

EMPLOYEE NOTIFICATIONS & DISCLOSURES REQUIRED FOR EMPLOYER-SPONSORED HEALTH BENEFIT PLANS (OTHER THAN SPDs AND SMMs)

TYPE OF NOTICE	WHEN TO DISTRIBUTE	TYPICAL METHOD	GOV. MODEL AVAILABLE	PENALTIES ¹
<p>Special enrollment rights (for certain losses of coverage & adding new dependents)</p> <p>[Plans & Employers subject to HIPAA Portability Rule – see End Notes]</p>	<p>At enrollment.</p>	<p>In open enrollment and new hire enrollment materials.</p>	<p>Yes (ERISA §701 regulations; but model text needs updating)</p>	<ul style="list-style-type: none"> • Up to \$110 per day for failure to provide notice on request • Up to \$100 per day excise tax for failure to provide notice • ERISA fiduciary penalties for improper plan administration • Criminal penalties for willful ERISA violations • Possible retroactive enrollments
<p>Initial COBRA notice (also called the “General COBRA Notice”)</p> <p>[Group medical, dental, etc. health plans of controlled groups with over 20 employees in prior year; not church plans]</p>	<p>Within 90 days of beginning of coverage.</p>	<p>Separate mailing (required to be delivered to covered spouse as well as employee).</p> <p>SPD can be used subject to timing and distribution to spouse requirements.</p>	<p>Yes. See DOL website: www.dol.gov/ebsa/COBRA.html</p> <p>(Current models require updating.)</p>	<ul style="list-style-type: none"> • Up to \$110 per day for failure to provide notice on request • Up to \$100 per day excise tax for failure to provide notice • ERISA fiduciary penalties for improper plan administration • Criminal penalties for willful ERISA violations • Possible retroactive extension of COBRA
<p>Follow-up COBRA notices:</p> <ul style="list-style-type: none"> • Election Notice • Unavailability • Early Termination • Conversion Rights • Premium Shortfall 	<p>Various times.</p>	<p>Individual mailings (typically managed by insurer or third party COBRA Administrator).</p>	<p>Yes, for Initial and Election Notices. See DOL website: www.dol.gov/ebsa/COBRA.html</p> <p>(Current models require updating.)</p>	<ul style="list-style-type: none"> • Up to \$110 per day for failure to provide notice on request • Up to \$100 per day excise tax for failure to provide notice • ERISA fiduciary penalties for improper plan administration • Criminal penalties for willful ERISA violations • Possible additional COBRA coverage

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<p>HIPAA Notice of Privacy Practices</p> <p>[Virtually all insured and self-funded group health plans except self-administered self-funded plans under 50 participants]</p>	<p>At enrollment and within 60 days of revision.</p> <p>Reminder of availability (or redistribution) every 3 years.</p> <p><i>(Note: Need privacy & security procedures before notice can be issued.)</i></p>	<p>In new hire enrollment materials.</p> <p>Initially, a mass mailing to all participants.</p>	<p>No.</p>	<ul style="list-style-type: none"> • Civil penalties: Tiered by degree of knowledge/willfulness from \$100 to \$50,000 per violation up to \$1.5 million per year. • Criminal penalties: Fines of \$50,000 to \$250,000 and one to 10 years' imprisonment
<p>Women's Health and Cancer Rights Act Notice (for reconstructive surgery benefits)</p> <p>[Generally the same Plans & Employers subject to HIPAA Portability Rule except self-funded church plans]</p>	<p>At enrollment and annually.</p>	<p>In new hire enrollment materials and annual enrollment materials.</p> <p>(Typically provided by insurer or third-party administrator materials used at enrollment.)</p>	<p>Yes. www.dol.gov/ebsa/pdf/CAGAppC.pdf</p>	<ul style="list-style-type: none"> • Up to \$110 per day for failure to provide notice on request • ERISA fiduciary penalties for improper plan administration • Criminal penalties for willful ERISA violations
<p>Medicare Part D Notice of Creditable Prescription Drug Coverage</p> <p>[Virtually all employers sponsoring health plans that cover drugs; includes HRAs, but not HSAs or FSAs]</p>	<p>To those with Medicare Part A or B coverage in a Part D service area at these times:</p> <ul style="list-style-type: none"> - Before Nov 15th (Oct. 15th beginning 2011) - Before initial Part D enrollment period - Before group plan enrollment - If Plan terminates or creditable status changes - On request 	<p>Provide notice to all participants at consistent annual enrollment time as well as:</p> <ul style="list-style-type: none"> - New hire enrollment - On request - If plan terminates or creditable status changes 	<p>Yes. See model notices at Centers for Medicare and Medicaid (CMS) website: www.cms.gov/CreditableCoverage/01_Overview.asp#TopOfPage</p> <p>(see Archives for notice forms; additional materials provide guidance)</p>	<ul style="list-style-type: none"> • Plans claiming the subsidy for retiree drug coverage may forfeit the subsidy • Claims may arise under ERISA fiduciary penalties for improper plan administration

