

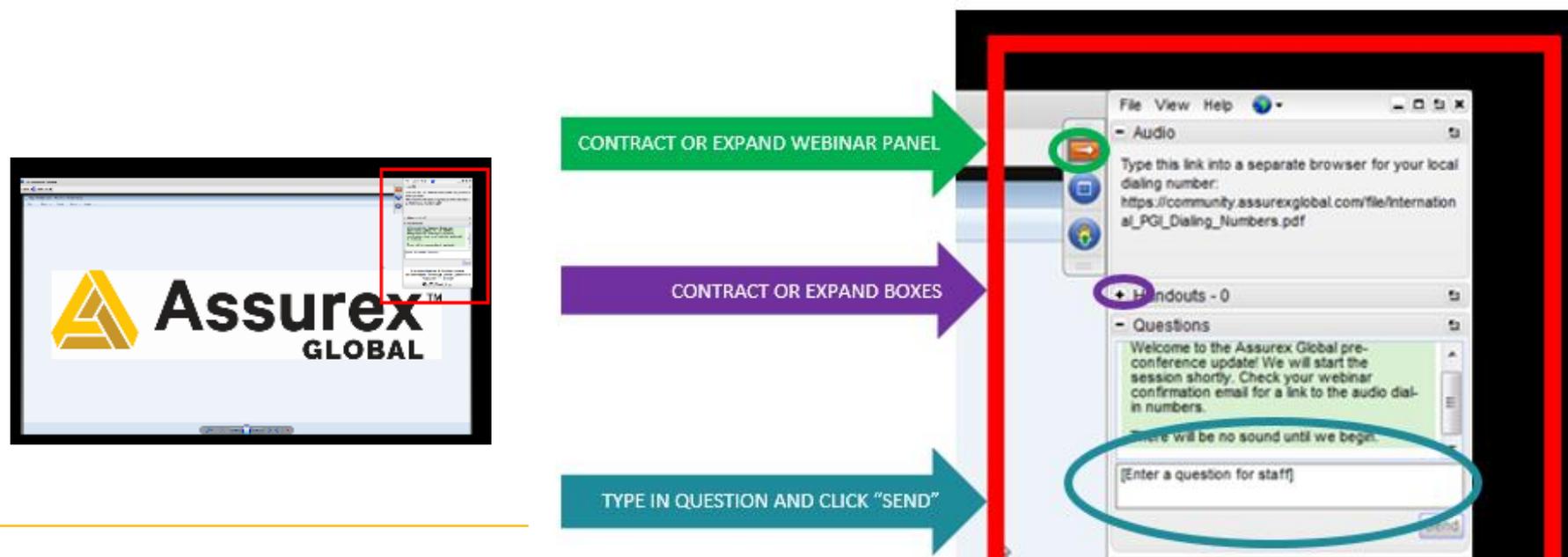
2019

How to Handle Participant Notices & Disclosures

Presented by Benefit Comply

How to Handle Participant Notices & Disclosures

- Welcome! We will begin at 3 p.m. Eastern
- There will be no sound until we begin the webinar. When we begin, you can listen to the audio portion through your computer speakers or by calling into the phone conference number provided in your confirmation email.
- You will be able to submit questions during the webinar by using the “Questions” or “Chat” box located on your webinar control panel.
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Agenda

- General Framework
- Common Questions
- Considerations for Some Common Notices/Disclosures
- Example

Some General Framework

Employers Subject to Disclosure/Reporting Requirements under Many Laws

Examples of Laws and Related Disclosure Requirements

ERISA	SARs, SPDs, SMMs, SBCs, etc.
ACA/Health Reform	Grandfathered Status, Exchange (Marketplace) Notice, 1095s, etc.
HIPAA	Notice of Privacy Practices, Special Enrollment, etc.
FMLA	Posted Notice, Eligibility Notice, etc.
COBRA	General Notice, Election Notice, Notice of Termination, etc.
Medicare	Notice of Creditable Coverage

Required Recipients Differ

Examples of Notices and Required Recipients

COBRA Election Notice	All Qualified Beneficiaries
SPD/SMM/SAR	Participants (employees and former employees, but not spouses and dependents)
HIPAA Privacy Notice	All covered individuals (but a single notice to named insured is sufficient)
HIPAA Special Enrollment Rights	All employees eligible to enroll
Medicare Part D Creditable Coverage Notice	Medicare Part D eligible individuals who are enrolled in (or seeking to enroll in) the plan
Exchange (Marketplace) Notice	All New Hires

