Open Enrollment and New Hire Benefit Disclosures, Timing, and Methods of Delivery

Name of Notice	Who provides it?	What is it?	To Whom?	When?	Penalty?
Children's Health Insurance Program Reauthorization Act	Employers with employees residing in states that provide premium assistance subsidies under a Medicaid plan or CHIP.	Provides notification about any premium assistance program available in the state where the employee resides.	All Employees	1) provided annually to ALL employees by the first day of the plan year- even those not eligible for health coverage 2) upon enrollment	There are civil penalties under the Internal Revenue Service (IRS) Code for failure to comply with the Employer CHIP Notice requirement. If a violation is discovered and is not corrected within 30 days of discovery, then the employer must self-report the violation on IRS Form 8928 and a civil penalty of $100 per day would be assessed. The tax increases to $200 per day if there is more than one qualified beneficiary affected to whom the failure relates (i.e., same family or multiple employees). Additionally, legal action may be brought by either a participant or the U.S. Department of Labor (DOL), and a court could assess an ERISA statutory penalty up to $110 a day. Finally, if a violation is discovered during an audit, the tax may not be less than the lesser of $2,500 or the regular tax amount determined above if the failure is discovered after the employer has received a Notice of Examination from the IRS. If the failure is more than de minimis (as determined by the IRS), $15,000 is substituted for $2,500.
HIPAA Notice of Privacy Practices	Normally, an employer will only deal with covered entities, not actually be one. However, if an employer has any kind of health clinic operations available to employees, or provides a self-insured health plan for employees, or acts as the intermediary between its employees and health care providers, it will find itself handling the kind of PHI that is protected by the HIPAA privacy rule.	Explains the privacy rights under the group health plan to participants.	All Enrolled Employees	Must be provided to all new participants when they enroll. Reminder must be sent every 3 years.	There are civil penalties of $100 per violation, but the penalties can be "stacked" if there are multiple violations with respect to a single individual.
Medicare Part D Disclosure of Creditable Coverage	Employers that provide prescription drug coverage.	The Medicare Modernization Act (MMA) requires employers with policies including prescription drug coverage to notify Medicare eligible policyholders whether (or not) their prescription drug coverage is creditable coverage, which means that the coverage is expected to pay, on average, as much as the standard Medicare prescription drug coverage.	All Plan Participants	1)Prior to in annual Medicare enrollment (October 15-December 7). 2) Prior to an individual employees Initial enrollment period for Medicare part D. 3) Prior to enrollment for any individual that joins the plan. 4) Upon request from an employee Providing it annually by October 15th satisfies 1-2.	The MMA does not include a specific penalty for failure to provide the required notices. If, however, the employer is requesting the retiree drug subsidy (RDS) from Centers for Medicare and Medicaid Services (CMS), then the required attestation that all applicable rules will be followed would require that the appropriate notices are sent to Medicare affected members. If the Medicare member can prove that he or she did not get adequate notice that his or her employer plan was not creditable, then CMS may not apply the premium penalty when the member enrolls in Part D. However, employee relations issues may arise if employers fail to properly notify Medicare Part D eligible employees of the plan's creditable status. For example, if employees do not know whether their coverage is creditable or noncreditable, this might prevent them from making an educated choice in coverage options and could possibly result in an individual having to later pay higher Medicare Part D premiums.
CMS Disclosure	Employers must report annually to CMS the status of their plan.	Employers disclose to CMS whether the coverage is creditable.	CMS	Annually within 60 days after the beginning of the plan year AND upon any change that affects creditable coverage status.	
Notice of Grandfather Status	Employers with a Grandfathered plan must provide notice each year that the plan is grandfathered.	The notice informs employees that the plan is subject to the grandfathered plan provisions of the PPACA.	All Plan Participants	Required in any plan materials describing benefits.	Failure to provide the grandfathered plan notice to participants will result in loss of grandfathered plan status.
Wellness	Employers with outcome based wellness programs	The plan must notify employees of the availability of a reasonable alternative standard to qualify for the reward.	All Plan Participants	1) At enrollment in the plan 2) Annually at Open Enrollment	Under the ACA, programs that are noncompliant could be subject to penalties under the Code and the PHSA of up to $100 per day. Wellness programs are also subject to audit from the DOL and could be subject to enforcement under ERISA.

