Annual Enrollment Health Plan Notices

Notice Responsibilities for Plan Sponsors

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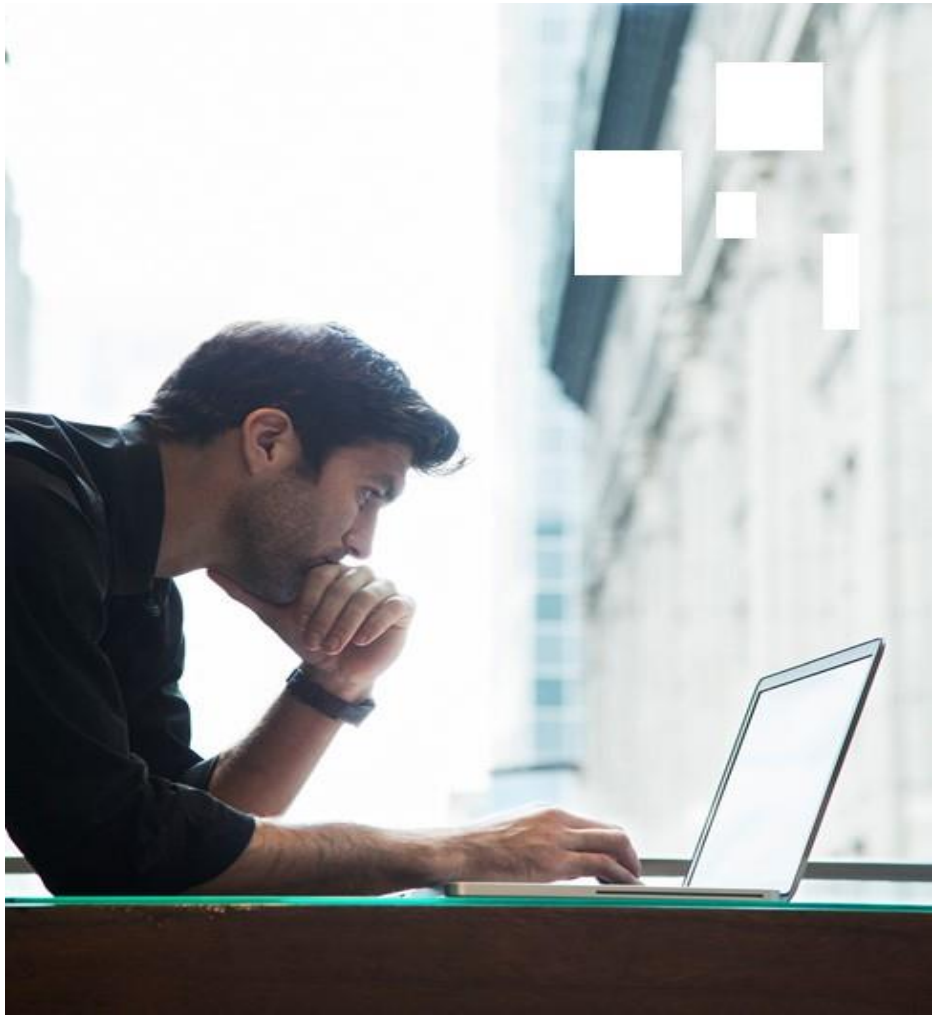
Notice



Within the Annual Enrollment Toolkit, we have provided templates for your annual notices. We are providing this information to you solely in our capacity as consultants with knowledge and experience in the industry and not as legal advice.

The issues presented here have legal implications, and we recommend discussing this matter with your legal counsel prior to choosing a course of action. Before distributing to employees, be sure to review and update each notice to ensure the templates accurately reflect your company and plan details.

As the plan sponsor, you are ultimately responsible for accuracy, timely distribution, and ensuring the appropriate notices are sent. We assume no duty in contract, tort, or otherwise in connection with this publication and expressly disclaim, to the fullest extent permitted by law, any liability in connection with these templates.

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HIPAA special enrollment rights notice

Applicable to group health plans

WHAT?

- Notice to employees of opportunity to enroll midyear

WHY?

- An individual may enroll outside of open enrollment upon the occurrence of certain events
  - Loss of eligibility for other group health coverage or health insurance;
  - Acquisition of a new spouse or dependent by marriage, birth, adoption, or placement for adoption; and
  - Becoming eligible for state premium assistance subsidy under Medicaid or CHIP or termination of Medicaid or CHIP eligibility.

