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Autumn Leaves, Pumpkin Spice Lattes, and Group Health Plan Notices

This time of year brings changing leaves, cooler temperatures, and the long-awaited return of the pumpkin spice latte. But that's not all!

Autumn also brings open enrollment, which provides an opportunity for group health plan sponsors to review their annual compliance checklists and ensure that their plan administrators are timely providing participants and eligible employees with certain required notices.

With the ever-changing compliance landscape and the array of new rules and regulations, it can be easy to overlook some of those historic, annually required notices.

Participants, Beneficiaries, Enrollees

Many of these annual notices must be provided to participants – including employees eligible to enroll for coverage in the plan – and beneficiaries – including COBRA beneficiaries. Plan administrators should check the specific rules for each notice to capture all recipients.

Summary of Benefits and Coverage (SBC)

This summary document required by the Affordable Care Act provides an overview of the plan's primary benefit rules, including cost-sharing obligations for common treatments and services such as office visits, prescription drugs, imaging, surgical procedures, and therapies.

Plans that conduct annual enrollment should include the SBC with the enrollment materials; plans with evergreen enrollment or automatic renewal must provide the SBC at least 30 days prior to the start of the plan year.

More information and a template SBC can be found here.

Summary Annual Report (SAR)

Plans for which Form 5500 must be filed with the DOL each year must also provide the SAR to participants within nine months after the end of the plan year, or within two months of an applicable Form 5500 extension period.

Plan administrators often rely on the plan's auditor to create the SAR using the Form 5500 software, but administrators remain responsible for distributing the SAR to participants and beneficiaries.

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

This notice informs participants of benefits for reconstructive surgery after a plan-covered mastectomy.

Plans with annual enrollment should include the WHCRA Notice with the enrollment materials; plans with evergreen enrollment or automatic renewal can include the WHCRA Notice with other annual materials, such as the SAR.

More information can be found here.

Medicare Part D Notice

The Part D Notice certifies whether a plan's prescription drug benefit coverage is "creditable," meaning that, on average, the benefits are equal to or greater than the standard Medicare prescription drug plan coverage.

Plans offering prescription drug benefits must provide a Part D notice to Medicare-eligible individuals each year prior to the start of the Medicare annual enrollment period on October 15.

Because Medicare eligibility can be based on age or disability, identifying Medicare-eligible individuals can be a burdensome task for plan administrators. To ensure compliance, most plan administrators provide the Part D Notice to all eligible enrollees and participants.

Plan administrators should have already provided the Part D Notice this year. To ensure compliance in future years, administrators should consider including the Part D Notice in enrollment materials if provided prior to October 15, or along with other annual notices such as the CHIP Notice.

More information and model notices can be found here.

Children's Health Insurance Program (CHIP) Notice

Employers that sponsor plans in states which provide premium assistance subsidies under Medicaid or CHIP must provide the CHIP notice annually.

Because the CHIP Notice must be provided before the start of the plan year, plan administrators can include the CHIP Notice with annual enrollment materials or with another annual notice, such as the Medicare Part D Notice.

The Department of Labor generally updates the model CHIP Notice effective each July 31.

HIPAA Notice of Privacy Practices

The HIPAA Notice of Privacy Practices describes how participants' protected health information (PHI) may be used and summarizes participants' rights with respect to their PHI. Although this notice is not subject to an annual disclosure requirement, it must be provided when modified or updated, and a *reminder* of the availability of the notice must be provided at least every three years.

To avoid overlooking the three-year reminder notice requirement, plan administrators should consider including the reminder notice with enrollment documents or other annual materials, such as the SAR and WHCRA Notice.

More information can be found here.

Electronic Disclosure Rules

Generally, plan notices may be provided by mail to the recipient's last known address or by hand delivery at the worksite.

Electronic disclosure of notices has become more common in recent years. Plan administrators should be mindful of the DOL requirements for electronic disclosures, including the different affirmative consent requirements for participants without access to a job-related computer and non-employee beneficiaries.

And More!

This is not an exhaustive list of group health plan notices. Instead, it is merely a reminder of some of the annual notices required of ERISA-covered group health plans that employers should think about this time of year. Many of these notices must also be provided at other times, including upon initial eligibility / enrollment and request. Insured plans may be able to rely on their insurers to provide some of these notices to participants. Non-ERISA plans, such as those sponsored by governmental entities, are also required to provide many of the notices identified above. For more detailed information about group health plan required notices, contact a Spencer Fane employee benefits attorney.

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