



# Plan for a Successful Open Enrollment with Strategic, Compliant Communications

July 18, 2019

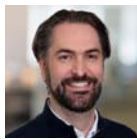
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## Presenters



**Kenneth Powell, J.D.**  
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**EPIC Insurance Brokers & Consultants**

Ken provides guidance on employee benefits issues, including those arising from merger and acquisition transactions. With over 12 years of industry experience, Ken supports EPIC clients and employee benefit consulting teams by reviewing plan documents, contracts, and merger and acquisition agreements. In addition, Ken speaks publicly on compliance topics, conducts employee training, and publishes advisories and white papers.



**Bob Simpson**  
**Director, Communications & Engagement**  
**EPIC Insurance Brokers & Consultants**

Bob oversees the operations of EPIC's Communications & Engagement practice and is responsible for the delivery of creative, innovative solutions for EPIC's clients. His creative experience includes solutions incorporating video design and production, web and app-based platforms, digital conversion of traditionally printed materials, survey and focus group studies and the use of metric-based reporting to provide clients with real-time results from communication campaigns.



**Leigh Jose**  
**Senior Consultant, Communications & Engagement**  
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As part of EPIC's Communications & Engagement team, Leigh creates and manages impactful, multi-channel campaigns for mid- and large-market employers. She helps clients pinpoint benefits/HR communication goals and develops strategies to best reach workforces based on key demographics.

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## Agenda

### TODAY, YOU'LL LEARN MORE ABOUT:

- What Is Open Enrollment?: The Basics
- Department of Labor (DOL) Electronic Distribution Rules
- Effective Open Enrollment Communications
- Using Enrollment Materials as Summary of Material Modifications (SMM)
- Optional Recommended Disclosures
- Required Health Plan Notices
- Q + A

## WHAT IS OPEN ENROLLMENT? The Basics

## What is Open Enrollment?

- A period each year when employees and other eligible individuals can elect employer-provided health coverage and benefits (e.g., flexible spending accounts, life insurance, 401(k), etc.)
- Precedes effective date of relevant coverage being elected, which generally starts on first day of ERISA plan year (or renewal date, for non-ERISA plans)
- Elections for health and welfare benefits are generally irrevocable (i.e., cannot be changed) during plan year unless certain status changes occur (e.g., new child, marriage, etc.)
  - Code section 125 (cafeteria plan) rules govern pre-tax benefits; elections must generally be prospective and in force for full plan year

## Is Open Enrollment Required?

- ERISA generally does NOT require enrollment periods for health and welfare plans.
- Employer decides whether to offer annual or periodic enrollment periods.
- Most employers offer annual open enrollment because:
  - Coverages and contributions tend to change each plan or renewal year
  - Provides employees a chance to review upcoming coverage options and to add, change or drop coverage
  - Offers a chance to encourage enrollment in new benefits plan options
  - FSA elections often adjusted based on changes in personal circumstances (e.g. day care for new child, projected known out-of-pocket health expenses)
  - Can convey information about company's financial and time investment in employee's well-being, reinforce retention, etc.
  - Helps reinforce company branding and increase workforce engagement
  - May be a convenient and timely avenue to distribute certain required notices

## Is Open Enrollment Required?

- Insurance carriers may require potential enrollees to submit health information, such as Evidence of Insurability (EOI), to determine whether to offer coverage (e.g., supplemental life, long-term disability)
- Some health insurers or HMOs may require enrollees to sign arbitration language for coverage to be accepted
- Important to follow carrier enrollment requirements to ensure coverage is not denied later

## What Information is Required?

- There are NO specific content requirements for OE materials
- Should provide the information enrollees need to make fully informed election choices
  - ERISA fiduciary duty
- Communicate plan information in clear and concise manner that is appropriate for the workforce
  - Non-English OE materials may be needed
- If employers intend OE materials to serve as Summary of Material Modifications (SMM) – a method of modifying the employer’s SPDs – they must draft information in a “manner that is understandable for the average participant.” We recommend a statement indicating that OE material constitutes an SMM.

## DOL ELECTRONIC DISTRIBUTION RULES

## DOL Electronic Distribution Rules

- Must use methods “reasonably calculated to ensure actual receipt”
- In-person delivery
- Mail delivery
  - First class mail
- Electronic delivery
  - Safe harbor rules apply

## DOL Electronic Distribution Rules

The rules for electronically distributing most federal health plan notices and disclosures are covered under the DOL safe harbor. Plan sponsors/employers may meet their notice and disclosure responsibilities by distributing materials electronically (e.g., email, intranet, disk) as long as the delivery method meets the DOL safe harbor.