WHEN?

- At or before the time an employee is initially offered the opportunity to enroll in a group health plan.

WHO?

- All employees who are offered the opportunity to enroll.

Note: HIPAA special enrollment rights are not applicable to excepted benefits such as dental, vision and health FSAs.

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Children's Health Insurance Program (CHIP) Notice

Applicable if an employer's health plan offers benefits in a state providing Medicaid or CHIP premium assistance subsidies

WHAT?

- Written notice

WHY?

- Informing of potential opportunities for premium assistance currently available in the state in which an individual resides to help pay for group health coverage.

WHEN?

- Annually, by the first day of the plan year

WHO?

- All employees, regardless of enrollment status

Note: Plans can provide the notice along with other items, such as open enrollment materials, but the notice must appear separately and in a manner that ensures an employee who may be eligible for premium assistance would appreciate its significance. Since this notice must go to all employees, a stand-alone notice may also be required.

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Women's Health and Cancer Rights Act (WHCRA) notice

Applicable to group health plans

WHAT?

- Written notice

WHY?

- Notice for an individual who is receiving benefits under the plan in connection with a mastectomy and who elects breast reconstruction, the coverage will be provided in a manner determined in consultation with the attending physician and the patient, regarding certain aspects of coverage.

WHEN?

- First, upon enrollment in a group plan. Second, annually. The second notice can be the same as the enrollment notice, or a shortened version.

WHO?

- Each participant. To a beneficiary "where the last known address of the beneficiary is different than the last known address of the covered participant."

Note: Notice should properly address operation of plan since deductibles and co-insurance limitations must be described.

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Medicare Part D Notice

Applicable to group health plans offering prescription drug coverage

WHAT?

- Written notice

WHY?

- Informing whether the plan's prescription drug coverage is creditable or non-creditable (actuarially equivalent to Part D coverage).

WHEN?

- An annual notice prior to October 15th of each year
  - Note: There are multiple deadlines for providing the Part D notice to Medicare-eligible employees. However, if an annual notice is provided prior to October 15th to all plan participants, then the requirements will be satisfied.

WHO?

- All Part D eligible individuals who are enrolled in or seeking to enroll in the plan whether the plan's prescription drug coverage is creditable.
  - Note: Most employers distribute to all employees enrolled or seeking to enroll in coverage to be safe.

May be provided separately or along with other information provided to participants. If included with other materials, the notice must be "prominent and conspicuous."

This means that the disclosure notice portion of the document (or a reference to the section in the document being provided that contains the required statement) must be prominently referenced in at least 14-point font in a separate box, bolded, or offset on the first page of information provided to plan participants.

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Initial notice of COBRA rights

Applicable to group health plans

WHAT?

- Written notice

WHY?

- Provides information on an individual's COBRA rights and obligations under the plan including a general description of the continuation coverage under the plan.

WHEN?

- At the time of commencement of coverage under the plan (within 90 days after commencement of plan coverage)

WHO?

- Each covered employee and covered spouse (if any)

Note: This notice must be sent to covered employees and covered spouses. The best practice is to mail this notice to meet this requirement.

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Notice of Privacy Practices (NPP)

Group health plans that are covered entities

WHAT?

- Written notice of privacy practices under HIPAA

WHY?

- Describes the uses and disclosures of protected health information (PHI) that may be made by the covered entity; an individual's rights; and the covered entity's legal duties with respect to PHI.

WHEN?

- A health plan must provide a notice of privacy practices to individuals—
  - On an ongoing basis after the compliance date, at the time of an individual's enrollment in the plan; and
  - Upon request by any person.

WHO?

- Individuals covered by the plan. A single notice to a health plan's named insured or covered employee is effective for all dependents covered through that insured or employee.

Note: The full NPP must be provided upon an individual's initial enrollment. Thereafter, the plan can provide the notice of availability of privacy practices every 3 years. However, many employers choose to provide the full NPP to avoid having different notices for initial enrollments vs. continuing enrollments.

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ADA wellness program notice

Employers offering wellness programs subject to ADA wellness regulations

WHAT?

- Written notice

WHY?

