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# SUMMARY OF NOTICES & DISCLOSURES

Unless otherwise specified below, these notices and disclosures should generally be provided to employees when they become eligible to participate in a group health plan. They are often included in enrollment materials.

Placing them in the plan's Summary Plan Description (SPD) will satisfy the distribution requirement only if the SPD is provided to all eligible employees on or before enrollment or as otherwise specified in the notice's distribution requirements.

PLAN TYPE	NOTICE/DISCLOSURE	DISTRIBUTE ELECTRONICALLY
ALL PLANS	<p><b>SPECIAL ENROLLMENT RIGHTS</b></p> <p>The Special Enrollment Rights disclosure must explain the participants' and beneficiaries' right to benefits and when that right may be lost. The disclosure should be made at or before the time an employee is initially offered the opportunity to enroll in a group health plan.</p>	FOLLOW DOL SAFE HARBOR
ALL PLANS	<p><b>MEDICARE PART D CREDITABLE COVERAGE NOTICE</b></p> <p>Plans must notify Medicare Part D eligible participants whether the current employer sponsored prescription drug benefit provides creditable coverage. Notification must be given prior to the effective date of coverage under the employer's plan. Because an employer may not always be aware of which employee participants and their beneficiaries are (or will be) eligible for Medicare Part D, many employers take the cautious approach and provide the notice to all employees.</p> <p><b>Other Disclosure Requirements:</b> The notice must also be provided annually on or before <b>October 15th</b> of each year and following changes in creditable coverage status.</p>	SEE FOOTNOTE <sup>1</sup>
GRAND-FATHERED PLANS	<p><b>GRANDFATHERED STATUS</b></p> <p>All group health plans claiming "grandfathered status" under the ACA must disclose this status to participants. The disclosure must be included with any material, including enrollment material, that describes benefits under the plan. Non-Grandfathered plans do not have to disclose their status.</p> <p><b>Other Disclosure Requirements:</b> A plan's grandfathered status should also be disclosed in the SBC and SPD. In addition, it should be included in any materials that describe benefits under the plan.</p>	FOLLOW GUIDELINES FOR SBC <sup>2</sup>
NON-GRAND-FATHERED PLANS THAT REQUIRE DESIGNATION OF A PCP	<p><b>PATIENT PROTECTIONS</b></p> <p>Non-Grandfathered plans that require the designation of a primary care provider (PCP) must provide information relative to a participant's rights under the ACA when choosing a PCP. The information must be included with any material, including enrollment material, that describes benefits under the plan.</p> <p><b>Other Disclosure Requirements:</b> A participant's rights under the ACA relative to selection of a PCP should also be disclosed in the SBC and SPD. In addition, it should be included in any materials that describe benefits under the plan.</p>	FOLLOW GUIDELINES FOR SBC <sup>2</sup>

PLAN TYPE	NOTICE/DISCLOSURE	DISTRIBUTE ELECTRONICALLY
PLANS WITH WELLNESS PROGRAMS THAT OFFER STANDARD-BASED INCENTIVE	<p><b>WELLNESS INCENTIVE (HIPAA REQUIREMENTS)</b></p> <p>The plan must disclose the availability of a waiver or alternative standard to receive a standard-based wellness incentive. If the enrollment materials include information on the standard-based wellness incentive, it should also include information about the availability of a waiver or alternative.</p> <p><b>Other Disclosure Requirements:</b> 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.</p>	FOLLOW DOL SAFE HARBOR
SELF-INSURED PLANS	<p><b>SUMMARY OF BENEFITS &amp; COVERAGE (SBC)</b></p> <p>The SBC for a self-insured plan must be provided to all eligible employees no later than the first date an employee is eligible to enroll. The plan administrator (generally, the employer) is responsible for creating and furnishing the SBC to participants. Unless the plan has knowledge of a separate address for a beneficiary, the SBC may be provided to the participant on behalf of the beneficiary, including when the SBC is distributed electronically.</p> <p><b>Other Disclosure Requirements:</b> The SBC must also be provided as part of any written application materials. In addition, the SBC must be provided upon request, prior to renewal and prior to a special enrollment. A Notice of Material Modification or a new SBC must be provided when there is a change during the plan year that would affect the content of the SBC.</p>	SEE FOOTNOTE <sup>2</sup>
FULLY-INSURED PLANS	<p><b>SUMMARY OF BENEFITS &amp; COVERAGE (SBC)</b></p> <p>The SBC for a fully insured plan must be provided to all eligible employees no later than the first date an employee is eligible to enroll. The insurer is responsible for creating the SBC and is jointly responsible with the plan administrator (generally, the employer) for furnishing the SBC to participants. Unless the plan or issuer has knowledge of a separate address for a beneficiary, the SBC may be provided to the participant on behalf of the beneficiary, including when the SBC is distributed electronically.</p> <p><b>Other Disclosure Requirements:</b> The SBC must also be provided as part of any written application materials. In addition, the SBC must be provided upon request, prior to renewal and prior to a special enrollment. A Notice of Material Modification or a new SBC must be provided when there is a change during the plan year that would affect the content of the SBC.</p>	SEE FOOTNOTE <sup>2</sup>

