



Group Health Plan Dependent Eligibility Audit

At the outset, employers should have two main objectives regarding their group health plan's eligibility provisions: **(1)** drafting clear plans and policies to reflect their intended eligibility rules, and **(2)** administering and monitoring these eligibility provisions consistently. In order to achieve the second objective, an employer may want to conduct a dependent eligibility audit.

A dependent eligibility audit is an employer-initiated review of a group health plan's eligibility provisions that identifies enrolled dependents who are ineligible for the plan. An employer may consider conducting a dependent eligibility audit for many reasons, however, the main purpose of the audit is usually to reduce healthcare costs. Also, employers are legally required by ERISA to follow the terms of the plan and administer their plan according to those terms. An eligibility audit will help employers act in the sole interest of their plan participants and beneficiaries by only providing benefits to dependents who are eligible for the plan. Employers who decide to implement a dependent eligibility audit will need to engage in careful planning and preparation.

FIRST STEP. Planning Your Audit.

Once an employer decides to conduct a dependent eligibility audit, they will need to make some initial decisions regarding the audit. The below questions outline considerations employers should make before implementing the audit.

Have we reviewed the plan's eligibility language? Employers should review the eligibility rules in their plan document and their summary plan description (SPD). This review is a good time to check for missing definitions, ambiguous language, and inconsistencies between the plan documents, employee communications and policies. Employers should make sure that their policies and SPD are compliant with various laws, including certain tax laws, state insurance laws and the Affordable Care Act (ACA).

Who is going to conduct the audit? The dependent eligibility audit can be conducted in-house or with assistance from a third party. Employers should weigh the advantages and disadvantages of both options to decide the right choice for their audit. If an employer decides to have a third party conduct their audit, they should carefully review the terms of the agreement between themselves and the third party. An agreement with a third party should clearly describe the service provider's role. Furthermore, the employer should determine whether a HIPAA business associate agreement should be entered into in connection with the service arrangement.

Will our audit process include an amnesty period? Employers may establish a period of amnesty where employees can voluntarily remove ineligible dependents with no penalty or ramifications. The amnesty period is usually between 30 to 90 days. Before communicating the amnesty period to the employees, employers should determine how they will remove ineligible dependents from the plan and the timeline for removal. An employer will generally not be able to remove ineligible dependents retroactively from coverage due to the ACA's prohibition on rescission (unless the individual obtained coverage through fraud or intentional misrepresentation). An employer can avoid the ACA's restrictions on rescission (or retroactive cancellation of coverage) by canceling coverage on a prospective basis. Prospective removal may be less problematic but could still raise some issues so it may be necessary to consult with a benefits advisor before terminating ineligible dependents.

SECOND STEP. Employee Communication and Verification.

After the employer decides on the scope of their audit, who will conduct their audit and whether or not they will implement an amnesty period, their next step should be to communicate the audit to their employees. Human Resources, managers and senior executives should all be prepared to field questions regarding the audit and communicate the reasons and importance of the audit.

Employee Communication. The employer should explain the audit to the employees in advance of the audit. The communication could be sent many ways, including email, company intranet, or payroll staffer. This communication piece should explain the amnesty period. After the amnesty period is over, employees will have to verify their remaining dependents in the second phase of the audit. The employer communication to employees should detail the documents employees need to provide for these remaining dependents, including a list of the acceptable documents for each category of dependents (e.g., marriage certificates, birth certificates, domestic partner affidavits, ect.). The communication should inform employees of the purpose of the audit, like controlling costs and promoting fairness.

Verification after Amnesty Period. During this time period, employees will have to send in the documents to verify their dependents' status. If the employer is using a third party, employees should be prepared for communication coming from that third party requesting this documentation. Often, employees may have questions regarding how to send in their documentation and where to find their documentation. The letters or emails sent to the employees by the employer or third party should contain detailed contact information regarding where and when employees can make these inquiries.

THIRD STEP. Final Results.

Before conducting the audit, the employer should decide how it will handle ineligible dependents who are enrolled in the plan. The employer should apply the same strategy consistently to all affected employees and dependents, and this information should be included in the employee communication materials.

Removing the Ineligible Dependents. Once an employer confirms that an employee has an ineligible dependent enrolled in the plan, they should notify the employee of that determination with information about removal and consequences. The employer will have to also notify insurers and TPAs of the dependent's removal. Employers should also consider the potential COBRA and tax issues raised from removing an ineligible dependent from the plan. Removing an ineligible dependent is not a COBRA qualifying event. However, employers should distinguish ineligible dependents from dependents who may actually be eligible for COBRA due to a COBRA qualifying event that occurred shortly before the audit (e.g. due to divorce, loss of dependent child status). Employers should also decide whether or not they want to pursue any further action against the employee, such as recovering insurance premiums paid on behalf of the ineligible dependent.

Employer Action Steps after Audit.

The employer should take time after the audit to improve and identify problems discovered through the process. **Some action steps include:**

- Deciding if the eligibility audit will be ongoing, annual or a one-time process;
- Identifying eligibility provisions that are ambiguous or misunderstood by employees and revising the eligibility language in the plan(s), along with the SPD;
- Clarifying language in the open enrollment materials and improving employee communication; and
- Reviewing plan systems and establishing procedures to avoid reenrollment of ineligible dependents.

HELPFUL RESOURCES

 [EBSA Affordable Care Act Implementation Frequently Asked Questions](#)

[ACA FAQs Part II - Rescissions](#)

 [HHS HIPAA Business Associate Contracts](#)

[Sample Business Associate Agreement](#)

 [EBSA COBRA Continuation Coverage](#)

[Employers Guide to Group Health Continuation Coverage under COBRA.pdf](#)