



Special Delivery: Providing Participants with Required Notices

Employers who sponsor group health plans have a variety of documents they must share with employees on an annual or regular basis. These documents are typically provided by paper or through an electronic method such as e-mail.

Knowing the rules behind when to use paper and when to send things electronically is just as important as knowing which notices you need to be providing to participants.

Notice	Who it applies to	When?
Summary Plan Description (SPD)	All ERISA welfare benefit plans (Includes large, small, fully insured, and self-funded plans)	<ul style="list-style-type: none"> 90 days after participant becomes covered under the plan Annually, if the SPD is used to relay certain annual notices

Summary of Benefits and Coverage (SBC)	All health plans	<ul style="list-style-type: none"> • Provided annually during open enrollment • Provided 60 days in advance of a mid-year plan change that requires an edit to the SBC
Marketplace Coverage Notice	All health plans	<ul style="list-style-type: none"> • Within 14 days of hire, and often included in the annual open enrollment notice packet
Medicare Part D Creditable Coverage Disclosure	All health plans with prescription drug coverage that covers Medicare eligible individual	<ul style="list-style-type: none"> • Prior to the Medicare Part D Annual Coordinated Election Period—beginning October 15 – December 7th of each year; • Prior to an individual’s Initial Enrollment Period for Part D; • Prior to the effective date of coverage for any Medicare eligible individual that joins the plan; • Whenever the entity no longer offers prescription drug coverage or changes the coverage offered so that it is no longer creditable or becomes creditable; and • Upon request by the individual.
Michelle’s Law Notice	All health plans that condition dependent coverage after age 26 on student status	<ul style="list-style-type: none"> • Annually during open enrollment
Women’s Health and Cancer Rights Act (WHCRA) Notice	All health plans	<ul style="list-style-type: none"> • Upon enrollment and annually (can be included in SPD if SPD is provided annually) • Opt-out notices if applicable for self-funded non-federal governmental plan, annually and upon enrollment
Newborns’ and Mother’s Health Protection Act (NMHPA) Notice	All health plans	<ul style="list-style-type: none"> • Upon enrollment and annually (can be included in SPD if SPD is provided annually) • Opt-out notices if applicable for self-funded non-federal governmental plan, annually and upon enrollment

Medical Loss Ratio	All fully insured health plans	<ul style="list-style-type: none"> Annually, included either in the SPD or in an annual notice
Grandfathered Plan Status	All grandfathered health plans	<ul style="list-style-type: none"> Annually
Wellness Program Disclosure 1	All health plans offering a health contingent wellness program	<ul style="list-style-type: none"> Annually Included in any plan materials or communications describing the terms of the wellness program
Wellness Program Disclosure 2	All health plans offering a wellness program that includes a medical examination, a biometric screening, or a health risk assessment	<ul style="list-style-type: none"> Annually
Premium Assistance Under Medicaid or CHIP	All health plans in a state with a CHIP or Medicaid program that provides premium assistance for group health plan coverage	<ul style="list-style-type: none"> Annually
HIPAA Notice of Privacy Practices & Notice of HIPAA Special Enrollment Rights	All health plans	<ul style="list-style-type: none"> Best practice is to provide these with the annual open enrollment notice packet
Notice of Patient Protections	All health plans that require or allow for designations of a primary care provider	<ul style="list-style-type: none"> Annually

Paper Delivery

Paper delivery is the most straight forward delivery option. Employers print the required documents and physically provide them to employees in any of the following manners:

- First-Class Mail
- Second- or Third-Class Mail if return/forwarding is included and address correction is requested
- Inter-office mail systems
- Hand delivered
- Included in a mailed or hand delivered paycheck envelope
- Insert in company publications if handed out to each employee

Tip:

Leaving copies of required notices in break rooms or communal areas or in the lobby of the HR office is not sufficient.

Tip:

Employers do not need to receive a signature from an employee indicating they received the notice, but it could be a helpful record to refer to in the future.

Electronic Delivery

The DOL divides employees into two groups when it comes to electronic delivery requirements.

Employees who use a computer in their day-to-day jobs and access the employer's electronic information system as part of their key job duties.

Employees who do not use computers in their day-to-day jobs.

Tip:

Employees who use a communal computer or kiosk to track time and attendance will not be considered to use computers in their day-to-day jobs.

Tip:

Employer-issued email addresses are not "proof" that an employee uses a computer in their day-to-day job, nor are they formally required by the electronic distribution rules. Practically speaking, having a working/legitimate email address (personal or employer issued) is necessary for electronic distribution.

If an employee uses a computer in their day-to-day job, and their work computer or electronic devices (tablet, phone, etc.) can access documents sent in an electronic format, an employer is free to provide required benefit notices and documents electronically.

Permissible electronic distribution methods include:

- Emailing the notices to employees (in the body of the email or as an attachment)
- Providing the documents on a storage device, such as a thumb drive, DVD, or another usable format

Can We Post Notices on Our Website, Intranet, or Benefit Portal?

Yes...but: Employers that post notices online must also send a notice (electronically via email or on paper) that notifies participants that a notice or notices have been posted, how they can access it, and why it is important to them. It should also contain instructions on how to obtain a free paper copy. This is why having a legitimate personal or employer issued email address is important. This template notice must be sent to employees each time a notice is posted on the website.

If ABC Employer posted their plan's SPD on their intranet site, they might send the following email to all participants.

Important Information for All Participants in the ABC Health Plan

ABC Company has posted an updated Summary Plan Description on our intranet in the Company Benefits folder. The Summary Plan Description describes the benefits that are available under the group medical plan. The SPD has been updated to reflect our deductibles and out-of-pocket maximums for 2019. We encourage you to read the SPD at your earliest convenience.

You have the right to receive a paper copy of the SPD at no cost to you. To request a paper copy contact Jane Doe at janed@abc.com or at 555-111-0000. Also feel free to contact Jane if you have questions about your benefits.

The most difficult population to deliver materials to are employees who do not use computers in day-to-day jobs. Employee populations in this group might include restaurant wait staff, housekeepers or janitorial staff, warehouse stockers, animal groomers, and more.

Employees who do not use computers in their day to day job must provide signed, written consent to receive documents electronically. They must be able to revoke that consent at any time (and the employer must have a paper copy action plan for employees who revoke or never provide consent).

Tip:

Paper copies and electronic copies of any notices should be exactly the same.

Prior to providing consent, employees must be given a clear statement that explains:

- The types of documents to which the consent will apply
- That the 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 distributed document, and whether the paper version will be provided at no charge
- The hardware or software needed to access and retain the documents delivered electronically

After providing consent, the individual must provide a working email address. The consent should be provided in a way that shows an employee has access to electronic devices, so providing this consent electronically is recommended.

Tips:

If employees are asked to provide consent during an online open enrollment process, the system must be designed in a way that an employee can decline to provide consent but can still move forward with the open enrollment process. If the system will not let an individual move forward without consenting, this would not be permissible.