

# COMPLIANCE OVERVIEW

Provided by National Insurance Services, Inc.

## Open Enrollment 2020 – Benefit Notices

Employers that sponsor group health plans should provide certain benefit notices in connection with their plans' open enrollment periods. Some of these notices must be provided at open enrollment time, such as the summary of benefits and coverage (SBC).

Other notices, such as the Women's Health and Cancer Rights Act (WHCRA) notice, must be distributed annually. Although these annual notices may be provided at different times throughout the year, employers often choose to include them in their open enrollment materials for administrative convenience.

In addition, employers should review their open enrollment materials to confirm that they accurately reflect the terms and cost of coverage. In general, any plan design changes for 2020 should be communicated to plan participants either through an updated summary plan description (SPD) or a summary of material modifications (SMM).

This Compliance Overview includes a chart that summarizes the benefit notices employers should provide at open enrollment time.

### LINKS AND RESOURCES

- Department of Labor's (DOL) [website](#) on compliance assistance for health plans, which includes links to many model notices
- Center for Medicare and Medicaid Services' (CMS) [website](#) on Medicare Part D disclosures

### HIGHLIGHTS

#### OPEN ENROLLMENT NOTICES

- Employers should provide certain benefit notices to their employees at open enrollment time.
- Some benefit notices apply to all group health plans.
- Other benefit notices only apply to certain group health plans, based on plan design and coverage.

#### SPECIFIC NOTICES

- Medicare Part D Notice
- SBC
- HIPAA Privacy Notice
- WHCRA Notice
- CHIP Notice
- SPD (and SMM, if applicable)
- Notice of Patient Protections
- Wellness Program Notices

This Compliance Overview is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice.

Benefit Notice	Applicability	Description
<b>SBC</b>	Group health plans and health insurance issuers	<p>Group health plans and health insurance issuers are required to provide an SBC to applicants and enrollees each year at open enrollment or renewal time. Federal agencies have provided a <a href="#">template</a> for the SBC, which health plans and issuers are required to use.</p> <p>The issuer for fully insured plans usually prepares the SBC. If the issuer prepares the SBC, an employer is not also required to prepare an SBC for the health plan, although the employer may need to distribute the SBC prepared by the issuer.</p>
<b>Medicare Part D notice of creditable or non-creditable coverage</b>	Employers with group health plans that provide prescription drug coverage	<p>Employers must notify Medicare Part D-eligible individuals before Oct. 15 each year about whether the drug coverage is at least as good as the Medicare Part D coverage (in other words, whether the prescription drug coverage is “creditable” or “non-creditable”).</p> <p>Because employers may not be able to identify which individuals are eligible for Medicare Part D, they often provide the Medicare Part D disclosure to all plan participants. Employers will satisfy the timing requirements for this notice if it is provided to all plan participants annually, prior to Oct. 15 of each year.</p> <p>CMS has provided <a href="#">model notices</a> for employers to use.</p>
<b>WHCRA notice</b>	Group health plans that provide medical and surgical benefits for mastectomies	<p>Group health plans must provide a notice about the WHCRA’s coverage requirements at the time of enrollment and on an annual basis after enrollment. The annual WHCRA notice can be provided at any time during the year. Employers often include the annual notice with their open enrollment materials. Employers that redistribute their SPDs each year can satisfy the annual notice requirement by including the WHCRA notice in their SPDs.</p> <p>Model language is available in the DOL’s <a href="#">model notice guide</a>.</p>
<b>Children’s Health Insurance Program (CHIP) notice</b>	Group health plans that cover residents in a state that provides a premium assistance subsidy under a Medicaid plan or CHIP.	<p>If an employer’s group health plan covers residents in a state that provides a premium subsidy under a Medicaid plan or CHIP, the employer must send an annual notice about the available assistance to all employees residing in that state. The annual CHIP notice can be provided at any time during the year. Employers often provide the CHIP notice with their open enrollment materials.</p> <p>The DOL has a <a href="#">model notice</a> that employers may use.</p>

