



**AMERICAN BENEFITS GROUP**

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# Section 125 Qualifying Events

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A Section 125 Cafeteria Plan must provide that participant elections are irrevocable and cannot be changed during the period of coverage, generally the plan year. However, an employer may design the plan to permit certain exceptions to the rule, known as qualifying events, which are governed by the Treasury regulations in Section 1.125. In general, if an employee requests an election change under these events, the request must be consistent with the event, and the request must be made within the time period governed by the Plan Document and SPD, typically 30 days.

Event	Description	Examples	Coverage Affected
<p><b>HIPAA Special Enrollment Rights</b></p>	<p>HIPAA requires group health plans to give special enrollment opportunities to certain employees, dependents and COBRA qualified beneficiaries. 26 CFR §1.125-4(b).</p> <p>A “special enrollee” is allowed to enroll or change his or her existing plan option in the plan after: a loss of eligibility for group health coverage, health insurance coverage, SCHIP or Medicaid; becoming eligible for state premium assistance, Medicaid or SCHIP subsidies; and the acquisition of a new spouse or dependent by marriage, birth, adoption or placement for adoption.<sup>1</sup> Additionally, effective for plan years beginning on or after Sept. 23, 2010, health care reform provisions require that special enrollment be given to enrollees for (1) coverage for certain adult children and (2) reinstating coverage for individuals who previously exhausted a plan’s lifetime limit.</p>	<p><b>Example 1:</b> An employee’s spouse has recently exhausted her 18 months of available COBRA coverage, and has not yet found other coverage. The employee may enroll the spouse as a “special enrollee” since the COBRA coverage has been exhausted. Special enrollment rights would not be applicable if the spouse simply stopped paying the COBRA premium before exhausting coverage.</p> <p><b>Example 2:</b> An employer’s plan qualifies for premium assistance from the state. The employer notifies the employees, and allows for a special enrollment period for employees who were not previously participating in the coverage who would qualify for the premium assistance.</p> <p><b>Example 3:</b> An employee acquires a dependent by birth. The employee and her spouse are currently enrolled in an HMO. The employee, spouse and newly acquired dependent receive special enrollment rights and are entitled to newly enroll in or change to any benefit package under the plan (e.g., PPO, HDHP), as if they were newly eligible for coverage. Additionally, due to a special provision for birth, adoption or placement for adoption, coverage must be effective retroactively to the date of birth as long as the enrollment request is timely (within 30 days, or longer if plan so provides).</p>	<ul style="list-style-type: none"> <li>• Major Medical</li> <li>• Dental</li> <li>• Vision</li> <li>• Health FSA</li> </ul>
<p><b>Change in Status</b></p>	<p>Applies to change in marital status (marriage, divorce or legal separation as defined by the state), number of dependents (includes birth, adoption, placement for adoption and death), employment status, dependent satisfies or ceases to satisfy eligibility requirements, change in residence.</p> <p>26 CFR §1.125-4(c)(1)(i).</p>	<p><b>Example 1:</b> A part-time employee previously ineligible under the terms of the plan is now full-time and satisfies eligibility. The employee would be given the opportunity to enroll self, spouse or dependents. If a full-time employee is now part-time and this results in a loss of eligibility, the employee is allowed to revoke elections.</p> <p><b>Example 2:</b> An employee is terminated and rehired within 30 days. Prior elections at termination are reinstated unless another event has occurred. A termination and rehire after 30 days entitles an employee to make new elections under all benefit options under the plan.</p> <p><b>Example 3:</b> A student turns age 26 and is no longer considered a dependent under the terms of the plan. The employee may revoke elections for that dependent only. Employer also has a responsibility to ensure only eligible dependents are kept on the plan.</p>	<ul style="list-style-type: none"> <li>• Major Medical</li> <li>• Dental</li> <li>• Vision</li> <li>• Health FSA</li> <li>• Dependent Care</li> </ul>

