

# COMPLIANCE ALERT

## CHECKLIST FOR STRATEGIC AND COMPLIANT EMPLOYEE BENEFIT PLAN COMMUNICATIONS

August 1, 2020

For employees to fully understand the valuable investment that your company makes in their benefits, you should convey benefit plan information during annual enrollment in an engaging, compelling manner. At the same time, annual enrollment is a great chance to distribute required health plan notices and legal information regarding employee benefits. The below checklist will help you meet these important goals.

The checklist includes recommended content for compliant enrollment communications and required health plan notices that you may wish to provide at enrollment. In addition, the checklist outlines considerations for successfully communicating the value of -- and encouraging enrollment in -- your employee benefit plans.

**Important note.** Due to the impact of the COVID-19 pandemic, the deadlines for providing required ERISA benefit plan notices and other disclosures to plan participants are temporarily extended under federal relief. The relief applies where a plan sponsor acts in good faith and furnishes the material as soon as administratively practicable. Good faith acts include using electronic alternative means of communicating with plan participants who the plan fiduciary reasonably believes have effective access to electronic means of communication, including email, text messages, and continuous access websites. This is a temporary relaxation of the Department of Labor's standard electronic disclosure rules. For more information about the extension relief, see this [EPIC article](#).

### CONSIDERATIONS FOR COMPLIANT ENROLLMENT COMMUNICATIONS

#### BENEFIT GUIDE/ENROLLMENT MATERIAL – COMMON CONTENT

- Election instructions
- Benefit descriptions
- Employee contributions and out-of-pocket costs
- Eligibility criteria (employees and dependents) or source for these details
- Benefit election duration (provide examples)
- Essential information to help make enrollment decisions (e.g., health savings account (HSA) eligibility, potential tax implications)
- Key information regarding plan conditions (e.g., high-deductible health plans (HDHPs), HSAs, flexible spending accounts (FSAs))

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## BENEFIT GUIDE/ENROLLMENT MATERIAL – RECOMMENDED CONTENT

- Tax implications for non-tax dependents (e.g., domestic partners)
- Statement that enrollment guide constitutes a summary of material modifications (SMM) regarding benefit changes required to be in the summary plan description (SPD)
- Consequences of enrolling ineligible individuals (e.g., disciplinary policy)
- Legal disclaimers (e.g., benefits are not guaranteed, plan terms may be changed any time and plan documents control)

## AFFORDABLE CARE ACT (ACA) REQUIREMENTS

**If you have a grandfathered plan**, determine whether it will maintain its grandfathered status for the upcoming plan year. A grandfathered plan is a health plan that was in existence when the ACA was enacted on March 23, 2010, and that has continuously adhered to certain guidelines. If plan changes go beyond those guidelines, the plan is no longer grandfathered. Grandfathered plans are exempt from some, but not all, of the ACA's requirements.

**If your grandfathered plan becomes a non-grandfathered plan**, it must immediately comply with all additional patient rights and benefit provisions required by the ACA. For example, in-network preventive care is covered at 100%, and there are limits on out-of-pocket maximums.

**If you sponsor a non-grandfathered plan**, it is subject to IRS limits on cost sharing or out-of-pocket maximums with respect to coverage for essential health benefits. For 2021 plans, the out-of-pocket maximum is \$8,550 for self-only coverage and \$17,100 for family coverage (up from \$8,150 and \$16,300, respectively, for 2020).

**If you sponsor an HSA that is compatible with an HDHP**, it is subject to IRS limits. The 2021 limits are \$3,600 for self-only coverage and \$7,200 for family coverage (up from \$3,550 and \$7,100, respectively, for 2020).

## HEALTH PLAN DISCLOSURES AND NOTICES

### Summary of Benefits and Coverage (SBC)

Provide SBCs for all of your medical plans to eligible employees at enrollment and upon request in accordance with applicable distribution rules.

### Grandfathered Plan Notice

This applies to grandfathered plans. Provide to eligible employees at enrollment in accordance with applicable distribution rules. This must also be included in the SPD.

### Patient Protection Notice (aka Physician Designation Notice)

This applies to non-grandfathered plans. Provide to eligible employees at enrollment in accordance with applicable distribution rules. This must also be included in the SPD.

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## HEALTH PLAN DISCLOSURES AND NOTICES

### Children's Health Insurance Program (CHIP) Notice

Provide annually to all employees living in states listed in the most current Department of Labor (DOL) Model Employer CHIP [model notice](#) in accordance with applicable distribution rules. This may be provided at enrollment, as a stand-alone document.

### Newborns and Mothers Health Protection Act (NMHPA) Notice

Provide at the time of enrollment in accordance with applicable distribution rules. This must also be included in the SPD.

### Women's Health and Cancer Rights Act (WHCRA) Notice

Provide annually and at time of enrollment in accordance with applicable distribution rules. This must also be included in the SPD.