- Informing employees of what health information will be collected, how the information will be used, who will receive the information, and what will be done to keep it confidential when an employer offers a wellness program.

WHEN?

- Before an individual is required to provide any health information and with enough time for the individual to decide whether to participate in the program.

WHO?

- Employees eligible to participate in the wellness program.

Wellness plans that require an employee to undergo a biometric screening or take a health risk assessment are subject to the EEOC's ADA wellness requirements

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Health contingent reasonable alternative standard (RAS) notice

Wellness programs classified as health contingent under HIPAA/ACA

WHAT?

- Written notice

WHY?

- Provides notice of availability of a RAS to qualify for reward (and, if applicable, possibility of waiver of standard). It must include contact information and also state that recommendations of an individual's personal physician will be accommodated. If plan materials merely mention that a wellness program is available, without describing terms, no need to include such disclosure.

WHEN?

- Plan must disclose in all plan materials describing terms of wellness program.

WHO?

- Eligible employees

Although technically not an annual notice, since wellness programs generally operate on an annual cycle, and since notice must be provided in materials describing the wellness program, it is recommended to provide annually during open enrollment.

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Patient protection model disclosure

Applicable to group health plans that require designation of certain providers

WHAT?

- Group health plans that require designation of certain providers must provide notice.

WHY?

- Describes the plan's requirements regarding designation of a primary care provider and certain other rights of the participant.
  - Right to:
    - Designate any participating primary care provider who is available to accept the participant or beneficiary;
    - Designate, for any participant or beneficiary that is a child, a primary care provider that is a pediatrician; and
    - Obstetrical or gynecological care without preauthorization or referral.

WHEN?

- Provide whenever a summary plan description or other similar description of plan benefits is provided to a participant.

WHO?

- Provide to participants
  - Including COBRA QB, QMCSO alternate recipient, retiree (if applicable)

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GINA warning against providing genetic information

Wellness plans subject to GINA

WHAT?

- Written notice

WHY?

- Wellness programs that require completion of health risk assessments or other forms that request health information from spouses may violate the collection prohibition under GINA unless they fit within an exception. This exception applies if the request does not violate any laws, does not ask for genetic information and includes a warning against providing genetic information in any responses.

WHEN?

- Upon any request for health information, such as in a wellness program's annual request to complete a health risk assessment.

WHO?

- Individual requested to provide health information

The GINA warning language does not need to be provided as a separate notice. Rather, it must be included with any request for health information.

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Summary of benefits and coverage (SBC)

Applicable to group health plans (not retiree or excepted benefits)

WHAT?

- Group health plans must provide a standardized summary of benefits.

WHY?

- Describes the plan's benefits, exclusions, and cost sharing amount, including examples.

WHEN?

- The SBC must be included with open enrollment materials.
  - If the plan or insurer requires participants to renew in order to maintain coverage, a new SBC must be provided no later than the date the renewal materials are distributed.
  - If renewal is automatic, the SBC must be furnished no later than 30 days prior to the first day of the new plan year.
  - For insured plans, if the new policy has not yet been issued 30 days prior to the beginning of the plan year, the SBC must be provided as soon as practicable, but no later than seven business days after the issuance of the policy.

WHO?

- The SBC must be distributed to all applicants (at the time of application), policyholders (at issuance of the policy), and enrollees (at initial enrollment and annual enrollment). This means that the plan administrator and the insurer must automatically provide an SBC to participants and beneficiaries with respect to each "benefit package" offered for which the participant or beneficiary is eligible.

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Individual Coverage HRA (ICHRA) notice

Applicable to employers that offer an ICHRA

WHAT?

- Notice to employees of the offer of an ICHRA

WHY?

- Describes the terms of the ICHRA being offered to employees, including the maximum reimbursement amount, dependents who are eligible (if any), and a statement that participants and any covered dependents must be enrolled in individual medical coverage or Medicare.

WHEN?

- At least 90 days before the beginning of each plan year or no later than the date an employee is first eligible to participate in the ICHRA.

WHO?

- Employees eligible to participate in the ICHRA

Note: HIPAA special enrollment rights are not applicable to excepted benefits such as dental, vision and health FSAs.

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Opt-Out by self-funded, non-federal governmental plan

WHAT?

- Self-funded group health plans sponsored by State and local governmental employers must provide notice of opting out of certain federal requirements.

