Employer-Provided Welfare Benefit Plan Required Notices

Notice	Recipients	Responsible Sender	Notice Deadline	Annual Notice?	Consequences of Non-Compliance
Grandfathered Plan Notice	Any employee or former employee who is or may become eligible to receive a benefit, and eligible spouses and dependents.	Plan Administrator (although insurer will often take care of this obligation if plan is fully insured).	Notice must be included with SPD and any other enrollment materials or communications deemed to summarize health benefits.	Most likely, yes, because it must be included in any communication deemed to summarize benefits under the health benefit.	Plan loses its grandfathered status.
Four-Page Summary of Benefits and Coverage (SBC) (and Notice of Material Modifications (NMM))	Technically, all participants and beneficiaries. However, DOL guidance permits delivery to only eligible employees and former employees unless the plan has knowledge of a different address for a beneficiary.	Plan Administrator (for self-funded plans); Plan Administrator or insurer (for insured plans).	SBC must be provided as part of any written application materials for enrollment. SBC must be provided within 7 business days if requested by participant or beneficiary. It also must be provided within 90 days after special enrollment. If renewal is automatic, SBC 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 before change takes effect.	Yes	Penalty of up to $1,443 per failure for a "willful" failure. This penalty amount is subject to inflation adjustments each year. Plan sponsors also subject to excise taxes under the Code ($100/day with respect to each individual to whom the failure relates).
Summary Plan Description (SPD)	All covered participants (but not beneficiaries).	Plan Administrator (even if plan is fully insured).	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. Civil penalties for failure to produce SPD upon participant request ($110/day) or upon DOL request (up to $195/day with a max. $1,956 per request).
Summary of Material Modifications (SMM)	All covered participants (but not beneficiaries).	Plan Administrator (even if plan is fully insured).	SMM must be furnished within 210 days after the end of the plan year in which a plan 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	Failure to distribute the SMM could affect the validity of the plan amendment. Civil Penalties for failure to produce an SMM upon participant request ($110/day) or upon DOL request (up to $19/day (max. $1,956 per request)).

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Advance Notice of Coverage Rescission	Each affected participant.	Plan Administrator (or health insurer if plan is fully insured).	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. Plan may be subject to excise taxes in Code § 4980D (based on the fact that this requirement is part of Chapter 100 in Code).
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).	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	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.	Must be provided at time of initial hire.	No	None
Notice of Health Care Coverage Reported to IRS (Forms 1094/1095)	Employers are only required to provide a 1095-C to a participant if requested by the participant. But employers must notify employees and covered individuals of their right to receive this information.	If employer is applicable large employer (ALE), the ALE is responsible for preparing and filing the Forms 1094-C and 1095-C IRS. If employer is not ALE and the plan is self-funded, employer is responsible for preparing and filing Forms 1094-B and 1095-B. If employer is not ALE and the plan is fully-insured, the insurer is responsible for preparing and filing the Forms 1094-B and 1095-B.	Upon request by the participant, the employer must provide no later than 30 days from the request or January 31, whichever is earlier.	Yes, but only if requested by participant.	Failure to provide a 1095-C to a participant upon request could trigger a penalty of up to $330 per return for filings made in 2025. However, intentional disregard of the filing requirement may result in $660 per return not filed. The IRS also may impose accuracy-related penalties.

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Women's Health and Cancer Rights Act (WHCRA) Notice	All covered participants 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).	Notice must be provided to plan participants upon their enrollment in the plan and sometime during the plan year each year thereafter.	Yes	Plan may be subject to excise taxes of $100/day/individual to whom a failure relates under Code § 4980D.
Initial COBRA Notice	Each covered employee and his/her covered spouse must receive COBRA "initial notice" (a/k/a "general notice").	Plan Administrator (although insurer will often take care of this obligation if plan is fully insured).	Initial notice generally must be sent within 90 days after the individual's coverage under plan commences.	No	DOL may impose penalties on plan of up to $110/day under ERISA § 502(c)(1). IRS also may impose penalties under Code § 4980B of up to $100/day/qualified beneficiary (capped at $200/day if multiple qualified beneficiaries). Moreover, employee's qualifying event notice obligations may be excused if employer did not provide initial notice.
COBRA Qualifying Event Notice	A "qualifying event notice" must be provided to "each qualified beneficiary" upon experiencing a COBRA qualifying event.	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.	Qualifying event notice must be sent within 14 days (or 44 days if employer and Plan Administrator are the same) after qualifying event.	No	Penalties are the same as for the Initial COBRA Notice above.
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	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 enrollee consequences will not apply.