### Notice of HIPAA Special Enrollment Rights

Provide at the time of enrollment in accordance with applicable distribution rules. It must also be included in the SPD.

### Notice of HIPAA Privacy Rights

Provide at the time of enrollment in the self-funded plan (including the health FSA) in accordance with applicable distribution rules. Insurers provide the HIPAA privacy notices for insured plans.

### Michelle's Law Notice

If you sponsor a medical plan that offers coverage to children age 26 or over conditioned upon full-time student status, you must provide a notice of the requirements of Michelle's Law to individuals covered under that plan. Under Michelle's Law, a plan cannot terminate a child's coverage for loss of full-time student status if due to a medically necessary leave of absence. The law generally applies to insured plans issued in states that mandate extended coverage for students age 26 or older, or self-funded plans that offer coverage to students beyond age 26. Provide notice in any materials describing a requirement for certifying student status for plan coverage. This may be included in enrollment materials.

### Medicare Part D Notice of Creditable Coverage and/or Notice of Non-creditable Coverage

For plans that cover prescription drugs, provide this notice to eligible employees. This must be distributed annually before October 15 and other times. Model notices and instructions are available [here](#).

### Wellness Program Notice of Alternative Standard

If you sponsor a wellness program that offers incentives to employees that participate in certain activities or meet certain health standards, you must offer alternative standards to employees for whom it is unreasonably difficult or inadvisable to meet the standards. Notice regarding the alternative standards should be provided in materials describing the wellness program (which may include enrollment materials).

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## HEALTH PLAN DISCLOSURES AND NOTICES

### Wellness Program Notice

If you sponsor a wellness program that asks employees for medical information (e.g., biometric data), you must give participating employees a notice that tells them what information will be collected as part of the wellness program, with whom it will be shared and for what purpose, the limits on disclosure and the way information will be kept confidential. The Equal Employment Opportunity Commission (EEOC) has provided a [sample notice](#) to help employers comply with this requirement.

## CONSIDERATIONS FOR EFFECTIVE ENROLLMENT COMMUNICATIONS

### OBJECTIVES

#### Successful Enrollment

The key to successful enrollment is effective employee communication. It is vital that employees have resources to learn about the value of their benefits and options, plan changes and coverage details. Many employers begin communicating with employees well in advance of enrollment to allow ample time to learn about benefit offerings, ask questions and consult with their families so they are prepared to make the best benefit decisions possible.

#### Appreciation

A recent study shows that up to half of employees do not understand their benefits or perceive value in them, despite the major investment companies make in employee benefits. Studies confirm that frequently sending small amounts of benefits information using new technology (such as videos, texts and mobile apps) will lead to greater perception of value in employee benefits.

#### Understanding

Individuals can take full advantage of benefits only if they understand what options are available and how they work. FSAs, HSAs and health reimbursement arrangements (HRAs) require additional targeted campaigning to avoid confusion and encourage buy-in. Employees who understand their coverage options and feel empowered to enroll make better-informed, cost-effective health care decisions.

#### Drive Enrollment

If you offer HDHPs, strategic communication and implementation is essential for securing employee participation, maximizing enrollment numbers and ensuring proper utilization.

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## OBJECTIVES

### Simplified Enrollment

The easier and faster the enrollment process is for employees, the more successful your enrollment season will be. If possible, work with your insurance carriers and/or enrollment platform provider to:

- Make paper forms as easy as possible to understand and reduce the amount of required information.
- Ensure the enrollment website is easy to navigate and includes links to more detail if needed, such as on eligibility and HDHP/HSA rules.

Simplified processes increase the chance of a smooth enrollment period – ideally, the desired percentage of employees will enroll, and you will receive a minimal number of complaints or requests for help.

### Technology

Employees' eyes are already on their smartphones, so providing mobile-friendly benefits information can help with engagement. For example, sending quick, entertaining benefits explanation videos can drive understanding and raise awareness. Text messaging campaigns and mobile apps with push notifications can also effectively reach employees, provide crucial information, and spur quick action.

### Targeted Messaging

Studies show that people are more likely to pay attention to messages tailored to their identities, needs or affiliations. There are two ways to categorize various groups in an employee population:

- **Segments** are self-selected. Employees respond to surveys or other interactive media to report their job function and specific interests.
- **Subgroups** are determined by employers and relate to more concrete classifications such as employee class (customer service representative, sales, and leadership, etc.), age (more likely to be starting a family or thinking about retirement) or geography (remote workers vs. office workers).

Carefully targeted benefit communications can help engage employees, steer enrollment, increase perceived value and lead to a successful enrollment season.

When crafting benefit communications, announce important messages, repeat and repeat again. Be sure to create to-the-point, easy-to-understand content – assume your audience knows little about coverage options and how they work. With attention spans growing shorter, it is also important to communicate as succinctly as possible.

## ***EPIC Employee Benefits Compliance Services***

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