WHY?

- These employers are permitted to exempt their plan from certain requirements for any part of the plan that is "self-funded" by the employer, rather than through an insurance policy, including:
  - Newborns and Mothers Health Protection Act
  - Women's Health and Cancer Rights Act
  - Michelle's Law

WHEN?

- Notice to individuals must be distributed at the time of enrollment and annually, thereafter.
- Election to opt out must be sent to CMS before the beginning of the plan year.

WHO?

- For a plan to opt-out, an election must be made with CMS, and a notice must be provided to plan participants.

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Michelle's law

WHAT?

- Extends eligibility for group health plan coverage to a dependent child who is enrolled in an institution of higher education at the beginning of a medically necessary leave of absence if the leave normally would cause the dependent child to lose eligibility for coverage under the plan due to loss of student status.

WHY?

- The extension of eligibility protects eligibility of a sick or injured dependent child for up to one year

WHEN?

- It is required only when an employer's plan conditions a dependent child's eligibility on full-time student status; and
- Need only be provided when a request for proof of full-time student status is made.

WHO?

- Participants

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Model language notice for grandfathered status

WHAT?

- To maintain status as a grandfathered health plan, a group health plan or health insurance coverage must include a statement, in any plan materials provided to a participant or beneficiary describing the benefits provided under the plan or health insurance coverage, that the plan or coverage believes it is a grandfathered health plan within the meaning of section 1251 of the Patient Protection and Affordable Care Act and must provide contact information for questions and complaints.

WHY?

- To provide information as to what benefits may or may not be covered under the plan.

WHEN?

- At or before the time an employee is initially offered the opportunity to enroll in a group health plan and then during annual enrollment.

WHO?

- Participants

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Appendix – List of Notice Requirements by Plan Type

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Annual Notice Requirements For ERISA Plans

- Summary of Benefits and Coverage (SBC)
- Grandfathered Status Notice
- Patient Protection Disclosure
- HIPAA Special Enrollment Notice
- Children's Health Insurance Program (CHIP) Notice
- Women's Health and Cancer Rights Act (WHCRA) Notice
- Michelle’s Law Notice
- Medicare Part D Creditable Prescription Drug Coverage Notice
- EEOC Wellness Notice
- HIPAA Reasonable Alternative Standard Notice
- GINA Warning
- Summary Annual Reports (SARs) (within 9 months after the close of the plan year, or within 2 months of a filed extension)
- Individual Coverage HRA Model Notice
- Individual Coverage HRA Model Attestation
- Initial Notice of COBRA Rights
- HIPAA Privacy Notice

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Annual Notice Requirements for Governmental Plans

- Summary of Benefits and Coverage (SBC)
- Grandfathered Status Notice
- Patient Protection Disclosure
- HIPAA Special Enrollment Notice
- Children's Health Insurance Program (CHIP) Notice
- Self-Funded, Non-Federal Governmental Plan Opt-Out. Plans opting out of the following benefits and following certain procedures must provide an opt-out notice:
  - Michelle's Law Notice
  - Mental Health Parity and Addiction Equity Act
  - Women's Health and Cancer Rights Act Notice
- Medicare Part D Creditable Prescription Drug Coverage Notice
- EEOC Wellness Notice
- HIPAA Reasonable Alternative Standard Notice
- GINA Warning
- Individual Coverage HRA Model Notice
- Individual Coverage HRA Model Attestation
- Initial Notice of COBRA Rights (pursuant to the Public Health Service Act (PHSA))
- HIPAA Privacy Notice

If the employer has not opted out of these benefits, then notices for the mandates must be provided.

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Annual Notice Requirements for Church Plans

- Summary of Benefits and Coverage (SBC)
- Grandfathered Status Notice
- Patient Protection Disclosure
- HIPAA Special Enrollment Notice
- Children's Health Insurance Program (CHIP) Notice
- Women's Health and Cancer Rights Act (WHCRA) Notice
- Michelle’s Law Notice
- Medicare Part D Creditable Prescription Drug Coverage Notice
- EEOC Wellness Notice
- HIPAA Reasonable Alternative Standard Notice
- GINA Warning
- Individual Coverage HRA Model Notice
- Individual Coverage HRA Model Attestation
- HIPAA Privacy Notices

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