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<p>Notice of Available State Premium Assistance Under Medicaid & CHIP</p> <p>[Plans & Employers subject to HIPAA Portability Rule]</p>	<p>Annually, before each plan year begins, if any employees reside in states offering assistance (see model notice).</p>	<p>With, but separate from, enrollment materials.</p>	<p>Yes. See DOL website (under Children’s Health Insurance Program): www.dol.gov/ebsa/compliance_assistance.html#section2</p>	<p>Up to \$100 daily penalty for each violation</p>
<p>Michelle’s Law notice of continued coverage during student medical leaves</p> <p>[Generally same Plans & Employers subject to HIPAA Portability Rule; state and local public sector may opt out]</p>	<p>Include with any notice regarding need to certify student status.</p> <p>(Health Reform’s age 26 mandate will eliminate most of these situations.)</p>	<p>Ideally included with insurer, TPA or other student status certification request.</p>	<p>No.</p>	<ul style="list-style-type: none"> • Up to \$110 per day for failure to provide notice on request • Up to \$100 per day excise tax for failure to provide notice • ERISA fiduciary penalties for improper plan administration • Criminal penalties for willful ERISA violations • Payment of lost benefits
<p>HIPAA Security Breach Notice (for Privacy breach involving disclosure of unsecured PHI)</p> <p>[Virtually all insured and self-funded group health plans except self-administered self-funded plans under 50 participants]</p>	<p>Without unreasonable delay, no later than 60 days after discovery of incident</p>	<p>Written notice to affected individuals and :</p> <ul style="list-style-type: none"> - Prominent media outlets (if 500 or more individuals in same state affected) - Health & Human Services Dept. (within same 60 days if 500 or more affected; otherwise annual log required in 1st 60 days after year ends) 	<p>No.</p>	<ul style="list-style-type: none"> • Civil penalties: Tiered by degree of knowledge/willfulness from \$100 to \$50,000 per violation up to \$1.5 million per year. • Criminal penalties: Fines of \$50,000 to \$250,000 and one to 10 years’ imprisonment

