

# Update

June 26, 2008



## Gear up now for a successful open season

### Summary

Annual open enrollment periods, often called “open season,” give group health plan sponsors an opportunity to communicate important plan changes, provide legally required notices and update their information on plan participants. Most sponsors hold open season several weeks to several months before the new plan year starts, so summer is a good time to start putting together your open enrollment strategy for this year. This *Update* provides information and suggestions for planning an open enrollment program that meets legal requirements, and the needs of participants and sponsors alike.

### Objectives for annual enrollment

Annual open enrollment seasons give group health plan sponsors an opportunity to communicate important benefit plan news, meet notice requirements, and collect updated information about dependents and their life status changes. Open season may be held weeks or even a few months before the new benefit plan year begins.

**Communicating plan changes.** With health care costs continuing to climb, many plan sponsors are looking for ways to cut expenses without making significant cuts in benefits. Open enrollment provides an excellent opportunity to explain benefit plan changes that may result from cost-saving efforts. In some cases, employees facing higher premiums or co-pays may want to switch plans; in others, an explanation of cost pressures may help employees understand that premium increases, or network or provider changes have been made in an effort to stretch everyone’s health care dollar.

## Enrollment methods

Open season also gives employers a chance to enhance or revise their enrollment practices. Employers usually choose one of the following designs:

### **Default enrollment:**

Employees are automatically enrolled for minimum coverage unless they affirmatively choose different coverages or no coverage at all.

### **Affirmative enrollment:**

Employees are not enrolled for any coverage unless they affirmatively elect coverage.

Note that employers offering cafeteria plans must inform employees of their right to decline coverage and receive cash instead.

### **Evergreen enrollment:**

Enrolled employees continue receiving the same benefits unless they affirmatively elect different or no coverage during the open enrollment period.

Evergreen designs aren't generally used for enrollment in flexible spending arrangements because employees risk forfeiture if funds are not spent during the plan year.

Evergreen designs must also be used with caution in plans that require premium contributions from employees. Some state laws prohibit deductions from employee wages without express written consent (except deductions required by law).

Because employees generally can't change their benefits elections after open season ends, clear communications are especially important. Changes can be made under certain circumstances, such as when an employee experiences a life change triggering HIPAA special enrollment rights or another IRS-specified event. HIPAA generally allows benefits changes within 30 days of an employee's loss of other health coverage, loss of employer contributions to other health coverage, or when an employee marries, has a child or adopts a child and needs dependent coverage. Under IRS rules, cafeteria plans can (but aren't required to) allow benefits changes when participants experience certain status changes such as job loss, death of a spouse or a dependent's loss of eligibility for coverage.

The open enrollment period is also a good time to explain the employer's monetary contributions to the benefit plans, so employees can see the role that benefits play in their total compensation package.

**Incorporating legal changes.** Changes to state and federal laws affecting benefit plans should be reflected in benefit programs and explained in open enrollment materials. Open enrollment can also provide a convenient way to comply with notice requirements under ERISA and other federal laws.

**Personal information updates.** Open enrollment is a perfect time to have employees verify and update personal information that may have changed during the year. Open enrollment gives employees that may have neglected to provide updated information about a life event – such as a child's graduation from college and consequent "aging out" of health coverage – a second chance to report the information. Employers considering a plan audit to identify ineligible dependents may benefit from information gathered in the open enrollment process.

## Preparing for open enrollment

Preparing for open enrollment requires a review of current benefit programs and plan documents, and changes in state and federal laws that may require updates. This is particularly true in regard to state laws, as more states look to address the problem of the uninsured by shifting additional responsibilities to employers.

**Update state laws.** A few states now require that employers offer cafeteria plans so employees can pay for health care coverage on a tax-favored basis. Other states continue looking at cafeteria plan mandates as part of a health care solution, so plan sponsors need to keep an eye on these developments.

Another trend embraced in several states is extending the age for unmarried children entitled to dependent coverage. Most states that have passed such laws extend coverage to age 24 or 25, but some state mandates go as high as age 30.

One final consideration: several states now require that health care coverage be made available to domestic partners, and a few recognize same-sex marriage.

Employers need to be sure their open enrollment strategies take relevant state law developments into account. Particular attention should be paid to plan terms defining dependents and spouses, coordination with vendors, and appropriate disclosure in open enrollment materials.

**Comply with federal laws.** ERISA requires that employers provide a summary plan description (SPD) to all new employees, and redistribute it to all employees every 10 years (five years if the plan has been changed). While employers aren't required to distribute SPDs during open enrollment, providing all benefits information at the same time can make meeting this obligation more convenient for all.

When benefit plans undergo changes, employers must inform participants of the changes in a timely manner, through either a summary of material modifications (SMM) or a summary of material reductions (SMR). Federal law imposes strict deadlines on these notices: SMRs must be distributed within 60 days after a reduction is adopted. SMMs must be distributed within 210 days after the close of the plan year in which a material change was adopted. With appropriate coordination, open enrollment materials can be designed to serve as SMRs and SMMs.

Finally, certain federal laws require that employees receive annual notice of their rights. Many employers find including these notices with annual open enrollment materials is a simple and timely way to meet the obligation. (See sidebar).

## Conclusion

Open enrollment periods provide employers with a comprehensive way to communicate benefits information, update employee records, and meet state and federal legal requirements. An audit of current plan status – the date of the last SPD or the need to distribute SMMs or SMRs – along with an understanding of new state laws, can help you design open season communications to meet many objectives with a single packet of information for employees.

## Required and optional legal notices

Although not all of these notices are required to be distributed with open enrollment materials, employers can meet annual notice requirements and provide employees with a concise packet of information by including this information in open enrollment packets.

### Employer *must* supply:

- HIPAA special enrollment rights notice
- HIPAA general notice of pre-existing condition exclusion, if applicable

### Employer *may* supply:

- Reminder or HIPAA privacy rights notice (must be given to new enrollees and reminder issued at least once every three years)
- Notice of Medicare Part D Creditable/noncreditable prescription drug coverage (revised February 2007)
- Women's Health and Cancer Rights Act notice (must be given to new enrollees and redistributed annually)
- Newborns' and Mothers' Health Protection Act notice
- COBRA rights notice (revised 2004; must be given to new enrollees).



## For more information

For additional information, please contact your Mercer consultant.

*This **Update** is for information only and does not constitute legal advice; consult with legal and tax advisers before applying this information to your situation.*

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