

# Benefit Brief



SUBJECT: Required Notices

DATE: May 18, 2009

**This Benefit Brief discusses the group health plan notices that employers must provide to plan participants.**

Group health plans are required to provide plan participants with notices informing them of their rights and restrictions under federal laws and regulations, such as ERISA, COBRA, and HIPAA. Employers, on behalf of the plan, are responsible for providing the required notices. But in many cases, the insurance company will provide the notice for the plan. The attached chart summarizes the notices that a group health plan must provide.

If you have questions about the notice requirements, please contact Danielle Omans at The Benecon Group at [domans@benecon.com](mailto:domans@benecon.com) or the number below.

This Benefit Brief is provided for informational purposes only and does not constitute legal advice. The Benefit Brief contains only a summary of the applicable legal provisions and does not purport to cover every aspect of any particular law, regulation or requirement. Depending on the specific facts of any situation, there may be additional or different requirements. Please use this Benefit Brief as a guide and not as a definitive description of your compliance obligations.

## REQUIRED NOTICES

<u>NOTICE</u>	<u>DESCRIPTION</u>	<u>DISTRIBUTION</u>	<u>RESPONSIBILITY*</u>
Summary Plan Description (SPD)	The document that informs participants and beneficiaries about their benefits, rights, and obligations under the health plan and how the plan operates. It must be comprehensive and written in simple terms.	For all group health plans subject to ERISA Distribute automatically to participants within 90 days of becoming covered under the plan, and to pension plan beneficiaries within 90 days after first receiving benefits. Updated SPDs must be furnished every 5 years if changes are made or the plan is amended. Otherwise, must be furnished every 10 years. Copies must be furnished no later than 30 days after a written request.	Employer
Summary Annual Report (SAR)	A summary of the Form 5500 filing that some employers file with the DOL.	For group health plans that file a Form 5500 Distribute each year that the employer is required to file a Form 5500 to covered employees and beneficiaries who receive SPDs. Within 9 months after the end of the plan year or 2 months after the due date of the Form 5500.	Employer
General Notice of Pre-Existing Condition Exclusion	Describes the specific terms of the pre-existing condition exclusion included in the health plan, and how prior creditable coverage can reduce the exclusion period.	For any group health plan that contains a pre-existing condition exclusion. Include with written enrollment materials.	Employer (but insurers usually do)
Individual Notice of Pre-Existing Condition Exclusion	Send when a pre-existing condition exclusion is applied to a participant describing time frame, basis for determination, and appeal information.	Distribute as soon as possible after receiving creditable coverage information from an individual that is not enough to offset the pre-existing condition exclusion period.	Employer (but insurers usually do) Employer will be in violation if not sent Can not enforce exclusion if notice is not sent
Notice of HIPAA Special Enrollment Rights	Describes the health plan's special enrollment rights and, if applicable, disclosure that the plan requires a reason for declining coverage.	For all group health plans Provide at or before enrollment Notice can be included on the enrollment form instead of a stand-alone notice.	Employer (but may be included on insurance company enrollment form)

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<b>NOTICE</b>	<b>DESCRIPTION</b>	<b>DISTRIBUTION</b>	<b>RESPONSIBILITY*</b>
Certificate of Creditable Coverage (HIPAA)	Describes the health plan coverage and the length of time the coverage was in effect.	<p>For all group health plans Distribute automatically upon termination of group health coverage, becoming eligible for COBRA coverage, and when COBRA coverage ceases.</p> <p>If a COBRA qualifying event, no later than the end of the period for sending COBRA notice – generally 44 days</p> <p>Provide as soon as possible upon request while coverage is active and up to 24 months following termination of coverage</p>	Employer (but insurers usually do)
Notice of Privacy Practices (HIPAA)	Describes individual rights under HIPAA Privacy regulations.	<p>Self-funded plans must distribute at time of enrollment and within 60 days of revision.</p> <p>Fully insured plans that maintain PHI must maintain and provide notice upon request</p> <p>Fully insured Plans that do not maintain PHI do not need to have a notice</p>	<p>For self-funded plans, the employer must provide</p> <p>For fully insured plans, the insurer must provide (but employer will also send one if it has access to PHI and/or sponsors an HRA)</p>
Notice of Availability of Notice of Privacy Practices (HIPAA)	Explains that the Notice of Privacy Practices is available upon request	Distribute once every three years	<p>For self-funded plans, the employer must provide</p> <p>For fully insured plans, the insurer must provide (but employer will also send one if it has access to PHI and/or sponsors an HRA)</p>
COBRA Initial Notice	<p>Describes an individual's rights under COBRA continuation.</p> <p>May be a stand-alone notice or included in the SPD or SMM.</p>	For groups subject to COBRA Distribute to covered employee and covered spouse within 90 days of the effective date of coverage or when the group becomes subject to COBRA.	COBRA Administrator or Employer