The DOL safe harbor applies to most health plan notices (e.g., Marketplace Coverage notice, SPDs, SARs, and more) and is summarized below.

### 1. *Employees with Access to Information System as Part of their Job Duties*

For employees with regular access to electronic media (e.g., email) at work, as part of their job duties:

- Notify employee of the significance of the material and that paper copy is available on request
- Take steps to ensure actual receipt of the above notice (e.g., return-receipt requested emails)

Notification using this method is commonly done by email with a link to the materials on the benefits website/webpage. Note, "regular access" means that accessing the site or email is integral to employee's job duties.

## DOL Electronic Distribution Rules

### 2. *Employees without Access to Information System as Part of their Job Duties*

For employees or other plan participants (e.g., employees on leaves of absence, COBRA beneficiaries, retirees) without regular access to electronic media, the employer first must obtain the participant's consent to receive materials electronically. To do so, inform the individual of the following via electronic media:

- Describe the type and significance of the material to be disclosed
- Describe the individual's right to consent to electronic delivery (and right to withhold or withdraw consent) and the individual's right to request a paper copy free of charge
- Obtain advance electronic consent from each individual to receive materials electronically (electronic consent is not required for disks, flash drives, etc. – hard copy consent is permitted.)
- Communicate software and hardware requirements and any changes in such requirements in the future

Since the "inform and obtain consent" rules are cumbersome for those without access to the employer's email as integral part of their work, and consent may be difficult to achieve and track, most employers choose to provide paper notices and disclosures using "in-hand" or mail delivery. It is not sufficient merely to post materials on a website without proactively notifying employees as detailed above.

## Sample Email Message for Electronic Distribution

*“This is to advise you that the company’s annual health plan notices for 2018 are available at [www.fantasticbenefits.com](http://www.fantasticbenefits.com).*

*These notices provide important information about the company’s health benefits. Please share these notices with your family members. If you have any questions or if you would like a hard copy of the notices, please contact the Benefits Team at xxx-xxx-xxx.”*

## SBC Distribution Rules

SBCs may be provided in either paper or electronic form. The rules for electronic distribution differ slightly from the DOL distribution rules.

- For enrolled participants, SBCs may be provided electronically if they satisfy the DOL safe harbor rules currently in place for SPDs, SMMs and other health plan notices.
- For eligible participants who are not enrolled, it is sufficient to post the SBCs online provided that the participant receives an e-card or postcard explaining availability of the SBCs and the electronic address where the SBCs reside. Federal rules offer sample language (shown below) to notify participants about online SBCs, although plans have flexibility to tailor the text.

### ***“Availability of Summary Health Information***

*As an employee, the health benefits available to you represent a significant component of your compensation package. They also provide important protection for you and your family in the case of illness or injury. Your plan offers a series of health coverage options. Choosing a health coverage option is an important decision. To help you make an informed choice, your plan makes available a Summary of Benefits and Coverage (SBC), which summarizes important information about any health coverage option in a standard format, to help you compare options. The SBC is available on the web at: [www.website.com/SBC](http://www.website.com/SBC). A paper copy is also available, free of charge, by calling 1-XXX-XXX-XXXX (a toll-free number).”*

## EPIC Webinar on DOL Distribution Rules

EPIC Compliance Webinar:

[Special Delivery: Participant Disclosures and the U.S. Department of Labor Electronic Distribution Rules – May 2018](#)

Available on [www.epicbrokers.com](http://www.epicbrokers.com) → KNOWLEDGE CENTER → EMPLOYEE BENEFITS → WEBINARS & SEMINARS

## EFFECTIVE OPEN ENROLLMENT COMMUNICATIONS



## Common Communication Challenges

“We don’t have an **internal brand** that matches our external brand.

We need to **attract specialized talent** in our highly competitive space.

I hear that **employees are leaving** for better opportunities elsewhere.

“We need to share the full picture of our **employee value proposition**.

Employees don’t **appreciate the full value of the programs** and benefits we offer.

We want to do a **total compensation summary**, but we just can’t seem to get to it.

“I don’t **know where to go for information** about my prescription drug coverage.

