

Checklist: Notices to Include in Health Plan Annual Enrollment Materials

Federal law requires health plans to send a variety of notices to participating employees and dependents, usually concerning health plan rights. A few notices are required annually and employers generally can minimize the cost of sending these notices by including them with health plan enrollment materials that are distributed annually. Although annual distribution is not required for most federally mandated health plan notices, employers should consider including some of them in the enrollment materials anyway. Doing so may cure any previous failure to give the notice, and it demonstrates an employer's good faith effort to apprise plan participants of their rights under various laws.

CHECKLIST



Annual Disclosure Requirements

Annual WHCRA Notice. The Women's Health and Cancer Rights Act (WHCRA) requires annual distribution of a notice to all participants and beneficiaries in a group medical plan advising them of their rights to post-mastectomy breast reconstruction. For additional details, see Willis' *Employee Benefits Alert, Issue 85, "Women's Health and Cancer Rights Act: Annual Notice Reminder."* Also, see Chapter 15 of the Compliance Manual and Exhibit 15-05.

SAR. A summary annual report (SAR) is mandatory for many health plans that are required to file a Form 5500. The SAR must be sent each year within 210 days after the end of the plan year. See Chapter 1 of the Compliance Manual and Exhibit 1-06.

Notice of Opt-Out by Self-Funded, Non-Federal Governmental Plan.

Self-funded, non-federal governmental plans can opt out of HIPAA's portability, nondiscrimination and renewability requirements, as well as the requirements of the Mental Health Parity Act, the Newborns and Mothers Health Protection Act, and the WHCRA. These plans opt out by filing a form with the Centers for Medicare & Medicaid Services (CMS). A plan that opts out must notify participants annually that it has done so. See Chapter 9 of the Compliance Manual and Exhibit 9-01.

Disclosure Requirements Fulfilled (in Part) by Annual Notices

Medicare Part D Creditable (or Non-Creditable) Coverage Notice. The laws governing Medicare Part D require all employer-sponsored group

medical plans that cover prescription drugs to notify Part D-eligible individuals who are “enrolled or seeking to enroll” whether the plan provides “creditable coverage.” Determining exactly who is entitled to the notice presents several difficulties, and the notice is required in several circumstances. Accordingly, most employers distribute the notice to all plan participants at least once a year.



The notice informs recipients whether the employer-sponsored prescription drug coverage is creditable (i.e., it is at least the actuarial equivalent of Medicare’s prescription drug benefit). The notice also explains the applicable enrollment penalty if a late enrollee has a gap in creditable coverage of 63 days or more. CMS has provided [model forms on its web site](#) (under the heading “Model Notices for use after February 15, 2007”) for employers to use in making this disclosure for employers to use in making this disclosure. Employers should be aware that a change is needed in the non-creditable coverage model notice. The form includes the following paragraph: “You should also know that if you drop or lose your coverage and don’t join a Medicare drug plan within 63 continuous days after your coverage ends, you may pay a higher premium.” This implies that the late enrollment penalty will not apply if the individual enrolls within 63 days of losing the non-creditable coverage, which is not true. CMS is aware of this problem and will eventually post a revised notice. In the interim, CMS recommends simply deleting the incorrect paragraph from the non-creditable coverage notice. There is no corresponding problem with the creditable coverage notice.

For additional details, see Willis’ [Employee Benefits Alert, Issue 104, “CMS Revises Model Prescription Drug Coverage Disclosure Notices \(Again!\)”](#). Also, see Chapter 12 of the Compliance Manual and Exhibits 12-01, 12-02 and 12-03.

Exhibit 12-02 is the model non-creditable coverage notice with the correction described above.

Initial COBRA Notice. COBRA requires that each participant (and his or her covered spouse) be notified of COBRA rights when coverage under a plan begins. COBRA also allows a plan to require participants (or others) to provide timely notices of certain events, such as a divorce. DOL regulations stipulate, however, that plans cannot deny COBRA rights based on failure to provide notice if the participant (and his or her covered spouse) has not received an explanation of this notice requirement when coverage begins or in the summary plan description. In many cases, employers do not know (or do not have documentation showing) if an individual received this explanation as required. To remedy those situations, and to be certain that participants and spouses have the latest information on the conditions they must meet to obtain COBRA coverage, some employers send the initial COBRA notice to all participants (and their covered spouses) every year. See Willis’ [Employee Benefits Alert, Issue 16, “DOL Finalizes Rules on COBRA Notices.”](#) Also, see Chapter 2 of the Compliance Manual and Exhibits 2-01, 2-02, 2-03, and 2-04.

HIPAA Notice of Privacy Practices. HIPAA privacy rules require that health plans or their insurers distribute a notice to participants of their privacy rights. HIPAA requires that plans give the notice to new participants and redistribute the notice if it is revised. In addition, HIPAA requires plans to send a reminder to participants every three years that a detailed description of their privacy rights is available and how to get it. Sending this reminder notice annually more than fulfills the requirement, and might be easier than remembering to send it every three years. See Willis’ [Employee Benefits Alert, Issue 96, “Reminder: It’s Time to Distribute a Notice Advising that the HIPAA Privacy Notice Is Available.”](#) Also, see Chapter 10 of the Compliance Manual and Exhibit 10-26.

SPD/SMM. ERISA requires a summary plan description (SPD) to be sent to each plan participant within 90 days of enrollment and again every five years (assuming changes have been made to the plan in the interim). The five-year SPD must incorporate all the amendments or changes made to the plan in the intervening years. If there are significant changes in the meantime, a summary of material modifications (SMM) must be sent notifying participants within 210 days after the change becomes effective or within 60 days after the adoption of any change that is a material reduction in covered health benefits or services. Sending a new SPD every year will certainly cover the requirement that the SPD be sent every five years and, depending on the timing, it may also obviate the need to send an SMM. See Chapter 1 of the Compliance Manual and Exhibits 1-04 and 1-05.

Key Contacts

US Benefits Office Locations

Atlanta, GA 404 224 5000	Farmington, CT 860 284 6147	Mobile, AL 251 433 0441	San Francisco, CA 415 981 0600
Austin, TX 800 861 9851	Florham Park, NJ 973 410 1022	Naples, FL 239 659 4500	San Jose, CA 408 436 7000
Baltimore, MD 410 527 1200	Ft. Worth, TX 817 335 2115	Nashville, TN 615 872 3700	San Juan, PR 787 725 5880
Birmingham, AL 205 871 3871	Grand Rapids, MI 616 954 7829	New Orleans, LA 504 581 6151	Seattle, WA 206 386 7400
Boston, MA 617 437 6900	Greenville, SC 864 232 9999	New York, NY 212 915 5422	Tampa, FL 813 281 2095
Cary, NC 919 459 3000	Houston, TX 713 961 3800	Omaha, NE 402 391 1044	Washington, DC 301 530 5050
Charlotte, NC 704 376 9161	Jacksonville, FL 904 355 4600	Orange County, CA 949 885 1200	Wilmington, DE 302 477 9640
Chicago, IL 312 621 4700	Knoxville, TN 865 588 8101	Orlando, FL 407 805 3005	<i>Employee Benefits Alert is produced by Willis' Legal & Research Group. The information contained in this publication is not intended to represent legal or tax advice and has been prepared solely for educational purposes. You may wish to consult your attorney or tax adviser regarding issues raised in this publication.</i>
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Columbus, OH 614 766 8900	Los Angeles, CA 213 607 6300	Pittsburgh, PA 412 586 1400	
Dallas, TX 972 385 9800	Memphis, TN 901 248 3100	Portland, OR 503 224 4155	
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