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COBRA Election Notice	Describes an individual's rights to elect COBRA continuation coverage with a qualifying event and procedures for enrollment.	<p>For groups subject to COBRA Send to covered employees, covered spouses, and qualified dependent children.</p> <p>Send within 14 days of notification of a qualifying event from a participant.</p> <p>Send within 44 days if the event is one for which the employer is responsible and the plan self-administers.</p>	<p>COBRA Administrator or Employer</p> <p>The plan must have procedures for participants to notify of a qualifying event and should describe these in the Summary Plan Description (SPD).</p>
COBRA Notice of Unavailability of Coverage	Informs an individual that they are not entitled to COBRA, provides the reason, and provides appeal information.	For groups subject to COBRA Send within 14 days of receiving a Notice of Qualifying Event, Disability, or Second Qualifying Event from the participant (if needed).	COBRA Administrator or Employer
COBRA Notice of Termination of Coverage	Explains that COBRA continuation will terminate earlier than the maximum coverage period.	For groups subject to COBRA Send to qualified beneficiaries as soon as practicable following determination that coverage will terminate.	COBRA Administrator or Employer
Medicare Part D Creditable Coverage Disclosure Notice	Informs Medicare Part D eligible participants whether the RX coverage under the group health plan is creditable.	For group health plans that provide prescription drug coverage. Distribute to Medicare-eligible individuals annually prior to November 15 <sup>th</sup> election period for Part D, prior to participant's initial enrollment with Part D, prior to effective date with group health RX plan, upon a change to the group health RX plan, and upon request.	<p>Employer</p> <p>Electronic Notice to CMS must also be filed annually within 60 days of the start of the Plan Year.</p>

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<b>NOTICE</b>	<b>DESCRIPTION</b>	<b>DISTRIBUTION</b>	<b>RESPONSIBILITY*</b>
Uniformed Services and Reemployment Rights Act (USERRA) Notice	Notifies employees of their rights to continuation of health coverage and reemployment under USERRA when returning from military service.	For all group health plans The DOL poster can be used to advise employees of these rights. The notice must be prominently placed where it can be seen by all employees.  If the plan includes election and payment rules, a notice must be sent that includes these procedures. This can be included in the COBRA Initial Notice or, if the group does not need to comply with COBRA regulations, a separate USERRA Notice is available.	Employer  The plan can develop election and payment rules.
Women's Health & Cancer Rights Act (WHCRA) Notice	Describes required mastectomy-related benefits under WHCRA.	For group health plans that provide mastectomy benefits. Distribute to employees at enrollment in the plan and annually thereafter.  Notice can be included on the enrollment form instead of a stand-alone notice.	Employer (but insurers usually do)
Newborns' & Mothers' Health Protection Act of 1996	Describes legislation that requires a minimum length of hospital stay for mothers and their newborns upon birth.	For group health plans that provide maternity or newborn coverage. Distribute in the Summary Plan Description (SPD) or Certificate.	Employer (but insurers usually do)
Family and Medical Leave Act (FMLA) General Notice	Describes the Act's provisions and provides information on procedures for filing complaints for violations.	For FMLA covered employers The DOL poster can be used to advise employees of these rights. The notice must be prominently placed where it can be seen by all employees and applicants.	Employer
Wellness Program Disclosure	Notifies employees of a reasonable alternative standard if it is unreasonably difficult or medically inadvisable for the employee to attempt to achieve the standards.	For group health plans offering wellness programs that require individuals to satisfy a standard related to a health factor. Distribute in plan material that describes the terms of the wellness program.	Employer (but insurers usually do)

## **REQUIRED NOTICES**

\*Where Employer responsibility is noted, this is actually the responsibility of the Plan.

### ITEMS THAT MUST BE DISTRIBUTED AT ENROLLMENT

SPD (within 90 days)

Initial Pre-Existing Condition Exclusion (PCE) Notice

Notice of HIPAA Special Enrollment Rights

Notice of Privacy Practices

COBRA Initial Notice (within 90 days)

Medicare Part D Creditable Coverage Notice

Women's Health & Cancer Rights Act (WHCRA) Notice