Open Enrollment and New Hire Benefit Disclosures, Timing, and Methods of Delivery

Name of Notice	Who provides it?	What is it?	To Whom?	When?	Penalty?
Newborns' and Mothers Notice	Group plans that provide maternity or newborn infant coverage.	The notice informs members about protections for mothers and their newborn children with regard to the length of hospital stay following childbirth.	All Plan Participants	Annually at Open Enrollment	Legal action may be brought by either participant or the DOL and an ERISA $110 per day per violation fine may be assessed by a court. If violation is not corrected within 30 days of discovery, then employer must self-report violation on Internal Revenue Service Form 8928 and a civil penalty of $100 per day would be assessed. The penalty may be increased to $200 per day if more than one qualified beneficiary is affected by the violation.
HIPAA Special Enrollment Disclosure	Employers required to provide	Notice describing the group health plan's special enrollment rules including the right to special enroll within 30 days of the loss of other coverage or of marriage, birth of a child, adoption, or placement for adoption.	All Plan Participants	At or before the time an employee is initially offered the opportunity to enroll in the group health plan and annually.	The Secretary of Labor enforces these requirements under ERISA for group health plans. In addition, participants and beneficiaries can sue both plans and issuers to enforce their rights under ERISA, as amended by HIPAA. The Secretary of the Treasury also enforces these requirements for group health plans. A taxpayer that fails to comply may be subject to an excise tax. States also have enforcement responsibility, including sanctions available under State law, for requirements imposed on health insurance issuers. If a State does not act in the areas of its responsibility, the Secretary of Health and Human Services may make a determination that the State has failed "to substantially enforce" the law, assert Federal authority to enforce, and impose sanctions on insurers as specified in the statute, including civil monetary penalties.
Summary of Benefits and Coverage & Glossary of Terms	For insured group health plan coverage, the plan satisfies the requirement to provide an SBC if the issuer provides a timely and complete SBC to the individual(s). Group health plans or issuers are also required to provide participants and beneficiaries with specified uniform definitions of certain health-coverage-related terms and medical terms.	The document is a uniform summary of benefits and coverage. It describes the benefits of the plan in compliance with PPACA	All Plan Participants	A copy of all benefit options required. 1) When first eligible, the disclosure is required by the date the person is eligible. 2) Within 7 days if requested or following a HIPAA special enrollment; 3) With enrollment materials at open enrollment.	A group health plan (including its administrator), and a health insurance issuer offering group or individual health insurance coverage, that willfully fails to provide required information will be subject to a fine of not more than $1,000 for each such failure. Each failure to deliver the SBC to an individual constitutes a separate offense under the Act.
Women's Health and Cancer Rights Act Notice	All plans are subject to the notice requirements. While both the plan and the issuer may be held responsible for delivery of the notices, the notice requirements are satisfied if either the plan or the issuer actually provides the notice.	Notice describing required benefits for mastectomy-related reconstructive surgery, prostheses, and treatment of physical complications of mastectomy.	All Plan Participants	Must be provided to all new participants when they enrolled and to all participants annually at open enrollment.	Failure to provide the notice may result in legal action brought by a participant or the DOL, and an ERISA fine of $110 per day per violation may be assessed. This penalty can be levied per each qualified beneficiary with no family maximum. Additionally, a new excise tax was recently added to WHCRA failures as a result of health care reform. This excise tax is equal to $100 per day for each individual to whom a failure relates, and the tax increases to $200 per day if more than one individual is affected by the violation, such as a family or multiple employees. Employers who identify that they have not complied with the WHCRA requirements will be required to self-report the error, file Internal Revenue Service Form 8928 and pay the excise tax. The tax must be paid by the due date for filing the employer's federal income tax returns (without extensions).
Marketplace Exchange Notice	All employers subject to Fair Labor Standards Act	Written notice about the health insurance exchange.	All Employees	Current Employees- Notice was required no later than 10/1/2013. New Hires: Within 14 days of employee's start date.	None