## FOOTNOTES

- 1] Electronic distribution is allowed via the DOL Safe Harbor, but the CMS prefers using paper documents because Part D eligible individuals are more likely to receive and understand them.
- 2] The SBC safe harbor 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.

# 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><b>WOMEN'S HEALTH &amp; CANCER RIGHTS ACT (WHCRA)</b></p> <p>Group health plans that provide coverage for medical and surgical benefits with respect to mastectomies must disclose a woman's rights 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><b>Other Disclosure Requirements:</b> In addition to disclosure upon enrollment, participants must be given an annual notice.</p>	FOLLOW DOL SAFE HARBOR
PLANS SUBJECT TO COBRA	<p><b>COBRA INITIAL (GENERAL) NOTICE</b></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 mailed to the employee participant's home address. 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> <p><b>Other Disclosure Requirements:</b> Because the plan must disclose COBRA rights to participants AND covered spouses, the COBRA General Notice is often also mailed to the participant's home address. Additional notices are required when a participant or beneficiary experiences a qualifying event.</p>	SEE FOOTNOTE <sup>1</sup>
SELF-INSURED PLANS	<p><b>HIPAA NOTICE OF PRIVACY PRACTICES</b></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><b>Other Disclosure Requirements:</b> 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.</p>	FOLLOW DOL SAFE HARBOR
GRANDFATHERED PLANS	<p><b>GRANDFATHERED STATUS</b></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><b>Other Disclosure Requirements:</b> A plan's grandfathered status should be included in any materials, including enrollment materials, regardless of when they are distributed.</p>	FOLLOW GUIDELINES FOR SBC <sup>2</sup>

PLAN TYPE	NOTICE/DISCLOSURE	DISTRIBUTE ELECTRONICALLY
<b>NON-GRAND-FATHERED PLANS THAT REQUIRE DESIGNATION OF A PCP</b>	<p><b>PATIENT PROTECTIONS</b></p> <p>Non-Grandfathered 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><b>Other Disclosure Requirements:</b> 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>	<b>FOLLOW GUIDELINES FOR SBC<sup>2</sup></b>
<b>PLANS WITH WELLNESS PROGRAMS THAT OFFER STANDARD-BASED INCENTIVE</b>	<p><b>WELLNESS INCENTIVE DISCLOSURE (HIPAA REQUIREMENTS)</b></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><b>Other Disclosure Requirements:</b> 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>	<b>FOLLOW DOL SAFE HARBOR</b>

## 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 participant'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.

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# SUMMARY OF NOTICES & DISCLOSURES

These notices and disclosures should be provided to employees on an annual basis. Generally, the notices can be provided at any time during the plan year unless specified below.

**Note:** If an employee becomes eligible for the plan after the distribution of an annual notice, the employee should be given the notice upon enrollment.

