2023

Open Enrollment Issues, Correction, & Mistakes

Presented by Benefit Comply

Assurex Global Partners

- Bolton & Company
- Cottingham & Butler
- Cragin & Pike, Inc.
- Daniel & Henry
- Dean & Draper Insurance Agency
- The Graham Company
- Henderson Brothers, Inc.
- The Horton Group
- Houchens Insurance Group
- The IMA Financial Group
- INSURICA
- Kapnick Insurance Group
- Lyons Companies
- The Mahoney Group
- MJ Insurance
- Oswald Companies
- Parker, Smith & Feek, Inc.
- R&R Insurance
- RCM&D
- RHSB
- The Rowley Agency
- Starkweather & Shepley
- Sterling Seacrest Pritchard
- WA Group
- Watkins Insurance Group
- Woodruff Sawyer
- York International

Agenda

- Open Enrollment Mistakes
  - Mistaken or Missed Elections
  - Non-responsive participants
  - Participant fails to set up HSA
  - Dependent Eligibility Verification
- Post-Open Enrollment Tasks
  - Audit Your Bills
  - Collect EOIs / Beneficiary Designations
  - Report Salary Changes / Recalculate Premiums
  - Distribute SPDs
  - Wellness Incentives

OPEN ENROLLMENT MISTAKES

Open Enrollment (OE) Mistakes

After OE, Before 1st Day of PY

- Employer's discretion whether to allow corrections

After 1st Day of PY

- Much harder to correct mistakes because now you have to deal with special enrollment and midyear election change rules.

Analyzing OE Mistakes

Whose mistake?

- Employer
- Employee
- 3rd Party

Type of mistake

- Missed election
- “Extra” election
- “Wrong” election

Evidence of mistake

- Impossibility
- Inconsistency
- Communication issues

Reason for mistake

- Accidental oversight
- Lack of attention
- Misunderstanding

Do you have to correct mistakes?

Employer & 3rd Party Mistakes

- E.g. Failure to transmit election to insurance company; insurance company fails to process enrollment; employee is enrolled in different benefit than they elected
- YES you need to correct the mistake, ideally back to the start of the plan year.
  - Many insurance companies will limit how far back they will correct errors, even if it was their fault, so important to uncover mistakes as soon as possible.
  - Employer could be forced to self-fund benefits if unable to correct the error and enroll the employee back to the start of the plan year.
  - If the employee had no claims between start of year and when the error is discovered *may* get away with enrolling the employee prospectively but a) no guarantee insurance company will go along without a special enrollment event; and b) cannot collect back premiums in this situation.

Do you have to correct mistakes? (cont.)

Employee Mistakes

- E.g. Forgot to complete open enrollment; elected the wrong benefit; elected the wrong amount of benefit, e.g. FSA election.
- Employer is not required to correct employee mistakes.
  - Even if employer is inclined to correct the mistake, must verify insurance company (including stop loss carrier where applicable) will allow correction and, if so, effective date, i.e. prospective only or retroactive back to start of plan year.
  - Even if you correct the underlying election, will cafeteria plan rules allow you to adjust the pretax election or will employee have to pay for benefits after-tax?
  - Consistency is important – if you're going to allow employee to correct mistake under certain circumstances must do the same for all similarly situated employees.

Bona Fide Mistake

- In many case, ability/desirability of correcting an error will turn on employee being able to prove there was a bona fide mistake.
  - Increases likelihood insurance company will correct error
  - Existence of bona fide mistake will often allow change to pretax elections
  - Helps with consistency by only allowing corrections where there is clear evidence of genuine and reasonable mistake.
- *Not* bona fide mistakes
  - “I forgot”
  - “I changed my mind”
  - “I wasn’t paying attention”
  - “I didn’t see your five reminders”
  - “I didn’t understand I needed to do something despite clear instructions telling me exactly what I had to do and what would happen if I didn’t”

Bona Fide Mistake (cont.)

Evidence that *may* suggest a bona fide mistake

Impossibility

- Employee makes an election that provides no benefit, e.g.
  - Elects family coverage when not married and has no children
  - DCAP election when they have no children under age 13 or other eligible tax dependents.

