

Open enrollment season is a busy time of year without managing the requirements and changes in the legislative landscape. Health Care Reform brings an added set of challenges and requirements. The following is a list of disclosures you may be required to provide under Health Care Reform and other federal laws.

#### Notices Required Upon Initial Plan Enrollment

	Description	Timing
<b>Initial COBRA Notice</b>	Plan administrators must provide written notice to each covered employee and his or her spouse of their rights to continue coverage upon the occurrence of a qualifying event.	Within 90 days after initial enrollment in the plan.
<b>HIPAA Privacy Notice</b>	Health plans or insurers must distribute a notice documenting privacy rights to participants.	Upon an individual's initial enrollment in the plan, within 60 days of a material change, and upon request. Also, participants must be made aware of the availability of and how to obtain the notice once every three years.
<b>Special Enrollment Rights Notice</b>	Group health plans must provide each employee who is eligible to enroll with a notice of his or her HIPAA special enrollment rights.	At or prior to the time the employee is offered the opportunity to enroll in the plan.
<b>Pre-Existing Conditions Limitation Notice</b>	Group health plans with a pre-existing conditions limitation must provide a notice explaining the limitation and how prior creditable coverage can reduce the exclusion period (applicable to grandfathered plans prior to the beginning of the 2014 plan year).	As part of any written application materials.
<b>Summary Plan Description</b>	Group health plans must provide plan participants a document explaining the plan's benefits, claim review procedures, and the participants' ERISA rights.	Within 90 days of enrollment in the plan, every five years if material modifications are made, and every 10 years if no amendments occur.
<b>Employee Notice of Exchange</b>	Employers must provide a written notice to all employees about health insurance exchanges. In general, the notice must inform employees about the Exchange, explain possible eligibility for tax credit or cost-sharing reductions, inform employees that purchasing coverage through the Exchange means they may lose employer contributions toward employer coverage and the federal tax impact, and include contact information for the Exchange and an explanation of appeal rights.	Within 14 days of date of hire.

**Notices Provided at Annual Enrollment**

	<b>Description</b>	<b>Timing</b>
<b>Women's Health and Cancer Rights Act</b>	Notice advising all participants and beneficiaries of their rights to breast reconstruction post-mastectomy.	Annually and at enrollment.
<b>Medicare Part D Creditable Coverage Notice</b>	Group health plans must provide notice to individuals covered by or eligible for the group health plan who are eligible for Medicare explaining whether the drug coverage is creditable (actuarially equivalent to coverage available under the standard Medicare Part D).	At least once per year no later than October 14 <sup>th</sup> , prior to an individual's initial Medicare enrollment period, upon enrollment of a Medicare eligible individual, when there is a change in the creditable status of the drug coverage, and when an individual requests the notice.
<b>CHIP Premium Assistance Notice</b>	Employers must provide notices to employees regarding available State premium assistance programs that can help pay for coverage and how they can apply for it.	Annually – generally provided during annual enrollment.
<b>Grandfathered Status</b>	Grandfathered status should be assessed on an annual basis. Any plan that believes it is grandfathered must include a statement in all plan materials provided to a participant or beneficiary that the plan believes it is grandfathered. The notice must clearly state that the plan is a grandfathered plan and must contain the plan's contact information for questions and complaints.	Annually - this notice should be included in all open enrollment materials and other plan materials distributed to participants as long as the plan remains grandfathered.
<b>Patient Protections</b>	Plans that require designation of a primary care provider must issue a notice to all participants of their new rights under the plan regarding designating providers. Also, all plans previously requiring prior authorization to see an OB/GYN must provide participants a notice that they no longer need prior authorization.	These notices (if required) must be provided whenever the plan sponsor provides a participant with a Summary Plan Description (SPD) or other similar description of benefits.
<b>Summary of Benefits and Coverage (SBC)</b>	Health plans and health insurance issuers must provide an SBC to participants and beneficiaries that accurately describe the benefits and coverage provided by the plan. In the case of a self-funded plan, the plan administrator is responsible for providing the SBC. In the case of an insured plan, both the plan and the issuer are obligated to provide the SBC, though the requirement is satisfied for both parties if either one provides the SBC.	At enrollment, during open enrollment, within 90 days of a special enrollment, within 7 days of a request, and if there is a mid-year change affecting the SBC an updated SBC must be provided 60 days before the change is effective.

## Distribution

The notices above must be distributed in compliance with the Department of Labor's (DOL) requirements with the exception of the HIPAA privacy practices notice and the SBC notice to those individuals eligible for coverage but not currently enrolled.

The DOL requires that notices be provided in a manner reasonably calculated to ensure actual receipt of the material by the participant. These methods include:

- Hand-delivered to employees at their worksite (merely posting material is not acceptable).
- U.S. mail via first, second or third class only if return and forwarding postage is guaranteed and address correction is requested.
- Electronic media (in accordance with electronic distribution guidelines).

Electronic distribution of notices to active employees requires that employees have work-related computer access at any location where the employee performs his or her duties, and that they have access to the employer's electronic information system as an integral part of those duties (merely providing a computer in a common area does not satisfy this requirement). The electronic transmittal must contain a statement that the employee may request a paper copy.

Notices required to be given to employees without work-related access, former employees, spouses or dependents may be provided electronically if the individuals give written consent to receive notices in electronic format. Prior to consenting to receive electronic distribution of notices, an individual must be given a statement that clearly explains the following:

- The types of documents to which the consent applies
- That consent can be withdrawn at any time
- Procedures for withdrawing consent and updating the address used for receipt of such documents
- The right to request and obtain paper versions free of charge
- The hardware or software needed to access and retain electronically distributed documents

After the individual agrees to electronic communication, it is best practice when sending electronic disclosures to use the return-receipt feature, undelivered mail feature, or other similar methods to confirm that the materials were received.

Electronic distribution of the SBC for those eligible, but not enrolled, must be in a readily accessible format (html, MS Word, or pdf), must be provided in paper form free of charge upon request and may be provided via internet posting if the intended recipient has advance notice such as by email, letter or postcard that the SBC is available on the Internet at the given Internet address.

HIPAA has its own distribution guidelines generally requiring that notices be hand delivered, mailed, or e-mailed, if an individual agrees to electronic delivery and such agreement has not been withdrawn. If an employer receives a transmission failure on an electronic delivery, a paper notice must be provided.

*The information contained in this document is informational only and is not intended as, nor should it be construed as, legal or accounting advice. Neither HORAN nor its consultants provide legal, tax nor accounting advice of any kind. We make no legal representation nor do we take legal responsibility of any kind regarding regulatory compliance. Please consult your counsel for a definitive interpretation of current statute and regulation and their impact on you and your organization.*