PLAN TYPE	NOTICE/DISCLOSURE	DISTRIBUTE ELECTRONICALLY
ALL PLANS	<p><b>CHILDREN'S HEALTH INSURANCE PROGRAM (CHIP)</b></p> <p>The Children's Health Insurance Program Reauthorization Act (CHIPRA) requires plans to disclose certain special enrollment opportunities to participants or beneficiaries (employees, dependents, COBRA qualified beneficiaries, etc.) residing in states that provide a premium assistance subsidy under Medicaid or CHIP. Because an employer may not always be aware of what states provide this assistance and where all employees and their beneficiaries reside, many employers take the cautious approach and provide the notice to all employees.</p> <p><b>Distribution Requirement:</b> Distribute annually to all employees who meet the criteria described above, not just those who are eligible or enrolled in the health plan.</p>	FOLLOW DOL SAFE HARBOR
ALL PLANS	<p><b>MEDICARE PART D CREDITABLE COVERAGE NOTICE</b></p> <p>Plans must notify Medicare Part D eligible participants of whether the employer sponsored prescription drug benefit provides creditable coverage. Because an employer may not always be aware of which employee participants and their beneficiaries are (or will be) eligible for Medicare Part D, many employers take the cautious approach and provide the notice to all employees.</p> <p><b>Electronic Distribution Requirement:</b> The notice must be provided annually to all employees who meet the criteria described above on or before <b>October 15th</b> of each year.</p> <p><b>Other Disclosure Requirements:</b> The notice must also be provided upon enrollment and following changes in creditable coverage status.</p>	SEE FOOTNOTE <sup>1</sup>
ALL PLANS	<p><b>WOMEN'S HEALTH AND CANCER RIGHTS ACT (WHCRA)</b></p> <p>Group health plans that provide coverage for medical and surgical benefits with respect to mastectomies must disclose a woman's rights after a mastectomy. 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 at enrollment.</p> <p><b>Distribution Requirements:</b> Distribute the notice annually to plan participants at any time during the plan year.</p> <p><b>Other Disclosure Requirements:</b> In addition to the annual notice, disclosure of a woman's rights relative to WHCRA must be provided upon enrollment.</p>	FOLLOW DOL SAFE HARBOR

PLAN TYPE	NOTICE/DISCLOSURE	DISTRIBUTE ELECTRONICALLY
<b>SELF-INSURED PLANS</b>	<p><b>SUMMARY OF BENEFITS &amp; COVERAGE (SBC)</b></p> <p>In addition to when an individual first becomes eligible for the plan, an SBC must be provided at each renewal. If a plan or issuer requires participants and beneficiaries to actively elect to maintain coverage during an open enrollment, or provides them with the opportunity to change coverage options in an open enrollment, the plan or issuer must provide the SBC at the same time it distributes open enrollment materials. If there is no requirement to elect to renew, and no opportunity to change coverage options, renewal is considered to be automatic and the SBC must be provided no later than 30 days prior to the first day of the new plan or policy year.</p> <p><b>Other Disclosure Requirements:</b> The SBC must also be provided as part of any written application materials. In addition, the SBC must be provided upon request and when an individual becomes eligible for the plan, including through special enrollment. A Notice of Material Modification or a new SBC must be provided when there is a change during the plan year that would affect the content of the SBC.</p>	<b>SEE FOOTNOTE<sup>2</sup></b>
<b>FULLY-INSURED PLANS</b>	<p><b>SUMMARY OF BENEFITS &amp; COVERAGE (SBC)</b></p> <p>The insurer is jointly responsible with the plan administrator (typically the employer) for furnishing the SBC to participants and beneficiaries. In addition to when an individual first becomes eligible for the plan, an SBC must be provided at each renewal. If a plan or issuer requires participants and beneficiaries to actively elect to maintain coverage during an open enrollment, or provides them with the opportunity to change coverage options in an open enrollment, the plan or issuer must provide the SBC at the same time it distributes open enrollment materials. If there is no requirement to elect to renew, and no opportunity to change coverage options, renewal is considered to be automatic, and the SBC must be provided no later than 30 days prior to the first day of the new plan or policy year.</p> <p><b>Other Disclosure Requirements:</b> The SBC must also be provided as part of any written application materials. In addition, the SBC must be provided upon request and when an individual becomes eligible for the plan, including through special enrollment. A Notice of Material Modification or new SBC must be provided when there is a change during the plan year that would affect the content of the SBC.</p>	<b>SEE FOOTNOTE<sup>2</sup></b>
<b>PLANS THAT FILE A FORM 5500 (EXCLUDING LARGE, UNFUNDED PLANS)</b>	<p><b>SUMMARY ANNUAL REPORT (SAR)</b></p> <p>The plan must provide to employee participants a narrative summary of the financial information contained on the Form 5500.</p> <p><b>Distribution Requirement:</b> Distribute to employees participating in the plan within 9 months of the close of the plan year or 2 months after the due date for filing the Form 5500.</p>	<b>FOLLOW DOL SAFE HARBOR</b>

## FOOTNOTES

- 1] Electronic distribution is allowed via the DOL Safe Harbor, but the CMS prefers using paper documents because Part D eligible individuals are more likely to receive and understand them.
- 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.

# SUMMARY OF NOTICES & DISCLOSURES

This information is typically provided to employee participants and/or beneficiaries upon the occurrence of certain events.