Event	Description	Examples	Coverage Affected
<b>Change in Cost<sup>2</sup></b>	<p>A change in the cost of coverage that permits the employer to automatically increase or decrease the employee contributions.</p> <p>26 CFR §1.125-4(f) (2)(i).</p>	<p>An employer decides mid-year that they wish to adjust the amount of employer contributions provided for major medical coverage. The plan document includes a provision allowing the employer to automatically increase or decrease the employee contribution. The employer must determine if the change is significant or insignificant. Since it is determined the change is insignificant, the employer notifies the employees of the new cost of the plan and implements the adjustment in the next paycheck.</p>	<ul style="list-style-type: none"> <li>• Major Medical</li> <li>• Dental</li> <li>• Vision</li> </ul>
<b>Significant Cost Changes<sup>2</sup></b>	<p>A significant change in the cost of coverage that permits an employee to actually change elections (drop coverage, add coverage, switch plans).</p> <p>26 CFR §1.125-4(f)(2)(ii).</p>	<p>An employer decides mid-year that they wish to adjust the amount of employer contributions provided for major medical coverage. It is determined that the increase to employees is significant. The employees are permitted to make mid-year election changes based on this provision if provided for in the plan document.</p>	<ul style="list-style-type: none"> <li>• Major Medical</li> <li>• Dental</li> <li>• Vision</li> <li>• Dependent Care</li> </ul>
<b>Significant Coverage Curtailment</b>	<p>A significant coverage curtailment (reduction in benefits) without a loss of coverage or a significant coverage curtailment, with loss of coverage.</p> <p>26 CFR §1.125-4(f)(3)(i) and 26 CFR §1.125-4(f) (3)(ii).</p>	<p>An entire network of hospitals no longer accepts the health insurance offered through the employer. Many participants lose their primary care physicians and specialists. The employer offers another benefit option that still includes the hospital network. The employees change their elections to avoid the coverage curtailment.</p>	<ul style="list-style-type: none"> <li>• Major Medical</li> <li>• Dental</li> <li>• Vision</li> <li>• Dependent Care</li> </ul>
<b>Addition or Significant Improvement of Benefit Options</b>	<p>If a plan adds a new benefit package option or other coverage option, or improves an existing option. An employee may drop coverage for old option, add coverage for new option or switch plans.</p> <p>26 CFR §1.125-4(f)(3)(iii).</p>	<p>An employer has previously provided the choice of a PPO or HMO under the major medical plans. They decide mid-year to add a High Deductible Health Plan (HDHP) with HSA as a benefit offering. Since this is an employer initiated improvement, this provision allows employees to make an election change to the HDHP and revoke the election to the PPO or HMO.</p>	<ul style="list-style-type: none"> <li>• Major Medical</li> <li>• Dental</li> <li>• Vision</li> <li>• Dependent Care</li> </ul>

