

SUMMARY OF NOTICES & DISCLOSURES

These notices and disclosures should generally be provided to participants upon initial enrollment in the group health plan.

Placing them in the plan's Summary Plan Description (SPD) may satisfy this distribution requirement as specified in the notice's distribution requirements; however, it is not required that they be placed in the SPD. By contrast, the Notices and Disclosures: SPD chart shows disclosures that must specifically appear in the SPD.

PLAN TYPE	NOTICE/DISCLOSURE	DISTRIBUTE ELECTRONICALLY
ALL PLANS	<p>WOMEN'S HEALTH & CANCER RIGHTS ACT (WHCRA)</p> <p>Group health plans that provide coverage for medical and surgical benefits with respect to mastectomies must disclose a woman's right to reconstructive surgery after a mastectomy. This requirement can be met by including the disclosure in an SPD that is distributed upon enrollment. Plans sponsored by self-funded, nonfederal governmental employers may elect to opt-out of this provision, which would require that an "opt-out-notice" be provided upon enrollment.</p> <p>Other Disclosure Requirements: In addition to disclosure upon enrollment, participants must be given an annual notice.</p>	FOLLOW DOL SAFE HARBOR
PLANS SUBJECT TO COBRA	<p>COBRA INITIAL (GENERAL) NOTICE</p> <p>The plan administrator must inform participants and their beneficiaries of their continuation coverage rights and requirements under COBRA within 90 days after coverage commences. The 90-day window makes it easier to provide the initial notice and SPD at the same time or to include the initial notice in the SPD. Because the plan must disclose COBRA rights to participants AND covered spouses, the COBRA Initial Notice is often addressed to the employee and spouse and mailed to the employee's home. If a spouse becomes covered after the date of the employee's enrollment, an initial notice must be sent to the spouse. If COBRA administration is outsourced, an employer should determine whether it (as the plan administrator) or the COBRA Administrator is responsible for distributing the COBRA Initial Notice.</p>	SEE FOOTNOTE¹
SELF- INSURED PLANS	<p>HIPAA NOTICE OF PRIVACY PRACTICES</p> <p>A covered entity must provide to individuals a notice of the plan's privacy practices upon enrollment in the plan. The covered entity may include the privacy notice with other written materials that are mailed to the individuals (except that the notice may not be combined in a single document with an authorization).</p> <p>Other Disclosure Requirements: A new privacy notice must be provided within 60 days after a material change to the notice and the plan must notify participants at least once every three years that a notice of privacy practices is available. The privacy notice must also be provided to anyone who requests it. If the plan has a website, the notice must be posted there. (This applies if the plan itself has a website; it does not apply to the website of the plan sponsor.)</p>	FOLLOW DOL SAFE HARBOR

PLAN TYPE	NOTICE/DISCLOSURE	DISTRIBUTE ELECTRONICALLY
GRAND-FATHERED PLANS	<p>GRANDFATHERED STATUS</p> <p>All group health plans claiming “grandfathered status” under the ACA must disclose this status in any plan materials describing benefits under the plan (including the SPD) that are distributed to participants upon enrollment. A Non-Grandfathered plan does not have to disclose its status.</p> <p>Other Disclosure Requirements: A plan’s grandfathered status should be included in any materials, including enrollment materials, regardless of when they are distributed.</p>	<p>FOLLOW GUIDELINES FOR SBC²</p>
PLANS THAT REQUIRE DESIGNATION OF A PCP	<p>PATIENT PROTECTIONS</p> <p>Plans that require the designation of a primary care provider (PCP) must provide information relative to a participant’s rights under the ACA. The notice is required to be provided whenever a summary plan description or other similar description of plan benefits is provided to a participant or beneficiary. This requirement can be met by including the disclosure in an SPD that is distributed upon enrollment.</p> <p>Other Disclosure Requirements: A participant’s rights under the ACA relative to selection of a PCP should be included in all materials that describe benefits under the plan, regardless of when they are distributed.</p>	<p>FOLLOW GUIDELINES FOR SBC²</p>
PLANS WITH WELLNESS PROGRAMS THAT OFFER INCENTIVE BASED ON A STANDARD RELATED TO HEALTH FACTOR	<p>WELLNESS INCENTIVE DISCLOSURE (HIPAA REQUIREMENTS)</p> <p>The plan must disclose the availability of a waiver or alternative standard to receive a standard-based wellness incentive in all plan materials describing the standard-based incentive (including the SPD) that are distributed to participants upon enrollment.</p> <p>Other Disclosure Requirements: A notice of the availability of a waiver or alternative standard must be included in all plan materials that describe the standard-based wellness incentive, regardless of when they are distributed</p>	<p>FOLLOW DOL SAFE HARBOR</p>