Inconsistent elections (past or present)

- Employee has consistently elected the same benefits for the last several years but this year misses one specific benefit while electing all others
- Employee elects an HDHP/HSA plan and a general purpose FSA
- Employee enrolls spouse and all but one of their children in the health plan, while enrolling spouse and all children in dental and vision

Communication issues

- Employee claims they misunderstood enrollment instructions and several other employees made the same mistake
- User interface of online enrollment tool is ambiguous as to what steps are necessary to elect a particular benefit
- Benefit enrollment materials fail to disclose an important aspect of the plan design that employee claims influenced their decision to elect / not elect that benefit

Correcting Mistakes – Cafeteria Plan

- Cafeteria plan elections (pretax premiums, Health FSA, DCAP, etc.) generally cannot be changed midyear without a midyear election change event
  - **Exception**: Pretax HSA contributions can be changed monthly.
  - Even if there is an event, the change generally must be prospective only.
- While not an official midyear election change event, IRS officials have long stated employers may allow employees to correct mistaken cafeteria plan elections where there is a *clear and convincing evidence of a bona fide mistake*.
- When correcting a mistaken pretax election, you are not just changing the election midyear but rather undoing the election back to the start of the year like it never happened.
  - Put employee in same position they would have been in had election never been made.
    - Refund premiums / contributions that have not been spent or collect missing premiums
    - Recharacterize pretax deductions to date as taxable income and withhold payroll taxes
    - Cancel / add coverage on underlying benefit plan

Examples

1

You distributed open enrollment materials to all employees via their work email. This was followed up with two reminder emails during OE, the 2nd of which was specifically targeted at employees who had not yet enrolled. Jamie did not log into the online enrollment portal or complete the enrollment process.

Jamie comes to you 2 weeks after the start of the plan year and says they don't recall ever seeing any emails about OE but they really need health insurance. You confirm Jamie was on the distribution list for all three OE emails; Jamie has a sporadic history of enrolling in health insurance in the past, enrolling some years, waiving in others.

Examples

2

Alex enrolled in health, dental and vision insurance. Alex enrolled their child in dental and vision insurance but not health insurance. Your online enrollment portal asks employees if they want to enroll dependents for each separate benefit. Alex has enrolled their child in health, dental and vision insurance in the past.

Alex comes to you 8 weeks after OE and says their claims were denied when they took their child to their doctor and is wondering why. When you point out that Alex did not enroll their child in health insurance, they say they must have overlooked the section to enroll dependents while enrolling but they meant to enroll their child as well.

Examples

3

You offer two health insurance plans – a base plan with a narrow network and buy-up plan with a lower deductible and a broader network, which is significantly more expensive. Seth enrolled himself and his spouse in your base health insurance plan.

Three weeks after the start of the plan year Seth comes to you and says he just discovered that the specialist that his spouse sees for a chronic condition is not in the narrow network and asks to switch plans. In reviewing the OE materials, you discover that while those materials describe the base plan as having a narrow network, they do not include any directions on how to look up whether a given provider is within that network.

Examples

4

During OE, Nadia enrolls in your HDHP plan, which includes quarterly employer HSA contributions, and she also enrolls in a general purpose Health FSA. While preparing to make the Q1 employer HSA contribution to Nadia's account, you discover her enrollment in the general purpose Health FSA. By this point, Nadia has contributed $500 to the Health FSA and submitted $250 in claims.

You thought the online enrollment system was supposed to prevent someone who elects the HDHP plan from also selecting the general purpose Health FSA but after investigating further you discover the online enrollment vendor never actually turned on that functionality. Your OE materials do explain that employees who sign up for the HDHP plan are not allowed to enroll in the general purpose FSA and no one else made this mistake.

Other Common OE Mistakes

- Non-responsive OE participants
  - You send OE materials to COBRA participants and employees on LOA during OE but receive no response – either enrolling or waiving coverage.
  - If OE materials clearly explain the consequence of not responding (e.g. all coverage will be waived, existing elections will be continued, etc.) and COBRA / LOA participants have a similar period of time to respond and are treated similarly in terms of reminders and other opportunities to enroll, you can follow through on communicated consequences.
  - If OE materials did not clearly explain what would happen if they did not respond, send out a follow-up communication ASAP giving one last opportunity to respond with clear deadline and consequences if the participant does not respond.

Other Common OE Mistakes (cont.)

