



Legislative Brief

HIPAA Common Questions: Notification Requirements



Do the HIPAA portability rules require that group health plans or health insurance coverage issuers provide individuals with notice of their rights under HIPAA?

The HIPAA Portability Regulations require that Group Health Plans and Health Insurance Coverage issuers provide the following notices:

1. Special Enrollment Notice,
2. General Notice of Pre-Existing Condition Exclusion,
3. Determination of Creditable Coverage Notice, and
4. Certificate of Creditable Coverage.

Under HIPAA, when must the Group Health Plan or Health Insurance Coverage issuer provide a Special Enrollment Notice?

The Special Enrollment Notice must be provided at or before the time the employee is initially offered the opportunity to enroll in the plan. The notice must be provided to all eligible employees, both those who enroll in the plan as well as those who decline coverage.

The final HIPAA Portability Regulations include a model notice that can be used to satisfy the notice requirement. However, please note that it has not been updated to include model language regarding the special enrollment rights provided by the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA), which was effective April 1, 2009.

Under HIPAA, when must the Group Health Plan or Health Insurance Coverage issuer provide a General Notice of Pre-Existing Condition Exclusion?

HIPAA requires that a General Notice of Pre-Existing Condition Exclusion be provided as part of any written application materials distributed by the Group Health Plan or Health Insurance Coverage issuer. If the plan or issuer does not distribute written enrollment application materials, the Notice must be provided by the earliest date following a request for enrollment that the plan or issuer, acting in a reasonable and prompt fashion, can provide it. If the General Notice of Pre-Existing Condition Exclusion is not provided, a Pre-Existing Condition Exclusion cannot be applied.

The General Notice of Pre-Existing Condition Exclusion must contain all of the following:

1. A description of the plan's Pre-Existing Condition Exclusion,
2. An explanation of the individual's right to reduce any applicable Waiting Period by providing evidence of Creditable Coverage, and
3. The name of the person to contact (including phone number or address) for assistance.

The final HIPAA Portability Regulations include a model notice that can be used as a starting point to meet this requirements.

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Under HIPAA, when must the Group Health Plan or Health Insurance Coverage issuer provide a Determination of Creditable Coverage Notice?

In the event a participant submits evidence of Creditable Coverage to the Group Health Plan or Health Insurance Coverage issuer in order to reduce the applicable Pre-Existing Condition Exclusion, a Determination of Creditable Coverage Notice must be provided to the participant. The Determination of Creditable Coverage Notice notifies the participant of any reduction in the Pre-Existing Condition Exclusion.

The Determination of Creditable Coverage Notice must be provided by the Group Health Plan or Health Insurance Coverage issuer on the earliest date following a determination of Creditable Coverage within a reasonable time after receiving information regarding prior health coverage. The notice does not need to include a list of conditions excluded.

In the event the Pre-Existing Condition Exclusion is completely offset by Creditable Coverage, HIPAA does not require that a Determination of Creditable Coverage Notice be provided.

Under HIPAA, when must the Group Health Plan or Health Insurance Coverage issuer provide a Certificate of Creditable Coverage?

1. Automatically

Group Health Plans and Health Insurance Coverage issuers provide a Certificate of Creditable Coverage automatically to individuals in the event they lose coverage under the plan and again when COBRA coverage terminates.

For individuals that lose coverage and that are eligible for state or federal COBRA, the Certificate of Creditable Coverage must be automatically provided no later than the date the individual would lose coverage in the absence of COBRA. Plans may meet this obligation by sending the Certificate of Creditable Coverage with the COBRA Qualifying Event Notice.

If an individual is not eligible for COBRA, the plan must automatically send the Certificate of Creditable Coverage within a reasonable time.

2. Upon Request

A Certificate of Creditable Coverage must be provided upon an individual's written request, if the request is made within 24 months after the date coverage ceases, regardless of whether the individual has previously received an automatic Certificate of Creditable Coverage. The Certificate of Creditable Coverage may also be provided to the individual's new plans, if it has been authorized to request the Certificate by the individual. A requested Certificate must be provided by the earliest date that the plan, acting in a reasonable and prompt fashion, can provide it.

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