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<b>SPD</b>	Group health plans subject to ERISA	<p>An SPD must be provided to new health plan participants within 90 days of the date their plan coverage begins. Employers may include the SPD in their open enrollment materials to make sure employees who newly enroll receive the SPD on a timely basis. Also, an employer should include the SPD with its enrollment materials if it includes notices that are required to be provided at the time of enrollment, such as the WHCRA notice.</p> <p>In addition, an updated SPD must be provided to participants at least every five years, if material modifications have been made during that period. If no material modifications have been made, an updated SPD must be provided at least every 10 years.</p>
<b>COBRA General Notice</b>	Group health plans subject to COBRA	<p>Group health plans must provide a written General Notice of COBRA Rights to covered employees within 90 days after their health plan coverage begins. Employers may include the General Notice in their open enrollment materials to ensure that employees who newly enroll during open enrollment receive the notice on a timely basis.</p> <p>The DOL has a <a href="#">COBRA Model General Notice</a> that can be used by group health plans to meet their notice obligations.</p>
<b>Grandfathered plan notice</b>	Health plans that have grandfathered status under the Affordable Care Act (ACA)	<p>To maintain a plan's grandfathered status, the plan sponsor must include a statement of the plan's grandfathered status in plan materials provided to participants describing the plan's benefits (such as the SPD, insurance certificate and open enrollment materials).</p> <p>The DOL has provided a <a href="#">model notice</a> for grandfathered plans.</p>
<b>Notice of patient protections</b>	Non-grandfathered group health plans that require designation of a participating primary care provider	<p>If a non-grandfathered plan requires participants to designate a participating primary care provider, the plan or issuer must provide a notice of patient protections whenever the SPD or similar description of benefits is provided to a participant. This notice is often included in the SPD or insurance certificate provided by the issuer (or otherwise provided with enrollment materials).</p> <p>The DOL has provided a <a href="#">model notice</a> of patient protections for plans and issuers to use.</p>
<b>HIPAA privacy notice</b>	Self-insured group health plans	The HIPAA Privacy Rule requires self-insured health plans to maintain and provide their own privacy notices. Special rules, however, apply

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		<p>for fully insured plans. Under these rules, the health insurance issuer, and not the health plan itself, is primarily responsible for the privacy notice.</p> <p>Self-insured health plans are required to send the privacy notice at certain times, including to new enrollees at the time of enrollment. Thus, the privacy notice should be provided with the plan's open enrollment materials. Also, at least once every three years, health plans must either redistribute the privacy notice or notify participants that the privacy notice is available and explain how to obtain a copy. The Department of Health and Human Services has <a href="#">model privacy notices</a> for health plans to choose from.</p>
<b>HIPAA special enrollment notice</b>	All group health plans	At or prior to the time of enrollment, a group health plan must provide each eligible employee with a notice of his or her special enrollment rights under HIPAA. This notice should be included with the plan's enrollment materials. It is often included in the health plan's SPD or insurance booklet.
<b>Wellness notice - HIPAA</b>	Group health plans with health-contingent wellness programs	Employers with health-contingent wellness programs must provide a notice that informs employees that there is an alternative way to qualify for the program's reward. This notice must be included in all plan materials that describe the terms of the wellness program. If wellness program materials are being distributed at open enrollment (or renewal time), this notice should be included with those materials. Sample language is available in the DOL's <a href="#">model notice guide</a> .
<b>Wellness notice - ADA</b>	Wellness programs that collect health information or include medical exams	<p>To comply with the Americans with Disabilities Act (ADA), wellness plans that collect health information or involve medical exams must provide a notice to employees that explains how the information will be used, collected and kept confidential. Employees must receive this notice before providing any health information and with enough time to decide whether to participate in the program. Employers that are implementing a wellness program for the upcoming plan year should include this notice in their open enrollment materials.</p> <p>The Equal Employment Opportunity Commission has provided a <a href="#">sample notice</a> for employers to use.</p>

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<b>Individual coverage HRA (ICHRA)</b>	Employers that sponsor ICHRAs for specific classes of employees (or all employees)	<p>Beginning in 2020, employers of all sizes may implement an ICHRA to reimburse their eligible employees for insurance policies purchased in the individual market, or for Medicare premiums. Employers with ICHRAs must provide a notice to eligible participants about the ICHRA and its interaction with the ACA's premium tax credit. In general, this notice must be provided at least 90 days before the beginning of each plan year. Employers may provide this notice at open enrollment time if it is at least 90 days prior to the beginning of the plan year.</p> <p>A <a href="#">model notice</a> is available for employers to use to satisfy this notice requirement.</p>