PLAN TYPE	NOTICE/DISCLOSURE	EVENT
ALL PLANS	<p><b>COVERAGE OPTIONS (EXCHANGE NOTICE)</b></p> <p>Employers subject to the Fair Labor Standards Act must provide notice to employees of their coverage options, including options available in the Health Insurance Marketplace.</p> <p><b>Distribution Requirement:</b> Distribute to all full-time and part-time employees, regardless of plan enrollment status, within 14 days of an employee's start date. Follow the DOL safe harbor for electronic distribution.</p>	UPON HIRE
ALL PLANS	<p><b>SUMMARY OF MATERIAL MODIFICATIONS</b></p> <p>A plan must provide written notice to participants if there is a material modification during the plan or policy year that would affect the content of material required to be included in the Summary Plan Description (SPD).</p> <p><b>Distribution Requirement:</b> Provide to participants no later than 210 days after the end of the plan year in which the change was adopted. If the change was a material reduction in benefits or services, provide to participants within 60 days of adoption of the material reduction. The plan can also send an updated SPD to satisfy this requirement. Follow the DOL safe harbor for electronic distribution.</p>	CHANGE TO SPD
ALL PLANS	<p><b>NOTICE OF MODIFICATIONS TO SBC</b></p> <p>A plan must provide written notice to participants if it makes a material modification during the plan or policy year that would affect the content of material required to be included in the SBC.</p> <p><b>Distribution Requirement:</b> The notice must be provided to enrollees no later than 60 days prior to the date on which the change will become effective. The plan can also send an updated SBC to satisfy this requirement. Please note that for fully insured plans, the insurer is jointly responsible with the plan administrator (generally, the employer) for furnishing the SBC to participants. Follow the guidelines for the SBC<sup>1</sup> for electronic distribution.</p>	CHANGE TO SPD
ALL PLANS	<p><b>NOTICE OF MCSO RECEIPT, PROCEDURES, AND DETERMINATION</b></p> <p>Upon receipt of a Medical Child Support Order (MCSO), a plan must notify the participant and each alternate recipient named of its receipt; the plan's procedures for determining whether it is "Qualified" (QMCSO); and the plan administrator's determination as to whether the order is a QMCSO.</p> <p><b>Distribution Requirements:</b> The plan administrator must promptly notify the participant and each alternate recipient of receipt of the MCSO and include the determination procedures. Within a reasonable period after receipt of the MCSO, the plan administrator must notify the participant and each alternate recipient of the determination as to whether the MCSO is qualified. See footnote<sup>2</sup> for electronic distribution.</p>	RECEIPT OF MCSO

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PLAN TYPE	NOTICE/DISCLOSURE	EVENT
ALL PLANS	<p><b>NOTICE OF RESCISSION OF COVERAGE</b></p> <p>A group health plan must provide notice to participants whose coverage is rescinded retroactively. Please note that coverage may only be rescinded retroactively in cases where an individual has engaged in fraud, intentionally misrepresented material facts, or failed to pay premiums.</p> <p><b>Distribution Requirements:</b> The plan must provide written notice to each participant who would be affected by the rescission of coverage at least 30 days before it implements the rescission.</p>	RETROACTIVE TERMINATION OF BENEFITS
SELF-INSURED PLANS	<p><b>HIPAA NOTICE OF PRIVACY PRACTICES</b></p> <p>A covered entity must provide to individuals a notice of the plan's privacy practices upon enrollment and whenever there is a change to the notice. The plan must also notify individuals then covered by the plan of the availability of and how to obtain the notice at least once every three years after the last distribution or notification. Follow the DOL safe harbor for electronic distribution.</p>	UPON CHANGE OR 3 YEAR ANNIVERSARY
SELF-INSURED PLANS	<p><b>BREACH NOTIFICATION</b></p> <p>Following a breach of unsecured protected health information (PHI), covered entities must provide notification of the breach to affected individuals and Health and Human Services (HHS). If the breach affects more than 500 residents of a State or jurisdiction, notice must be made to prominent media outlets serving the State or jurisdiction.</p> <p><b>Distribution Requirements:</b> The notice to individuals must be provided in written form by first-class mail, or alternatively, by e-mail (if the affected individual has agreed to receive such notices electronically) within 60 days following discovery of the breach. HHS must be notified by submitting a form on the HHS website within 60 days if the breach affects 500 or more individuals, or within 60 days after the end of the calendar year in which the breach is discovered if fewer than 500 individuals are affected. Notice to media outlets can be made in the form of a press release no later than 60 days after discovery.</p>	BREACH OF UNSECURED PHI



# SUMMARY OF NOTICES & DISCLOSURES

The Summary Plan Description (SPD) is the primary vehicle for informing participants and beneficiaries about their rights and benefits under the employee benefit plans in which they participate.

