

Spouse & Dependent Eligibility

Presented by Benefit Comply
August 2024

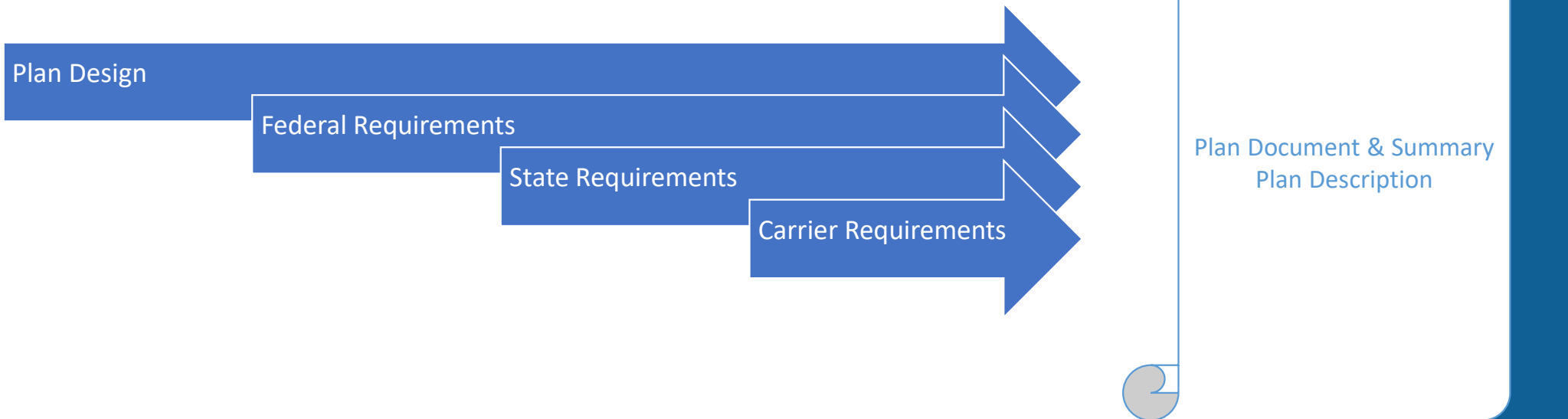
Welcome! We will begin at 3 p.m. ET.

There will be no sound until we begin the webinar.

Thank you to the following Assurex Global Partners for sponsoring this event:

- C3 Risk & Insurance Services
- CCIG
- Christensen Group Insurance
- Cottingham & Butler
- Cragin & Pike, Inc.
- The Daniel & Henry Co.
- Dean & Draper Insurance Agency
- Henderson Brothers, Inc.
- Houchens Insurance Group
- The IMA Financial Group
- INSURICA
- Kapnick Insurance Group
- Lyons Companies
- The Mahoney Group
- MJ Insurance
- Oswald Companies
- Parker, Smith & Feek, Inc.
- The Partners Group
- R&R Insurance
- RCM&D
- Starkweather & Shepley
- Sterling Seacrest Pritchard
- WA Group
- Watkins Insurance Group
- Woodruff Sawyer

Spouse and Dependent Eligibility



Spouse and Dependent Eligibility

- **What does plan documentation state?**
 - ERISA requires plan sponsors to follow the terms of the plan document and SPD
 - Non-ERISA plans still typically are maintained pursuant to a document that should outline eligibility requirements
 - If a wrap document is utilized ensure any benefit specific eligibility language is accurate
 - *Example:* Conditional eligibility for spouse (based on whether the spouse has coverage available through their own employer) applicable only to major medical



Spouse and Dependent Eligibility

- **Employers have broad control over who is eligible, but...**
 - Plan eligibility should never be more inclusive than carrier language, as offering coverage to dependents who are not eligible under carrier/ stop-loss terms could result in employer responsibility for claims
 - Eligibility can be designed to be less inclusive through the use of a supplemental wrap document
 - Federal, state, and carrier requirements should be complied with and reflected in eligibility provisions within plan documentation
 - Failing to strictly follow plan eligibility terms can lead to additional participant claims for benefits



Who?

- **Children**

- Natural, step, adopted
- Children of domestic partner
- Legal guardians
- Disabled adult
- Foster Children

- **Spouse**

- Legal spouse
- Same sex spouse
- Common law
- Domestic partner

- **Additional Possible Dependents**

- Parents
- Grandchildren
- Tax dependents



Tax qualified status

Legal spouse, children under age 27 as of the last day of the year, and tax dependents

Employee Contribution

- Medical
- Dental
- Vision
- Flexible Spending Account (FSA)

Employer Contribution

- Medical
- Dental
- Vision
- Flexible Spending Account (FSA)
- Health Reimbursement Arrangement (HRA)