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<p>HIPAA Wellness Program Disclosure (notice of availability of alternative standard for earning wellness incentives)</p> <p>[Plans & Employers subject to HIPAA Portability Rule or, as of 2014, Health Reform]</p>	<p>Whenever a description is provided that a plan offers a wellness incentive requiring satisfaction of a standard related to a health factor.</p>	<p>Include in same descriptive material as the information on the wellness incentive.</p>	<p>Yes (ERISA §702 regulations provide sample text; modified under Health Reform proposed regulations at 77 Federal Register 70620 (11/26/2012) effective in 2014).</p>	<ul style="list-style-type: none"> • Up to \$100 per day excise tax for failure to meet HIPAA nondiscrimination requirements • Up to \$100 per day excise tax for failure to meet ACA requirements
<p>Qualified Medical Child Support Order (QMCSO) Procedures</p> <p>(Including National Medical Support Notices) [Virtually all health plans, including health FSAs and HRAs, of any employer]</p>	<p>Must notify employee and child upon receipt of a medical child support order.</p>	<p>Individual mailing to employee and child.</p> <p>(SPD should also include procedures or explain how to obtain them.)</p>	<p>No.</p>	<p>ERISA plans:</p> <ul style="list-style-type: none"> • Up to \$110 per day for failure to provide notice on request • ERISA fiduciary penalties for improper plan administration • Criminal penalties for willful ERISA violations <p>Generally:</p> <ul style="list-style-type: none"> • State enforcement of order
<p>Summary Annual Reports</p> <p>[ERISA plans required to file Form 5500]</p>	<p>Within 2 months of the deadline (including extensions) for filing Form 5500.</p>	<p>Written notice (can use same options as for SPDs)</p>	<p>Yes. (ERISA §104 regulations)</p>	<ul style="list-style-type: none"> • Up to \$110 per day for failure to provide notice on request • ERISA fiduciary penalties for improper plan administration • Criminal penalties for willful ERISA violations

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EMPLOYEE NOTIFICATIONS & DISCLOSURES REQUIRED FOR EMPLOYER-SPONSORED HEALTH BENEFIT PLANS (OTHER THAN SPDs AND SMMs)

HEALTH REFORM (ACCOUNTABLE CARE ACT, OR “ACA”) NOTIFICATIONS CURRENTLY REQUIRED				
(This section covers currently required notifications to participants and employees, not overall reporting required by employers.)				
[Generally same Plans & Employers as subject to HIPAA Portability Rule; “NG” means applies only to non-grandfathered plans]				
TYPE OF NOTICE	WHEN TO DISTRIBUTE	TYPICAL METHOD	GOV. MODEL AVAILABLE	PENALTIES¹
Summary of Benefits and Coverage (SBC)	With enrollment materials for active enrollment; otherwise by 1 st day of new employee eligibility & 30 days before new plan year for enrolled employees; also w/in 7 days of request.	Both paper and electronic delivery permitted.	Template form required, limited changes permitted.	<ul style="list-style-type: none"> • Up to \$1000 per individual for willful failure; amounts may differ among IRS, DOL and HHS (Not enforced during initial year if diligent efforts made to comply)
Advance Notice of Material Modifications to SBC Content	60 days prior to effective date of changes taking place other than at beginning of plan year.	Both paper and electronic delivery permitted. May be able to combine with SMM.	May use updated SBC (following template requirements) or separate notice describing change.	<ul style="list-style-type: none"> • (Same as SBC) • May not be able to implement change on intended date
Advance notice of coverage rescission	30 days before a rescission of coverage can be implemented for fraud or misrepresentation.	Individual notice.	No.	<ul style="list-style-type: none"> • Up to \$100 per day excise tax for failure to meet ACA requirements
Notice of grandfathered plan status	At least when SPD or similar plan description is provided.	Include in SPD at a minimum.	Yes. See DOL website (under Grandfathered Health Plans) at: www.dol.gov/ebsa/healthreform/	<ul style="list-style-type: none"> • Up to \$100 per day excise tax for failure to meet ACA requirements
Notice of procedures for internal appeals and external reviews [NG] (for claims denials)	When a claim or internal appeal is denied or a rescission is issued.	Include in ERISA-style adverse determination notices (revised and expanded to non-ERISA plans)	Yes. See DOL website (under Interim Procedures for Internal Claims and Appeals and Interim Procedures for Federal External Review) at: www.dol.gov/ebsa/healthreform/	<ul style="list-style-type: none"> • Up to \$100 per day excise tax for failure to meet ACA requirements