Distribution Timing Requirements Differ

Examples of Different Timing Requirements

When newly eligible/annually	SBC, Newborns' & Mothers' Health Protection Act (NMHPA), Women's Health and Cancer Rights Act (WHCRA)
When newly eligible or upon hire (no annual requirement)	SPD, HIPAA Notice of Privacy Practices, Exchange (Marketplace) notice
Annually (not upon hire or when newly eligible)	CHIP Notice, Form 1095s, SARs

Common Questions about Notices/Disclosures

Some Common Questions – Combining Notices

- Can I just combine all my notices into a single packet?
 - This may work for many of the disclosure requirements, but pay attention to:
 - Different timing requirements
 - Different recipients
 - Certain notices must be noticeable if included with other materials. For example:
 - CHIP Notice: must appear separately and in a manner that ensures that an employee who may be eligible for premium assistance would appreciate its significance
 - Medicare Part D Creditable Coverage Notice: must be “prominent and conspicuous”
 - CMS has clarified that the notice must be “prominently referenced” in at least 14-point font in a separate box, bolded or offset on the first page of the other information that is being provided
 - Example from CMS guidance:

If you (and/or your dependents) have Medicare or will become eligible for Medicare in the next 12 months, a Federal law gives you more choices about your prescription drug coverage. Please see page xx for more details.

Some Common Questions – What to include in SPD?

- Which Notices/Disclosures should be included in the SPD?
 - DOL SPD regulations require specific disclosure of certain mandates
 - Some disclosures will need to be included under these requirements
 - E.g., Newborns' and Mothers' Health Protection Act (NMHPA); Claims procedures; disclosures regarding COBRA and continuation rights; QMCSO procedures
 - ERISA generally requires SPD disclosures about benefits and loss of benefits
 - Many federal mandates should be addressed in the SPD under this general requirement
 - E.g., Women's Health and Cancer Right Act (WHCRA); Michelle's Law; Mental Health Parity Act (MHPA); USERRA rights
 - Some notices can be included in SPD but may be subject to different delivery/timing requirements
 - E.g., HIPAA Notice of Privacy Practices

Some Common Questions – Electronic Disclosure

- Can I send all the required notices/disclosures electronically?
 - Different rules apply to different notices
 - Many required notices under ERISA may be sent electronically if the requirements of the DOL electronic distribution safe harbor are met
 - DOL safe harbor generally permits electronic distribution if the employee:
 - Has access to a computer at their regular workplace (Workplace Access Safe Harbor); or
 - Affirmatively consents to electronic delivery (Affirmative Consent Safe Harbor).
 - If relying on the DOL electronic disclosure safe harbor...
 - Each participant must be notified, electronically or otherwise, of:
 - The documents being distributed electronically;
 - The significance of the documents; and
 - The right to request a paper copy from the plan administrator.
 - The plan administrator must take “Appropriate and necessary measures reasonably calculated” to confirm receipt of the electronic documents

Some Common Questions – Electronic Disclosure (Cont.)

- Other notices have specific electronic distribution requirements
 - **SBC**
 - May be distributed electronically as long as a paper copy is available upon request and the following criteria are met:
 - Covered participants who enroll online may receive the SBC electronically with their enrollment
 - Covered participants who don't enroll online may receive the SBC electronically if the DOL safe harbor is met
 - Eligible (but not enrolled) individuals may receive notification by email that the SBC is available on the internet
 - **HIPAA Notice of Privacy Practices**
 - May be delivered by email if the individual consents to electronic delivery
 - If plan sponsor has reason to believe email transmission has failed, must provide paper copy
 - Not clear whether relying on DOL safe harbor is sufficient
 - **Form 1095**
 - May be provided electronically if employer obtains consent

Some Common Questions – Employer Size/Funding

- Are the requirements different for small/large employers? What about for fully-insured/self-insured benefits?
 - In general, participant notice and disclosure requirements apply regardless of employer size or funding arrangement.
 - There may be differences in a law's applicability depending on these elements
 - Certain small employers not subject to COBRA or FMLA
 - Different reporting requirements under Sections 6055/6056 depending on employer size/funding
 - Employers who self-administer benefit plans with fewer than 50 participants not subject to HIPAA Privacy and Security requirements

Some Common Questions – Different Benefits

- Are the notices required regardless of which types of benefits are offered?
 - Many of the notices apply specifically to group medical plans (e.g. Medicare creditable coverage notice, WHCRA, NMHPA, HIPAA special enrollment)
 - However, several apply beyond just the group medical plan (e.g. COBRA notices, FMLA notices, SPD, HIPAA Notice of Privacy Practices)

Some Common Questions – Model Notices

- Are there always model notices? And are we required to use model notices exactly as drafted?
 - Model notices are often made available, but this isn't always the case – e.g., there are no model SPDs
 - When model notices are made available, it is not necessary to use them exactly as drafted. They are just a guide. However, it's important to make sure that all required statutory elements are included in whatever version the employer uses.

