

Employer Provided Welfare Benefit Plan Required Notices

Notice	Recipients	Responsible Sender	Effective Date	Initial Notice Deadline	Annual Notice?	Consequences of Non-Compliance
Grandfathered Plan Notice	Technically, it must be provided merely to all participants and beneficiaries. But it will be easier logistically to provide notice to <u>all eligible employees</u> during open enrollment season in packet of plan information.	Plan Administrator (although insurer will often take care of this obligation if plan is fully insured).	PYB 9/23/2010	No explicit deadline, but notice will need to be included with SPD and any other enrollment materials.	Yes	Plan loses its grandfathered status.
Age 26 Mandate Notice	Technically, it must be provided only to children whose coverage ended, or who were denied coverage, under the terms of a GHP or insurance policy because the availability of dependent coverage ended prior to the child's attainment of age 26. But it will be easier logistically to provide the notice to <u>all eligible employees</u> .	Plan Administrator	PYB 9/23/2010	Technically, plan need only give notice by first day of PYB 9/23/2010. But the notice must provide at least a 30-day window in which to enroll, and the effective date of coverage must be the first day of the plan year. Thus, as a practical matter, notice will need to be given at least 30 days before the new plan year.	No. Regulations require only a one-time notice that must be given in first PYB 9/23/2010.	Individual may be able to enroll and have retroactive coverage to first day of plan year.
Four-Page Summary of Benefits and Coverage (SBC) (and Notice of Material Modifications (NMM))	<u>Both</u> participants <u>and</u> beneficiaries (much broader than normal SPD distribution requirement).	Plan Administrator	3/23/2012 (not PYB 3/23/2012, but actually 3/23/2012)	Must be provided as part of any written application materials for enrollment. It also must be provided within 7 days of request for special enrollment. If renewal is automatic, must be distributed no later than 30 days prior to first day of new plan year. With regard to NMMs, NMM must be issued at least 60 days <u>before change takes effect</u> .	Yes	\$1,000 per failure for "willful" failure to provide SBC. Plan sponsors also subject to excise taxes under the Code (\$100/day with respect to each individual to whom the failure relates). As of 8/1/2016, it's \$1,087 for a "willful" failure but these penalty amounts are subject to inflation adjustments each year.
Summary Plan Description	All covered participants (but not beneficiaries)	Plan Administrator (even if plan is fully insured)	First day of second PYB 1/22/2001	SPD must be furnished to new participants within 90 days after coverage begins. For new plans, SPD must be furnished within 120 days after plan becomes subject to ERISA. An updated SPD must be provided every 5 years if there have been any material changes, and every 10 years if there have not been any material changes.	No	Possible liability for additional benefits and/or fiduciary breach liability. No civil penalties for failure to produce SPD absent participant request. But failure to produce SPD following participant request can lead to penalty of up to \$110/day.
Summary of Material Modifications (SMM)	All covered participants	Plan Administrator (even if plan is fully insured)	First day of second PYB 1/22/2001	SMM must be furnished within 210 days after the end of the plan year in which a modification is made. However, any modification that is deemed a "material reduction in covered services or benefits" must be disclosed no later than 60 days after the date the modification is adopted.	No	Probably no liability, although failure to distribute the SMM could affect the validity of the plan amendment.
Summary of Material Reduction (SMR)	All covered participants	Plan Administrator (even if plan is fully insured)	First day of second PYB 1/22/2001	SMR must be furnished within 60 days after the date of adoption of a "material reduction" in covered services or benefits under the plan.	No	Probably no liability, although failure to distribute the SMR could affect the validity of the plan amendment.