Eligible Expenses

- Medical
- Dental
- Vision
- Flexible Spending Account (FSA)
- Health Reimbursement Arrangement (HRA)
- Health Savings Account (HSA) subject to different rules, covered later



Spouse



Legal Spouse



- **Most plans broadly define spouse to include “any legal spouse”**
 - Following a divorce, ex-spouses are not eligible – they are no longer the employee’s legal spouse
 - **Legally** separated
 - May not result in loss of eligibility
- **Typically includes:**
 - Common Law
 - Limited states allow common law marriage
 - Employers could choose to exclude
 - Same-sex
 - Excluding will be considered discriminatory
- **No federal requirement to offer coverage**

Domestic Partner

- **Definition should be included in plan documentation**
 - Factors may include: cohabitation, sharing of expenses, not married, etc.
 - Proof of relationship: registration (*where available*), affidavit
- **Not eligible for tax-free benefits (unless they qualify as tax dependent)**
 - Both employee and employer contributions are taxable
 - Plans must determine fair market value of domestic partner's coverage
 - Expenses not reimbursable under an employee's HSA, FSA, or HRA.
- **Not qualified beneficiaries**
 - Covered employee may elect COBRA for DP upon termination of employment or reduction of hours
 - No independent rights to elect COBRA
 - Termination of domestic partnership
 - Not a qualifying event for the former domestic partner
 - Qualifying event for the former domestic partner's child (if loss of dependent status occurs)



Children



Plan Eligibility

- Virtually all plans cover biological, adopted, and stepchildren
 - Marital status of parents doesn't impact eligibility of biological children
 - Plans may permit eligibility for adopted children prior to adoption being finalized
 - When is stepchild status lost?
 - Divorce
 - Death of biological parent?



Age 26 Mandate

- **The ACA requires major medical plans that offer coverage to dependents to offer coverage until dependents turn 26**
 - Does not require dependent coverage in general
- **Any *eligible* child within the Code § 152 definition is subject to the mandate**
 - Natural
 - Adopted
 - Step (children of domestic partners could be included, depending on state)
 - Foster
- **Employers are prohibited from defining eligibility for dependents on anything other than the dependent's relationship to the employee**
 - *Example:* Offering dependent coverage for major medical up to age 26 unless the dependent has an offer of coverage through their own employer is a violation of the age 26 mandate



Employer Mandate

- Applicable Large Employers (ALEs)
 - 50 or more full-time and full-time equivalent employees in the prior calendar year
- Penalties under **§4980H(a)** apply, if:
 - ALE fails to offer MEC to at least 95% (or all but 5, if greater) of full-time employees **and their dependent children (under 26 years)** in any given month, and
 - A full-time employee enrolls through a public Exchange and qualifies for a premium tax credit (or tax subsidy)
- Exceptions
 - Stepchildren
 - Foster children
 - Certain children who are non-U.S. citizens or nationals



Additional Eligibility Considerations

Does the plan include additional categories of dependent children?

■ Disabled adults over age 26

- If so, how does the plan define?
 - % of support provided by employee,
 - whether the child can maintain gainful employment,
 - Social security disability determination,
 - Principal place of abode,
 - Tax dependent,
 - Etc.

■ Foster Children

- Many plans don't provide coverage

■ Legal Guardian

- State law differs from state to state
 - Typically involves court order
 - Informal procedures exist
 - Terminology differs
 - Custody does not necessarily = legal guardianship
- Relevant factors *can* include:
 - Principal place of abode
 - % of support provided by employee
 - Age



Health Savings Accounts (HSAs)

- **Distributions are tax free if used for reimbursement of qualifying medical expenses of the account holder, spouse, or tax dependent**
 - The employee's child or other relative younger than the employee, who:
 - is totally disabled, or has not attained age 19 (or 24 if a full-time student); and
 - lives with the employee at least half of the year; and
 - does not provide more than one-half of his or her own financial support; and
 - has not filed a joint return (other than only for a claim of refund) with his/her spouse
 - Not dependent on whether the child is enrolled in the qualified HDHP



Health Savings Accounts (HSAs)

■ HSA Eligibility

- The ability to establish; make and receive contributions to an HSA
- Cannot be claimed as a tax dependent by another individual
- *Example:* Winston (an employee of Company A) and his daughter, Ruth, are enrolled in Company A's qualified HDHP. Winston can no longer claim Ruth as his tax dependent. Ruth has no other disqualifying coverage.
 - **Question:** Is Ruth eligible to establish and contribute to her own HSA? If so, what is Ruth's annual maximum?
 - **Answer:** Ruth is eligible to contribute up to the family maximum to her own HSA.



Other Dependents



Additional Categories

- **Possible, but not common...**
 - Parents
 - Grandchildren
 - Tax Dependents
- **Tax dependency does not necessarily mean eligibility**
 - Tax dependents are not eligible unless plan documents specifically say so



Questions