

Open Enrollment Means It Is Also Annual Legal Notice Time

By: John Kirk on October 16, 2020 on graydon.law

This is the time of the year when open enrollment occurs for many health plans. This is also the time of year when you can meet many of your annual legal notice responsibilities. Open enrollment is a busy time of year so it is a good idea to get into the habit of giving out your annual notices at the same time. This means there is one less thing to forget later in the year. In addition, some of these items must be given out during open enrollment; otherwise you can face fines and other penalties. Below is a summary of the notices you should provide during this time of year.

Summary of Benefits and Coverage (“SBC”) and Uniform Glossary. The SBC provides an overview of each plan option and must be distributed to all eligible participants. The glossary must also be provided. Employers should avoid doing too much customization to these forms as the DOL has a standardized template. Failure to distribute the SBC can cause you to incur penalties up to \$1,176 per enrollee. Remember, in some cases your HRA may need its own, separate, SBC.

Women’s Health and Cancer Rights Act Notice. This notice informs participants that if they have breast reconstructive surgery in connection with a mastectomy they have certain protections. There is a DOL provided template available if your health insurer or TPA does not provide you with this notice.

HIPAA Notice of Special Enrollment Rights. This notice may be in your carrier or TPA’s enrollment materials or it can be stand alone. This informs participants their special enrollment rights if a qualifying event should occur.

Grandfathered Plan Notice. If your plan is still grandfathered, you must include a statement to that effect on all enrollment materials.

Notice of Patient Protection. If your plan is non-grandfathered and requires participants to designate a primary care provider, you must provide participants with this notice when any description of benefits, such as at open enrollment, is provided. Typically, your insurance carrier or TPA will include this in the open enrollment materials. You should confirm this is the case for your plan. If not, model language is available from the DOL.

Children’s Health Insurance Program Premium Assistance (“CHIPRA”) Notice.

Participants who live in a state that offers premium assistance for children’s health coverage must get a copy of this notice. There is a federal notice you can use that includes a current list of all applicable states.

Wellness Program Disclosures. If you have a wellness program that is activity or outcome based, you must provide a notice to participants that explains the program. If you have incentives or rewards, those should be explained and the existence of any reasonable alternatives to earn the rewards should also be noted. If your program asks about medical conditions or ask employees to have blood draws or other tests (like tests to detect high blood pressure, high cholesterol, or diabetes), you must provide an EEOC notice about how their medical information will be kept confidential. There is a [federal template](#) for this notice too.

HIPAA Privacy Notice for Self-Funded Plans. If you have a self-funded health plan, including an HRA, you may want to provide the Plan’s notice of your HIPAA privacy practices. If you are fully-insured, the carrier should provide this notice. While this notice is only required to be given to new participants or when there is a change to the privacy practices, many employers provide it to all eligible employees an open enrollment to ensure no new participants are missed.

Summary Plan Description. An SPD does not need to be provided every year. However, it must be provided to all new enrollees within 90 days of enrollment. Many plans will include the SPD with their open enrollment materials each year as a best practice to make sure everyone has received a copy. In general, the certificate of coverage from an insurance carrier or TPA will not meet all the requirements of an SPD.

COBRA General Notice. This is not the notice you send to employees who terminate. This is the notice you provide when someone first enrolls letting them know COBRA may apply if they terminate. It is a good idea to provide this at every open enrollment to make sure all participants have received it.

If you have any questions about the annual notices, their distribution, or the language of your current notices, please reach out to any of Graydon’s benefits team.