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Lifetime Limit Elimination Notice	Technically, it must be provided only to individuals whose coverage under a GHP or insurance policy ended by virtue of reaching a lifetime limit. But it will be easier logistically to provide the notice to all eligible employees.	Plan Administrator. (If plan is insured, the notice obligation also falls upon the insurer. Presumably, as long as one of the entities provides the notice, the regulations will be satisfied.)	PYB 9/23/2010	Technically, plan need only give notice by first day of PYB 9/23/2010. But the notice must provide at least 30-day window in which to enroll, and the effective date of coverage must be the first day of the plan year. Thus, as a practical matter, notice will need to be given at least 30 days before the new plan year.	No. Regulations require only a one-time notice that must be given in first PYB 9/23/2010.	Individual may be able to enroll and have retroactive coverage to first day of plan year.
Advance Notice of Coverage Rescission	Each affected participant.	Plan Administrator (or health insurer if plan is fully insured).	PYB 9/23/2010	Notice must be provided at least 30 days prior to the effective date of rescission.	N/A	Rescission of coverage will be ineffective and participant will remain covered under the plan.
Provider Choice Notice	All participants in plans that require participant to designate a primary care provider. (In general, this will apply only to HMO plans.)	Plan Administrator (or health insurer if plan is fully insured).	PYB 9/23/2010	Notice must be issued "whenever the plan provides participant with an SPD or other similar description of benefits under the plan."	Technically no (but notice must be included in the SPD, whenever that document is issued).	Plan may be subject to excise taxes in Code § 4980D (based on the fact that this requirement is part of Chapter 100 in Code).
Notice of Exchange (PPACA mandate)	All new hires and current employees must receive written notice about the health benefit Exchange and a discussion of the consequences if employee purchases coverage through the Exchange rather than through his/her employer	All employers subject to the FLSA.	10/1/2013	Originally, all current employees were going to have to receive the notice no later than 3/1/2013, while employees hired after that date must receive the notice at the time of their hiring. But DOL suspended the requirement until 10/1/2013.	No (only must be provided once at time of hire)	None
Notice of Coverage Reported to IRS	Every covered person under the plan. (The notice will detail the information was provided to the IRS regarding the details of the covered person's coverage under the plan)	If plan is self-insured, the employer is responsible for the notice. If plan is fully insured, the insurer is responsible for the notice.	1/1/2014	First notice will occur in 2015. (The notice will relate coverage provided in 2014.) The notice to participants must be provided no later than January 31 following the calendar year to which the reporting relates.	Yes	TBD
Women's Health and Cancer Rights Act (WHCRA)	All participants and beneficiaries in plans that offer coverage for medical and surgical benefits with respect to mastectomies.	Plan Administrator (although insurer will often take care of this obligation if plan is fully insured).	PYB 1/1/1999	Initial notice must be provided to participants upon their enrollment in the plan.	Yes	None
Newborns' and Mothers' Health Protection Act (NMHPA)	Participants and beneficiaries in plans subject to NMHPA's requirements (i.e., all plans providing benefits for hospital stays in connection with child birth, except for (i) self-insured non-federal governmental plans that have opted out of NMHPA's requirements and (ii) insured plans that don't have to comply with NMHPA's requirements because of applicable state insurance law).	Plan Administrator (although insurer will often take care of this obligation if plan is fully insured).	PYB 1/1/2009	Initial deadline has passed, although certain brand new non-federal governmental plans may still have to issue an initial notice.	No	Plan may be subject to excise taxes under Code § 4980D (based on fact that this requirement is part of Chapter 100 in Code), or penalties under PHSA § 2723(b).

