plans, check with carrier
 - Section 125 rules only allow mid-year changes for certain events (called “mid-year election change events”)



➤ HIPAA Special Enrollment

Event	Enrollment Period Length	Coverage Effective Date
Employee (or dependent) loses eligibility for other health coverage	At least 30 days	No later than the first day of the calendar month beginning after the plan receives the special enrollment request
Employee acquires new dependent through marriage, birth, adoption or placement for adoption		However, when a new dependent is acquired through birth/adoption, coverage must be retroactively effective to the date of birth/adoption

➤ HIPAA Special Enrollment

Event	Enrollment Period Length	Coverage Effective Date
Employee (or dependent) is covered by a Medicaid plan or state CHIP and coverage is terminated due to loss of eligibility	At least 60 days	No specific guidance on this issue, although may be reasonable to begin no later than the first day of the calendar month beginning after the plan receives the special enrollment request
Employee (or dependent) becomes eligible for a premium assistance subsidy through Medicaid or a state CHIP		



➤ Mid-year Election Changes

General Section 125 Rule: Participants' elections are **irrevocable** during the plan year

Subject to certain limited exceptions

IRS recognizes certain events as permitting mid-year election changes

Plan design option—not required to allow participants to change elections

Most employers design their Section 125 plans to allow the mid-year election change events permitted by IRS

➤ Mid-year Election Change Events

The IRS recognizes three broad categories of mid-year election change events

Change in status

- Major life events (marriage, birth, adoption, employment changes)

Cost or coverage changes

- Changes to qualified benefits under cafeteria plan

Other laws or court orders

- Coordinate cafeteria plan rules with other laws (for example, FMLA COBRA and HIPAA)
-



Election Methods

➤ Three Main Election Methods

Employers have three main options for how employees will make their elections at enrollment time

- Affirmative elections
 - Default (or automatic) elections
 - Rolling (or evergreen) elections
-

➤ Election Methods

Affirmative Elections

- Employees complete a written (or electronic) agreement to participate in the plan
- Works well with all types of welfare benefits
- Most common and straightforward method

Default Elections

- Employees are automatically enrolled in coverage, unless employee completes waiver
- Must explain how process works to employees and confirm compliance with state wage withholding laws
- Often used with rolling elections for re-enrollment

Rolling Elections

- Current elections continue to next plan year unless employee makes an election change
 - As a best practice, remind employee of current elections at open enrollment
 - Does not work well with all benefit types (for example, health FSA)
 - Confirm compliance with state wage withholding laws
-

➤ Electronic Enrollment

More employers are using online enrollment and posting health plan notices electronically

ERISA
requirements
for electronic
disclosure

- Must notify employees when documents are posted
 - Must follow ERISA's style and content requirements
 - Participants have a right to paper copies
 - Employees who do not have work-related computer access must consent to electronic delivery
-



Open Enrollment 2019 >

➤ Plan Design Changes

Group health plan sponsors should be aware of changes for the 2019 plan year

- ✓ Review plan documents
- ✓ Make any necessary updates
- ✓ Communicate changes to participants with an updated SPD or a summary of material modifications (SMM)



➤ Grandfathered Status

A grandfathered (GF) plan is one that was in existence when the ACA was enacted and has not had certain prohibited changes made to it since then

Review GF Status

- Determine whether plan will maintain GF status for 2019 plan year
 - If plan keeps GF status, include GF plan notice in enrollment materials
 - If plan does not keep GF status, must comply with additional ACA reforms (for example, preventive care without cost-sharing)
-

ACA Affordability Standard

Under the ACA, applicable large employers (ALEs) must offer affordable, minimum value health coverage to full-time employees (and children) or risk paying a penalty

ALEs

- Employers that had, on average, **50 or more full-time employees (including full-time equivalent employees)** during the prior calendar year

Affordability Percentage

- 2018 plan years: **9.56 percent**
- 2019 plan years: **9.86 percent**

If you are an ALE, confirm at least one of your health plan options will satisfy the ACA's affordability standard

› Out-of-Pocket Maximum (OOPM)

Non-GF plans must comply with an annual limit on cost-sharing for coverage of EHB

2018

- \$7,350 for self-only
- \$14,700 for family

2019

- \$7,900 for self-only
 - \$15,800 for family
-

➤ Health FSA Limit

Monitor whether the health FSA limit will increase for 2019 (IRS guidance expected in October 2018)

- ACA imposes dollar limit on employees' pre-tax contributions to a health FSA
 - \$2,550 for 2015/2016
 - \$2,600 for 2017
 - \$2,650 for 2018
- Employers can impose their own limits that are lower than the ACA's limit

Communicate the plan's limit on health FSA contributions as part of enrollment process

➤ HDHP Design for 2019

Type of Coverage	Minimum Annual Deductible	Annual Out-of-pocket Maximum
Self-only	\$1,350 (\$1,350 for 2018)	\$6,750 (\$6,650 for 2018)
Family	\$2,700 (\$2,700 for 2018)	\$13,500 (\$13,300 for 2018)

- IRS adjusts limits annually for changes in cost-of-living
- The OOPM limits increase for 2019 plan years
- The minimum deductible limits remain the same

➤ HSA Contribution Limits

Type of Coverage	2018 Limit	2019 Limit
Self-only	\$3,450	\$3,500
Family	\$6,900	\$7,000

Individuals age 55 or older by the end of year may contribute an additional **\$1,000 catch-up contribution**

Open Enrollment Notices >

➤ Open Enrollment Notices

Annual
CHIP Notice

- Group health plans that cover residents in a state that provides a premium subsidy to low-income residents to pay for employer-sponsored coverage must provide this notice.

WHCRA
Notice

- Must provide an annual notice regarding participants' rights to mastectomy-related benefits under the Women's Health and Cancer Rights Act (WHCRA)

Medicare
Part D
Notice

- Must provide notice of creditable (or non-creditable) coverage each year before Oct. 15
-

➤ Open Enrollment Notices

SBC

- Must be provided with enrollment materials (issuer typically provides for fully insured plans)

Notice of patient protections

- Non-GF plans that require designation of primary care provider must provide notice of patient protections (may be included in SPD or insurance booklet)

Wellness program notice

- If group health plan includes a wellness program, certain notices (HIPAA and ADA) may be required
-



Questions? 

Thank you! 

This presentation is current as of the date presented and is for informational purposes only. It is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Please contact legal counsel for legal advice on specific situations. This presentation may not be duplicated or redistributed without permission. © 2018 Zywave, Inc. All rights reserved.