I don’t **understand** my health care options or how the HSA works.

I’m **too busy to read** all the material from HR to learn about our benefits.



ORGANIZATION



HR




EMPLOYEE

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## One Workforce, Various Considerations

### FOUR GENERATIONS IN THE WORKPLACE



### ★ UNIQUE LIFE EVENTS FOR EACH GROUP IN THE NEAR FUTURE

- Targeted communication by life stage and/or family status
- Spouses (especially in male-dominated industries) often make health decisions

### WIDE RANGE OF COMMUNICATION METHOD PREFERENCES

More “**TRADITIONAL**,” printed communications for older workers

VS

Electronic, “**MOBILE FIRST**” for younger groups

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## Focus the Message

Pay attention

Understand and remember the idea

Agree or believe in the idea

Care

Act

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## Digital Solutions

eCards

Text messages

Microsites

Email

eMags

Videos

DIGITAL

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## Benefits of Digital Components

The diagram consists of four hexagons arranged in a diamond shape. The top hexagon is green and contains the text "Rapid response to changes". The right hexagon is grey and contains "Flexibility of design". The bottom hexagon is red and contains "Analytics and tracking". The left hexagon is blue and contains "Potentially lower production costs".

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## Making a Game Plan

- 1 ESTABLISH ENROLLMENT GOALS**  
What are the top three goals you want to accomplish with your communications?
- 2 THINK LIKE YOUR WORKFORCE**  
What would be the best way to communicate with employees in the office, in the factory or on the road?
- 3 DON'T FORGET THOSE AT HOME**  
Spouses/partners and other dependents might be the main decision makers.

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# Importance of Branding

### CONSUMER-DRIVEN HEALTH PLAN (CDHP) FAQ

**What is a CDHP?**  
A CDHP is a health insurance plan that allows you to pay out-of-pocket for qualified medical expenses up to a certain limit. The amount you pay is tax-deductible. CDHPs are designed to give you more control over your health care costs.

**How do I enroll in a CDHP from the EPIC and EPIC?**  
You can enroll in a CDHP through the EPIC website or by calling 1-800-444-4444. Enrollment is available from October 29 to November 16, 2018.

**What is a Health Savings Account (HSA)?**  
An HSA is a tax-advantaged account that you can use to pay for qualified medical expenses. Contributions are tax-deductible, and the account grows tax-free. You can use the funds for qualified medical expenses at any time.

**HELPFUL TERMS**

**ENROLLMENT PERIOD**  
The period during which you can enroll in a health plan. For the 2019 plan year, enrollment is open from October 29 to November 16, 2018.

**WHAT IS ELIGIBLE FOR THE CDHP PLAN?**  
You must be an active employee of the University of California, San Diego, and you must not be enrolled in any other health plan.

### COMING SOON OPEN ENROLLMENT FOR BENEFITS

**OS**

**EPIC**

**ENROLLMENT PERIOD**  
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- 13. Payroll Deductions
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### SPENDING ACCOUNTS

**Flex Accounts (FSA)**

**Health Savings Account (HSA)**

**Dependent Care FSA**

**Life Insurance**

**Disability Insurance**

**Other Voluntary Benefits**

**Payroll Deductions**

**Key Dates**

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# USING ENROLLMENT MATERIALS AS A SUMMARY OF MATERIAL MODIFICATIONS (SMM)

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## Using Enrollment Materials as SMM

- ERISA-covered plans must provide SPDs to participants, to describe plan benefits, rights and obligations
- Summary of Material Modification (SMM) – an alternative to updating the SPD – required when the information that must be in an SPD (e.g., benefits, eligibility provisions, cost changes, etc.) is modified
- Can use enrollment materials as an SMM
  - Provide enrollment materials/SMM with SPD, and retain it with plan records
- Can use SMM approach to update SPD for up to five years

## Using Enrollment Materials as a SMM

Document	Type of Information	To Whom	When/How
<b>Summary of Material Modification (SMM)</b>	Describes material modifications to a plan and changes in the information required to be in the SPD, as alternative to updating full SPD.  <i>OE material can be used to communicate the changes (optional). Statement that material is SMM recommended.</i>	Plan participants.	Automatically to participants. Within 210 days after the end of the plan year in which the change is adopted.  Recommended at OE by first-class mail, in-person delivery or electronically.
<b>Summary of Material Reduction (SMR) in Health Plan Services or Benefits</b>	Summary of group health plan amendments and changes in information required to be in SPD that constitute a “material reduction in covered services or benefits,” as alternative to updating full SPD.  <i>OE material can be used to communicate the changes (optional). Statement that material is SMR recommended.</i>	Plan participants.	Generally within 60 days of adoption of material reduction in group health plan services or benefits.  Recommended at OE by first-class mail, in-person delivery or electronically.