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Notice of Exchange Availability	By October 1, 2013 for all current employees, then within 14 days for new hires	In writing or electronically if the requirements of the DOL’s electronic disclosure safe harbor are met.	Yes. See DOL website (under Patient Protection Model Notice) at: www.dol.gov/ebsa/healthreform/	• Up to \$100 per day excise tax for failure to meet ACA requirements
Provider choice notices [NG] (explaining expanded rights in selecting network providers)	When SPD or similar plan description is provided for a plan requiring designation of primary care provider.	Include in SPD or similar description.	Yes. See DOL website (under Patient Protection Model Notice) at: www.dol.gov/ebsa/healthreform/	• Up to \$100 per day excise tax for failure to meet ACA requirements
Notice of no contraception coverage (by NG, non-profit employers objecting on religious grounds)	For 1 st plan year beginning on/after 8/1/2012 (until 1 st plan year beginning on/after 8/1/2013).	Must include in application materials in connection with enrollment and re-enrollment.	Yes. See notice attached to guidance at http://cciio.cms.gov/resources/files/prev-services-guidance-08152012.pdf	• Up to \$100 per day excise tax for failure to meet ACA requirements
Annual Notice of waiver of prohibition on annual limits (by plans granted waivers from annual limits, including pre-9/23/10 HRAs under class waiver)	<i>[Refer to government guidance and model]</i>	<i>[Refer to government guidance and model]</i>	Yes. See annual limit waiver guidance at: http://cciio.cms.gov/resources/other/index.html#alw	• Up to \$100 per day excise tax for failure to meet ACA requirements
Awaiting guidance on the following:				
<ul style="list-style-type: none"> • Auto-enrollment (deferred) • Quality of Care Report 				

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End Notes:

"HIPAA Portability Rule" requirements are typically a concern for only group medical benefits of private, state & local public sector, and church employer plans (e.g., not applicable to stand-alone dental and vision plans, most long-term care, or if fewer than 2 active employees covered). HRAs generally subject.

Summary Plan Descriptions (SPD) and Notifications: Some disclosures are explicitly required to be included in SPDs rather than issued as separate notices (e.g., Newborn and Mothers Health Protection Act), so are not separately included in this chart. Of course, an SPD may (and sometimes should) include notifications other than those explicitly required to be included. If SPDs are regularly distributed with enrollment materials, the SPDs can normally include notices otherwise required to be distributed at that time. The content should not be "buried" within the SPD but be reasonably noticeable or prominent. Summaries of Material Modifications (SMMs), required for updating SPDs that are not completely revised, may also be used similarly. For more details on SPD and SMM requirements, see the DOL website at <http://www.dol.gov/ebsa/> and follow the links under "Compliance Assistance" and "For Health Plans" to retrieve the "Reporting/Disclosure Guide for Employee Benefit Plans."

Methods of Delivering Notifications: The U.S. Department of Labor (DOL) has specific guidelines on the manner of delivering notices required under its regulations. Electronic delivery requires particular consideration of special regulatory guidance.

Responsibility for Notification under Insured and Self-Funded Plans: The primary obligation to furnish notifications is sometimes imposed on the insurer when benefits are insured. However, employers acting as ERISA Plan Administrators are well advised to ensure proper notification occurs whether a plan is insured or self-funded.

Multiple Employer Welfare Arrangements (MEWAs): MEWAs (i.e., plans covering multiple employers not in the same controlled group) pose additional complications for notifications and other requirements. Specific guidance should be obtained for such arrangements.

More Information: Additional details for many notices is available in materials posted on the DOL website: <http://www.dol.gov/ebsa/> (e.g., "For Health Plans" link) and <http://www.dol.gov/> (more general employment regulations material, including links to required posters for, e.g., FMLA, USERRA, EEOC).

State laws: State laws regulating insurance, state criminal laws, and several other types of state law are either clearly not preempted by ERISA or raise questions of preemption that should be examined on a state by state basis. State laws similar to many federal requirements will often apply to the extent more protective of individuals.

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