Some Common Questions – Upcoming Changes

- Are there any significant changes to model or required notices for 2020?
 - No significant changes we're currently aware of

Considerations for Some Common Notices

Part D Creditable Coverage Disclosure

- Who is subject to the requirement?
 - Employers that sponsor prescription drug plans
- Who must receive the notice?
 - Medicare Part D eligible individuals who are enrolled in (or seeking to enroll in) the plan
- When must the notice be provided?
 - Prior to commencement of the annual enrollment period for Part D (October 15);
 - Prior to an individual's initial Part D enrollment period (IEP);
 - Prior to the effective date of coverage;
 - Whenever coverage changes between creditable and non-creditable or coverage is no longer offered; and
 - Upon request.
- Can be included with other materials?
 - Yes, as long as notice is “prominent and conspicuous” according to CMS’ guidelines
- Can be sent electronically?
 - Yes, but CMS prefers paper delivery

Summary of Benefits and Coverage (SBC)

- Who is subject to the requirement?
 - All group health plans (but not excepted benefits or retiree-only plans)
- Who must receive the notice?
 - All eligible individuals, including employees and former employees, along with spouses and dependents one notice is adequate unless there is reason to know they reside at different addresses
- When must the notice be provided?
 - Upon initial enrollment;
 - Upon annual enrollment;
 - Upon special enrollment; and
 - Upon request.
- Can be included with other materials?
 - Yes, but note SBC-specific electronic delivery requirements
- Can be sent electronically?
 - Yes, if SBC-specific electronic delivery criteria met

Exchange (Marketplace) Notice

- Who is subject to the requirement?
 - All employers subject to the Fair Labor Standards Act (FLSA)
- Who must receive the notice?
 - All new hires
- When must the notice be provided?
 - Within 14 days of hire
 - No annual requirement
- Can be included with other materials?
 - Yes, but note that notice must be distributed to ALL new hires (not just those eligible for benefits)
- Can be sent electronically?
 - Yes, if DOL electronic delivery safe harbor met

Women's Health and Cancer Rights Act (WHCRA)

- Who is subject to the requirement?
 - Group health plans that provide mastectomy benefits
- Who must receive the notice?
 - All participants (employees and former employees), as well as their spouses and dependents
- When must the notice be provided?
 - Two notice requirements:
 - First notice: Upon enrollment
 - Second notice: On an annual basis
- Can be distributed with other materials?
 - Yes, AND should be included in the SPD
- Can be delivered electronically?
 - Yes, if DOL electronic delivery safe harbor met

HIPAA Notice of Special Enrollment Rights

- Who is subject to the requirement?
 - Group health plans subject to HIPAA portability requirements
- Who must receive the notice?
 - All eligible employees
- When must the notice be provided?
 - At or before the employee is eligible to enroll in group health plan
- Can be distributed with other materials?
 - Yes
 - (Information about special enrollment rights should also be included in SPD)
- Can be delivered electronically?
 - Yes, if DOL electronic delivery safe harbor met

COBRA Initial (General) Election Notice

- Who is subject to the requirement?
 - Group health plans subject to COBRA
- Who must receive the notice?
 - Participants and covered spouses (one notice addressed to both is adequate unless employer has reason to believe they reside at different addresses)
- When must the notice be provided?
 - Within 90 days of the effective date of coverage
- Can be distributed with other materials?
- Can be delivered electronically?
 - Yes, if requirements of DOL electronic delivery safe harbor met
 - May be difficult to meet for individuals (e.g. spouses) without work-related access

Example

Annual Notice Packet

- Notices Included:
 - CHIP
 - COBRA Initial
 - FMLA General
 - Medicare Part D Creditable Coverage
 - Newborn and Mother's Health Protection Act
 - Women's Health and Cancer Rights Act
 - Notice of Privacy Practices
- Considerations:
 - When will the packet be distributed? Will any of the included notices need to be distributed again?
 - How will the packet be distributed? Does the distribution method result in a successful disclosure for every notice included?
 - Who will receive the packet? Are spouses and dependents included in the distribution?

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