ERISA defines in general terms the content that must appear in the SPD. Because of differing benefits, this information can vary widely from plan to plan. However, various laws also require disclosure about specific rights and benefits. The chart below summarizes many of the disclosures that are applicable to these mandates and must appear in the SPD. If the disclosure or notice must also appear in other plan material, it is noted under "Other Disclosure Requirements."

In addition, the Notices and Disclosures: Upon Initial Enrollment chart shows other notices that can be (and often are) included in the SPD. However, this is done primarily for convenience and these notices are not required to appear in the SPD.

Please note that the Affordable Care Act (ACA) mandated certain coverage requirements, such as the PHSA Mandates, which are not reflected in this chart.

SPD Distribution Requirements: The SPD must be provided to participants within 90 days of coverage. An updated SPD must be furnished every 5 years if the plan is amended or every 10 years if it is not. A notice or new SPD must be provided when there is a material change to the plan. Email and other Internet-based methods that comply with the DOL safe harbor can be used to distribute the SPD electronically.

PLAN TYPE	NOTICE/DISCLOSURE	ALSO INCLUDE IN THE SBC?
ALL PLANS	<p><b>NEWBORN'S AND MOTHER'S HEALTH PROTECTION ACT (NMHPA)</b></p> <p>For group health plans providing maternity or newborn infant coverage, the SPD must disclose a mother's and newborn's rights after childbirth.</p>	NO
ALL PLANS	<p><b>QUALIFIED MEDICAL CHILD SUPPORT ORDER (QMCSO)</b></p> <p>The SPD must disclose the procedures for determining whether a Medical Child Support Order is qualified (QMCSO) or a statement indicating how a participant may obtain a copy of the procedures. A National Medical Support Notice (NMSN) might also be considered a QMCSO.</p> <p><b>Other Disclosure Requirements:</b> After receiving a medical child support order, plans must respond with letters to the participant and alternate recipients notifying them of the receipt of a medical support order and whether an order has been determined to be a QMCSO.</p>	NO
ALL PLANS	<p><b>CONTINUATION COVERAGE</b></p> <p>The SPD must disclose continuation coverage rights and requirements, such as those available under COBRA or state mandated continuation coverage.</p> <p><b>Other Disclosure Requirements:</b> Plans subject to COBRA must disclose COBRA rights to participants AND covered spouses in a COBRA Initial Notice that is often mailed to the employee participant's home address. Additional notices are required when a participant or beneficiary experiences a qualifying event.</p>	NO
GRAND-FATHERED PLANS	<p><b>GRANDFATHERED STATUS</b></p> <p>All group health plans claiming "grandfathered status" under the ACA must disclose this in all plan materials distributed to participants describing benefits under the plan, including the SPD. A Non-Grandfathered plan does not have to disclose its status.</p> <p><b>Other Disclosure Requirements:</b> A plan's grandfathered status should be included in all materials that describe benefits under the plan.</p>	YES

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<b>NON-GRAND-FATHERED PLANS THAT REQUIRE DESIGNATION OF A PCP</b>	<p><b>PATIENT PROTECTIONS</b></p> <p>Non-Grandfathered plans that require the designation of a primary care provider (PCP) must provide information relative to a participant's rights under the ACA. The plan's SPD should describe a participant's rights when choosing a PCP.</p> <p><b>Other Disclosure Requirements:</b> A participant's rights under the ACA relative to selection of a PCP must be included in all materials that describe benefits under the plan.</p>	<b>YES</b>
<b>PLANS WITH WELLNESS PROGRAMS THAT OFFER STANDARD-BASED INCENTIVE</b>	<p><b>WELLNESS INCENTIVE (HIPAA REQUIREMENTS)</b></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 that describe the standard-based incentive. If the SPD describes this incentive, it must also include information about the availability of a waiver or alternative</p> <p><b>Other Disclosure Requirements:</b> 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.</p>	<b>SEE DOL SAFE HARBOR</b>

## 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 web site

- » 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

## 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.

## DEPARTMENT OF LABOR (DOL) SAFE HARBOR (CONTINUED)

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- » 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. Employees 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; and
  - » 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.