FOOTNOTES

- 1) Electronic distribution is allowed via the DOL Safe Harbor, but is not recommended due to the consent and notice requirements for individuals who do not have access to an employer’s system (such as covered spouses, beneficiaries). Therefore, the COBRA Initial Notice is also often mailed to the employee’s home address.
- 2) A safe harbor specifically for SBCs allows the SBC to be provided electronically to participants and beneficiaries in connection with their online enrollment or renewal of coverage. If online enrollment is not available, the SBC may be provided electronically according to the DOL safe harbor for participants covered under the plan. For participants and beneficiaries who are eligible but not enrolled, the SBC may be provided electronically if the format is readily accessible, which includes an Internet posting if the individuals are notified in paper form (such as a postcard) or via email that the documents are available on the Internet. Special rules may apply for non-federal governmental plans.

ELECTRONIC DELIVERY RULES

The plan administrator may electronically furnish to participants and/or beneficiaries any documents or notices that are required by ERISA. Documents delivered electronically must be furnished in the required style and format. However, the appearance of paper and electronic versions do not need to be identical.

DELIVERY METHODS

GENERAL REQUIREMENTS

- The plan administrator must take steps to ensure the actual receipt of information that is distributed electronically.
- The plan administrator must ensure that the method for providing documents that contain personal information meets the requirements of applicable privacy laws.
- The plan administrator must provide notice (electronically or non-electronically) to each recipient at the time the electronic documents are furnished regarding the significance of the document and the right to obtain a paper version of it.
- Paper versions of the electronic documents must be available upon request. In addition, the paper copies must be provided at no charge if the document in question must otherwise be provided at no charge.

1. Email or Attachment to Email

- DOL Recommendations for meeting the General Requirements.
- Use the return-receipt email feature.
- Use the undelivered email feature.
- Ensure recipients can distinguish documents that are delivered via email from all other items in their inbox.
- Conduct periodic reviews or surveys to confirm receipt of transmitted material.

2. Posting documents to a company website

- DOL Recommendations for meeting the General Requirements.
- If the documents are newly posted to an intranet site, the intended recipients must be alerted to the fact that they are now available.
 - » Annual or periodic notice is not sufficient.
- Conduct periodic reviews or surveys to confirm receipt of transmitted material.

DEPARTMENT OF LABOR (DOL) SAFE HARBOR

DELIVERY METHODS

RECIPIENT REQUIREMENTS

Plan administrators may electronically distribute ERISA disclosures provided the recipients meet the following conditions:

1. Employees Have Work-Related Computer Access

- The employee has the ability to access documents at any location where he/she could reasonably be expected to perform his/her employment duties.
- The employee's access to the electronic information system is an integral part of his/her employment duties..
- Employees working out of a home office will fall under this provision provided that they meet the requirements above and that the home office is a location where the employment duties could be reasonably performed and that access to the employer's computer system is an integral part of the employee's duties.

If the employees meet the criteria above, they DO NOT have to:

- Have the ability to print out a paper copy at the place where they have computer access
- Consent to receive documents electronically.

2. Individuals Without Work-Related Computer Access Affirmatively Consent to the Electronic Delivery of Materials

- A consent must include a clear and conspicuous statement that explains:
 - The types of documents to which the consent will apply
 - That consent can be withdrawn at any time without charge
 - The procedures for withdrawing consent and for updating the address used for receipt of electronically furnished documents
 - The right to request and obtain a paper version of an electronically furnished document, including whether the paper version will be provided free of charge
 - Hardware or software needed to access and retain the documents delivered electronically.
- If delivery is through the Internet or other electronic communication system, the individual must affirmatively consent in a manner that reasonably demonstrates the individual's ability to access information in the electronic format that will be used
- Requiring that the consents be furnished back to the employer electronically is a reasonable demonstration of the individual's access ability
- An individual must provide an address for delivery of documents

NOTE The plan administrator is generally not required to distribute Summary Plan Descriptions (SPDs), Summary of Material Modifications (SMMs), or Summary Annual Reports (SARs) to each beneficiary under the plan. Therefore, the plan administrator is not required to obtain consent from each beneficiary under the plan (e.g. spouses and dependents). However, other notices have to be distributed to both participants (who may have work-related access to computers) and beneficiaries (who will most likely not have such access.) For example, COBRA initial notices must be sent to both the employee and spouse; HIPAA creditable coverage certificates must be sent to any beneficiary who loses coverage. In such cases, electronic notice may not be the most effective compliance method.