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HIPAA Medical Privacy Notice	HIPAA medical privacy notice must be provided to all covered employee-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, including almost all health FSAs.)	With self-insured plans, obligation rests with the Plan Administrator. With fully-insured plans, obligation rests only with the insurer *unless the plan sponsor has access to PHI*. If plan sponsor of fully insured plan has access to PHI, it must prepare a notice and issue such notice to any individual *upon request*; but the notice from the insurer will suffice in terms of initial notice.	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, i.e., issue a "reminder notice.")	Where a group health plan does not know (and wouldn't have known by exercising due diligence) that it violated HIPAA, the penalty range is $145 to $73,011 for each violation. Increased penalty amounts if violation due to "reasonable cause," "willful neglect" (but corrected) or "willful neglect" (not corrected) (up to $2,190,294 for uncorrected willful neglect, as adjusted for inflation).
Medicare Part D Notice	All Medicare Part D eligible individuals "enrolled in or seeking to enroll in" group health plans *that provide prescription drug coverage.* 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 *sponsor* (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.	Notice must be given to Medicare Part D eligible individuals prior to their initial enrollment in the plan and annually thereafter. Notice also must be given to all Medicare Part D eligible individuals before 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 be issued on or before 10/14. That date is used because notice must be issued before annual coordinated election period, which runs from 10/15 until 12/7.)	No enforcement from CMS, but employers that do not comply are likely to encounter adverse employee relations issues.
Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) Notice	<u>All</u> 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	No explicit deadline but must be given sometime during the plan year.	Yes	Employer may be subject to a $145/day/violation penalty for each individual whom the employer fails to provide the required notice. This penalty amount is subject to an inflation adjustment each year.

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Fixed Indemnity Policy Notice	All employees eligible for a fixed indemnity policy through the employer.	** Plan *sponsor* (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.	Plan years beginning on or after January 1, 2025.	No (But the notice must be prominently displayed on all marketing, application, enrollment, and reenrollment materials.)	Plan will not be treated as HIPAA excepted benefit (and thus will be subject to ACA) and Employer will be subject to excise tax of $100/day **for each** individual to whom a failure relates.
Wellness Program Notice **(ADA requirement)**	If the employer has a wellness program, all employees participating in the 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	Prior to the employee providing any health information. Also, the notice must be provided to give the employee enough time to decide whether or not to participate in the program.	The regulations are not clear on this, but cautious employers are likely to give out at open enrollment in order to assure that the notice has been timely given, since waiting to provide the notice until after an employee has completed a health risk assessment or medical examination would be illegal.	The wellness program will be deemed to be "non-voluntary," which means the program will be treated as violating the Americans with Disabilities Act.
Wellness Program Notice **(HIPAA requirement)**	All employees participating in an employer's wellness program, regardless of whether the program is activity-only or outcome contingent.	Employer or Wellness Program Provider	Must be included in plan materials which describe the program. If the plan merely mentions that wellness program is available, without describing terms, no need to include the notice in that material.	Technically, no, but any time information is given out describing the program, the notice should be given. If program material is given out each year at open enrollment, then the notice should be in such material.	Plan may be subject to excise taxes in Code § 4980D (based on the fact that this requirement is part of Chapter 100 in Code).

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Qualified Small Employer HRA ("QSEHRA") Notice	All employees (unless the employer has implemented certain permissible exclusions, e.g., under age 25). Keep in mind, QSEHRAs are available only to "small employers," i.e., employers that do not have 50 or more full-time employees (including full-time equivalent employees) during the preceding year. Further, the availability of QSEHRAs is subject to certain limitations, e.g., employer can't maintain any other group health plan, and can only be funded through direct employer contributions.	Employer	At least 90 days prior to the beginning of the plan year. If eligibility is satisfied mid-year (e.g., new hire, change from part-time to full-time), the Notice must be sent on or before the 1st day the employee becomes eligible.	Yes	The qualified status of the QSEHRA will not be affected, but employers may pay a penalty of up to $50 per employee, up to a maximum of $2,500 per calendar year.
Individual Coverage HRA ("ICHRA") Notice	All eligible employees. Keep in mind the ICHRA sponsor cannot offer "traditional" group health plan coverage to the class eligible for the ICHRA.	Employer	At least 90 days prior to the beginning of the plan year. If eligibility is satisfied mid-year (e.g., new hire, change from part-time to full-time), the Notice must be sent on or before the 1st day the employee becomes eligible.	Yes	None
Summary Annual Report ("SAR")	Covered participants and beneficiaries who must be provided with SPDs.	Employers who are required to file a Form 5500 for their welfare benefit plan	Within nine months of the close of the plan year. If the employer obtains an extension to file the Form 5500, the employer must provide the SAR within two months after the close of the period for which the extension was granted.	Yes	There are no specific penalties for failure to distribute SARs, but participants and beneficiaries may sue and seek penalties of up to $110 for each day the employer fails to provide the SAR in response to a participant's or beneficiary's request.

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