Open Enrollment and New Hire Benefit Disclosures, Timing, and Methods of Delivery

Name of Notice	Who provides it?	What is it?	To Whom?	When?	Penalty?
Summary Plan Description	ERISA requires virtually every employee benefit plan to have a summary plan description (SPD) and to furnish copies to each individual entitled to receive the SPD.	Primary vehicle for informing participants and beneficiaries about their plan and how it operates. Must be written for average participant and be sufficiently comprehensive to apprise covered persons of their benefits, rights, and obligations under the plan. Must accurately reflect the plan's contents as of the date not earlier than 120 days prior to the date the SPD is disclosed.	All Plan Participants	Must be provided within 120 days of its finalization. New Participants to existing plan- within 90 days of becoming a participant in the plan. Every 5 years if any changes to the plan. Every 10 years if no changes.	There are no specific penalties in the statute or regulations for failure to prepare or furnish a required SPD or SMM. However, pursuant to ERISA's general enforcement provisions, participants and beneficiaries may bring suit to enforce the requirement. Also, in the event of a DOL investigation, the DOL investigator is likely to require the plan sponsor to immediately produce and distribute any required but missing SPDs or SMMs that are currently applicable. In addition, criminal penalties may be imposed on any individual or company that willfully violates any requirement of Title I of ERISA, which includes the SPD rules.
Initial COBRA Notice	Employers are responsible. A COBRA administrator has to be notified of new enrollees into the plan.	Notice of the right to purchase temporary extension of group health coverage when coverage is lost due to a qualifying event.	Provide to each covered employee and covered spouse* no more than 90 days after group health plan coverage begins. *A single notice may be mailed to the employee's home, addressed to both the employee and spouse if the spouse is known to reside there.	Within 90 days of becoming a participant in the plan. Also required to be in SPD.	Legal action may be brought by participants or the DOL, and an ERISA fine of $110 per day per violation may be assessed by a court. This penalty can be levied per each qualified beneficiary with no family maximum. If violation is not corrected within 30 days of discovery, the employer must self-report the violation on IRS Form 8928, and a civil penalty of $100 per day will be assessed. If more than one qualified beneficiary is affected by the violation, such as a family, the penalty increases to $200 per day. There are additional noncompliance issues to consider. If an employer fails to provide an initial COBRA notice, and the participant has not been informed of his or her responsibility to inform the plan when a qualifying event occurs, then the plan is not permitted to enforce certain notice deadlines against employees and qualified beneficiaries. As an example, in the case of a divorce, the employee or his or her spouse must notify the plan administrator within 60 days of the qualifying event in order to receive COBRA coverage. If, however, the employee and/or spouse never received the initial COBRA notice, then the plan administrator cannot deny coverage if the employee or spouse does not give notice of the divorce in a timely manner, since he or she was never informed of the obligation and plan procedures to provide notice.
Sample Waiver Form	Employers are responsible.	Protection from ACA Penalties	All Plan Participants	Open Enrollment or Initial Eligibility	
Patient Protections Disclosure	Employers are responsible.	The Affordable Care Act requires non-grandfathered group health plans to describe to covered individuals their rights to (1) choose a primary care provider or a pediatrician (when the plan requires designation of same), and/or (2) obtain obstetrical or gynecological care without prior authorization.	All Plan Participants	Must be provided to all new participants when they enrolled and to all participants annually at open enrollment.	