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COBRA Notice	Each covered employee and his/her spouse must receive COBRA "initial notice" (a/k/a "general notice"). In addition, a "qualifying event notice" must be provided to "each qualified beneficiary."	(1) Plan Administrator (although insurer will often take care of this obligation if plan is fully insured). (2) In the event that employer and the plan administrator are different entities, the employer must notify plan administrator upon the occurrence of certain qualifying events.	PYB 11/26/2004	(1) "Initial notice" generally must be sent within 90 days after the individual's coverage under plan commences. <u>See</u> DOL Reg. § 2590.606-1(b) (2) "Qualifying event notice" must be sent within 14 days (or 44 days if employer and plan administrator are the same) after qualifying event.	No (but plan's SPD must contain certain information about COBRA).	DOL may impose penalties on plan under ERISA § 502(c)(1). IRS also may impose penalties under Code § 4980B. Moreover, employee's notice obligations may be excused if initial notice was not provided by employer.
HIPAA Pre-Existing Condition Exclusion (PCE) Notice	With regard to the "initial notice," all "participants" (as defined by ERISA) in a plan that has a pre-existing condition exclusion (PCE). This includes employees and former employees who are, or may become, eligible for benefits or whose beneficiaries are, or may become, eligible for benefits. Once plan receives participant's certificate of creditable coverage from another plan, it must notify the participant in writing of the length of any PCE that remains after offsetting any prior creditable coverage. (No individual notice is required if no PCE remaining.)	Plan Administrator and Insurer. Duplicate notices are not required. But if the insurer in an insured plan fails to issue the notice, it will be the plan administrator that it is on the hook.	PYB 7/1/2005	Initial pre-existing condition exclusion (PCE) notice must be provided as part of any written enrollment application materials distributed by the plan.	No	Pre-existing condition exclusion is ineffective until notice is issued. Claims incurred before notice is issued (regardless of when claim for reimbursement is submitted) will not be subject to the pre-existing condition exclusion.
HIPAA Special Enrollment Rights Notice	Each employee who is offered coverage under the plan. If the plan requires employee declining coverage to verify that declination in writing at time of declination, the notice of special enrollment rights must be included in that declination form.	Plan Administrator	PYB 7/1/2005	Notice must be provided "at or before the time an employee is initially offered the opportunity to enroll in the plan."	No	Employer may be required to permit retroactive enrollment for affected individual, and normal late enroll consequences will not apply
HIPAA Medical Privacy Notice	HIPAA medical privacy notice must be provided to all plan participants if an employer receives, or is able to receive, "protected health information" (other than summary health information or enrollment information) from its group health plan. (This will always apply to self-insured plans, and may or may not apply to insured plans.) Notice must be available to anyone who requests it (regardless of whether they are a participant in the plan); it is considered a public document.	With self-insured plans, obligation rests with the Plan Administrator. With fully-insured plans, obligation rests only with the insurer <i>unless the plan sponsor has access to PHI</i> . If plan sponsor of fully insured plan has access to PHI, it must prepare a notice and issue such notice to any individual <i>upon request</i> ; but the notice from the insurer will suffice in terms of initial notice.	4/14/2003	Privacy notice must be issued to participants at time of individual's enrollment in the plan and within 60 days of any material change to the notice.	No (But at least once every 3 years, plan must notify all participants that a privacy notice is available and must advise them how to obtain a copy)	HHS enforces and could impose monetary sanctions.

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Medicare Part D Notice	All Medicare Part D eligible individuals "enrolled in or seeking to enroll in" group health plans <i>that provide prescription drug coverage</i> . The notice must state whether such coverage is creditable or not (i.e., whether actuarial value of such coverage equals or exceeds actuarial value of standard Part D coverage). A Part D eligible individual is a person who (1) is entitled to benefits under Medicare Part A or Medicare Part B; and (2) lives in the service area of a Part D plan.	** Plan <i>sponsor</i> (although insurer may take care of this obligation if plan is fully insured). But responsibility for issuance remains at all times with the plan sponsor/employer. ** Please note that employer also must send an annual "Disclosure to CMS Form" to CMS (electronically) regarding whether coverage is creditable or not. This form must be filed within 60 days of beginning of plan year and within 30 days of termination of prescription coverage and within 30 days after any change in creditable status of prescription coverage.	1/1/2006	Notice must be given to Medicare Part D eligible individuals upon their initial enrollment in the plan and annually thereafter. Notice also must be given to all Medicare Part D eligible individuals when prescription coverage is added to the plan, eliminated from the plan, or upon any change in coverage that makes it creditable or non-creditable. (It also must be given to individuals upon request.)	Yes (Annual notice must issue on or before 10-14. That date is used b/c notice must be issued before annual coordinated election period, which runs from 10-15 until 12-7)	None
Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) Notice	All employees residing in a state with an SCHIP program (regardless of the employer's location or principal place of business). Notice is <u>not</u> limited merely to employees who are actually enrolled in the plan or who are eligible to enroll in the plan.	Employer	4/1/2009	First PYB 5/1/2010 or, if earlier, 1/1/2011.	Yes	Employer may be hit with a \$110/day penalty for each individual whom the employer fails to provide the required notice. These penalty amounts are now subject to inflation adjustments each year.
Wellness Program Notice	All employees participating in the employer's wellness program, to the extent the wellness program asks disability-related questions and/or requires a medical examination. Whether the wellness program is participatory or outcome contingent is irrelevant.	Employer	1/1/2017	1/1/2017	Yes	The wellness program will be deemed to be non-"voluntary," which means the program will be treated as violative of the Americans with Disabilities Act