Event	Description	Examples	Coverage Affected
<b>Change of Coverage Under Another Employer's Plan</b>	<p>Allows for a new election or revoking a previous plan election when a change is made under another employer plan (including a plan of the same employer or of another employer) for the employee, spouse or dependent.</p> <p>26 CFR §1.125-4(f)(4).</p>	<p><b>Example 1:</b> A son's employer begins offering coverage for the first time, which provides him with major medical, dental and vision. Even though the son is still a dependent for purposes of the plan, the parent wishes to drop the son from coverage since he has other insurance. This would be permissible if the plan allows for this provision.</p> <p><b>Example 2:</b> A husband has open enrollment in December each year. A wife has open enrollment in June. The husband covers the entire family through his employer, but in June the family decides to switch to the wife's insurance. The husband is permitted to drop all coverage under this provision.</p>	<ul style="list-style-type: none"> <li>• Major Medical</li> <li>• Dental</li> <li>• Vision</li> <li>• Dependent Care</li> </ul>
<b>Loss of Group Coverage Under a Governmental or Educational Institution</b>	<p>Allows adding coverage under a cafeteria plan for the employee, spouse or dependent if the employee, spouse or dependent loses coverage under any group health coverage sponsored by a governmental or educational institution, which includes: state CHIP, coverage through an Indian tribe and a state risk pool.</p> <p>26 CFR §1.125-4(f)(5).</p>	<p><b>Example 1:</b> An employee has employee-only coverage under the employer plan, and her three children are covered under the state's CHIP plan. Mid-year, the employee is promoted and her new salary makes her children ineligible for the CHIP coverage. Since the plan includes this provision, the employee adds her dependents to her employer-provided coverage.</p> <p><b>Example 2:</b> An employee's daughter goes to college and is provided insurance through the school as part of her tuition. This does not entitle the employee to remove the daughter from employer-sponsored coverage. This change would be made at open enrollment. However, the daughter struggles in school and moves home, losing her coverage. The employee may now add the daughter back onto her employer sponsored coverage under this provision.</p>	<ul style="list-style-type: none"> <li>• Major Medical</li> <li>• Dental</li> <li>• Vision</li> </ul>
<b>Judgments, Orders or Decrees</b>	<p>Applies to a judgment, decree or order resulting from a divorce, legal separation, annulment, changes in legal custody or qualified medical child support order (QMCSO). It is important to note that ERISA requires a plan to honor qualified medical child support orders, and including this provision in the plan document allows coverage through a QMCSO to be paid pre-tax.</p> <p>26 CFR §1.125-4(d).</p>	<p>An employer is provided a court order which requires that the employee cover the dependent child on all available medical, dental and vision coverage available. The child does not live with the employee, and the employee is not currently enrolled in any benefit offerings through the employer, although they are eligible for it. The policies all require employees who cover dependents to be enrolled on the plan. The employer should enroll the employee and dependent on all plans, to comply with the court order.</p>	<ul style="list-style-type: none"> <li>• Major Medical</li> <li>• Dental</li> <li>• Vision</li> <li>• Health FSA</li> </ul>

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<b>Medicare or Medicaid Entitlement</b>	<p>If an employee, spouse or dependent becomes enrolled in coverage under Part A or Part B of Medicare, or Medicaid or loses coverage under these, a cafeteria plan may permit the employee to make an election change to increase, change or revoke coverage of that employee, spouse or dependent under the plan. Treas.</p> <p>Reg. §1.125-4(e) This category does not include SCHIP, VA Benefits or TRICARE.</p>	<p>An employee becomes eligible for Medicare because of End Stage Renal Disease (ESRD), and requests to revoke his group medical plan election since the plan contains this provision. Later, this same employee receives a kidney transplant and exhausts his coverage from Medicare. The employee is now able to request to be re-enrolled on the group plan under this same provision.</p>	<ul style="list-style-type: none"> <li>• Major Medical</li> <li>• Dental</li> <li>• Vision</li> <li>• Health FSA</li> </ul>
<b>Family Medical Leave Act (FMLA)</b>	<p>An employee taking FMLA may revoke their election for medical, dental and vision and choose another option for the remaining period of leave.</p> <p>26 CFR §1.125-4(g).</p>	<p>An employee qualifies for unpaid FMLA and does not have enough paid time accrued to earn a full salary during the full 12 weeks of leave. The employee requests to revoke coverage during his leave. This is permitted under this Section 125 provision. Upon return, the employee has the right to be reinstated to the coverage in effect prior to the leave.</p>	<ul style="list-style-type: none"> <li>• Major Medical</li> <li>• Dental</li> <li>• Vision</li> <li>• Health FSA</li> <li>• Dependent Care</li> </ul>

#### Footnotes

<sup>1</sup> Effective April 1, 2009, if the loss of eligibility is under a Medicaid plan or the state children's health insurance program, a period of at least 60 days must be allowed to request special enrollment. 26 USC §9801(f)(3)(A)(i).

<sup>2</sup> A change in cost may be "significant" or "insignificant." Unfortunately, no real guidance has been issued on what is "insignificant" versus "significant." The regulations only mention an example of 12.5 percent (26 CFR 1.125-4(f)(6), ex. 7), but the IRS has indicated that this should not be interpreted as a safe harbor guideline. The plan should base its determination on the plan's unique circumstances such as type of employees (minimum wage employees vs. high income), past changes (no previous changes) and type of plan changed (medical vs. vision).

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