- No HSA Account
  - Employee enrolls in HDHP but never completes the paperwork to open HSA.
  - As long as OE materials clearly explain that employer HSA contributions will be forfeited and employee contributions will either not be deducted or returned to the employee if HSA account is not opened by the time you are ready to make deposits, you can follow through on communicated consequences.
  - If OE materials did not clearly explain what would happen if HSA was not established, send out a follow-up communication ASAP after discovering the employee has no account giving one last opportunity to open the account with clear deadline and consequences if the participant does not do so.

Other Common OE Mistakes (cont.)

- Dependent Eligibility Verification
  - You require written documentation verifying dependent eligibility but employee has not yet produced sufficient documentation.
  - Ideally, complete the dependent verification process during OE and do not enroll dependents for whom sufficient documentation is not received before the start of the plan year.
  - If dependent verification lapses into start of the plan year, clearly communicate deadline for providing verification, either in OE materials or follow-up reminder, as well as clear statement that dependents who are not verified by the deadline will have their coverage terminated.
    - Likely not able to cancel coverage retroactively because of ACA “no recission” rules
    - Coverage cancelled for failure to verify dependent eligibility is not a COBRA qualifying event. However, if verification process uncovers a COBRA event has occurred, e.g. divorce, dependent child aging out, that event may trigger COBRA.

POST OPEN ENROLLMENT TASKS

Audit Your Bills

- Best way to identify mistakes is to periodically audit your bills/census from carriers, especially the first ones of the new plan year.
  - Do subscribers match?
  - Correct plan option listed?
  - Correct coverage tier?
  - Are total premiums consistent with what you are expecting and match up with what you are collecting through payroll?
- Insurance companies generally expect you to audit bills and notify them of mistakes in a timely manner. Many will not correct mistakes that are more than 60-90 days old if the error could have been discovered by reviewing the bill.

Collect EOI & Beneficiary Designations

- Know your responsibilities
  - Many ancillary benefits rely on employer to collect paperwork like evidence of insurability (EOI) or beneficiary designation forms.
  - Often these forms are to be stored and maintained by the employer and not handed over to the insurance company unless/until there is a claim.
  - If employer fails to collect or hold onto a required EOI or similar paperwork and a claim is filed, carrier may determine coverage was never valid and deny the claim.
    - In the meantime, employer has likely been collecting premium and otherwise leading employee to believe they have coverage.
    - At best, employer would be required to return premiums to the employee; at worst, employer may be liable for the benefit that was denied because of their failure to maintain proper records.
  - Similar issues can arise if employer fails to collect or maintain beneficiary designation forms – benefits may go to default beneficiary, rather than intended beneficiaries, who may sue for the lost benefit.

Update Salaries & Premiums

- The amount of certain benefits are tied to the employee's salary, e.g. life insurance, STD/LTD, etc.
  - Premium may also change as the employee's salary (and hence benefit) increases
- Carriers collect this information at different times, e.g.
  - Annually upon contract renewal
  - At the time of salary increase
  - At time of claim
- Failure to notify insurance company of changes in salary may lead to employee's receiving less benefit than expected and/or collecting less than the required premium.

Distribute SPDs/SMMs

- Not uncommon to receive updated SPDs or SMMs after start of plan year.
- Time frame for distributing these documents varies
  - 120 days after start of plan year for new plan
  - 90 days after start of plan year for new enrollees
  - 60 days after start of plan year for material reduction in health plan services or benefits
  - 210 after end of plan year for all other material modifications
  - Even if document is not “late”, there is case law prohibiting enforcement of exclusions and limitations in modified document not disclosed prior to distribution
  - All revised documents should be distributed ASAP
- ERISA electronic distribution rules will allow distribution via intranet or email if certain conditions are met.
  - Notice requirements for employees with regular, job-related computer access
  - Notice & consent requirements for all other employees

Wellness Incentives

- In some cases, you will not know if an employee has earned a wellness incentive until after the start of the plan year.
- Set clear deadlines for when tasks must be completed and/or required documentation submitted to earn incentive.
- Employees must have a reasonable amount of time to complete wellness activities to earn incentive.
- Under HIPAA wellness plan rules, employees must be allowed a reasonable alternative standard (RAS) for activity-only and outcome-based incentives if they cannot meet the initial standard.
  - Employee who completes an RAS is entitled to the full-incentive for the year, which may require refunding premiums or catch-up contributions depending on the nature of the incentive.

2022

Open Enrollment Issues, Correction, & Mistakes

Presented by Benefit Comply