## Sample SMM Language for Enrollment Materials

*“This enrollment guide summarizes the changes that have been made to the ABC Company Health and Welfare Plan (the “Plan”). In accordance with the Employee Retirement Income Security Act (ERISA), this notice constitutes the Summary of Material Modifications (SMM) for the Plan. You should review this information carefully and share it with your covered dependents. Keep this information with your Summary Plan Description (SPD) for future reference. This SMM is effective January 1, 20XX.*

*This SMM describes the changes to the Plan in general terms. The specific terms and conditions of these plans are set forth in, and governed by, legal plan documents, insurance contracts, service agreements, and HMO agreements. In the event of a conflict between this SMM and the terms of those documents, contracts, and agreements; the documents, contracts, and agreements will at all times govern plan operation and payment of all plan benefits. In the event of an ambiguity in this SMM, the terms of the official plan documents will govern.”*

## OPTIONAL DISCLOSURES – RECOMMENDED

## Optional Disclosures – Recommended

- Elections are in force for the full plan year unless status change occurs during the year (e.g., birth, marriage) and employee submits election change request within certain number of days
- When coverage is effective (e.g., January 1 for calendar year plan; first of the month following waiting period for mid-year enrollment [but be sure to comply with ACA maximum waiting period limits] on date of birth, etc.)
- Tax consequences for non-tax dependents' benefits (e.g., domestic partners)
- Whether benefits are paid after-tax or pre-tax and; if employee can choose, instructions for making selection
- Instructions to sign arbitration agreement on enrollment form, if carrier(s) require
- Flexible Spending Account (FSA) benefits, tax savings, savings calculator, FSA "use or lose" rule, etc.
- Opt-out provisions for waiving coverage (must also include in cafeteria plan document)
- High-deductible health plan (HDHP) and Health Savings Account (HSA) explanation and rules (if applicable)

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## Optional Disclosures – Recommended

- Health Savings Accounts (HSAs)
  - Ensure HSA participants are enrolled in employer's HDHP
  - Ensure HSA participants are not enrolled in or receiving disqualifying health coverage (e.g., non-HDHP, Medicare, full-purpose Health Flexible Spending Account, comprehensive on-site clinic, telehealth)
  - Verify employee age, if making HSA catch-up contributions
  - Ensure that HSA contributions do not exceed applicable IRS maximum
  - Make sure systems are set up to catch HSA enrollment issues and correctly apply state taxes on HSA contributions (certain states)
- Advise that HSA contributions and distributions may be subject to state taxes
- Note availability of HSA funds for children's expenses – eligible to age 18 (age 24 if full-time students), or can be claimed as tax dependent (different than health benefits)
- Refer to HSA vendor and IRS publications for important information and guidance

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## Optional Disclosures – Recommended

- Enrollment of ineligible persons may result in disciplinary action including termination of employment
  - If planning to conduct an eligibility audit, advise enrollees at OE before they enroll an ineligible person
- Duty to inform employer of any loss of eligibility within required timeframe and by what method (e.g., online, in writing, etc.)
- Reminder to update personal information with HR
- Legal provisions (e.g., offer of benefits is not a guarantee of employment)
- Carrier and other vendor contact information
- How to obtain a copy of the SPDs and SBCs and other materials that describe benefit details
- SMM statement

## REQUIRED HEALTH PLAN NOTICES



## Required/Recommended Health Plan Notices

- Certain laws require health plans and their sponsors to provide specific notices to enrollees
- Employers also must provide certain health program notices to all employees, regardless of eligibility
- Most employers provide these required notices during OE or onboarding of new employees
- Notice timing requirements vary, depending on OE dates, so employers may need to provide some notices at other times
- Employers must provide some notices separately
- Recommended practice: *keep notices separate from OE material*

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## Required/Recommended Health Plan Notices

Document	Type of Information	To Whom	When/How
<p><b>Summary of Benefits and Coverage (SBC)</b></p> <p>Regulations, templates and instructions available <a href="#">here</a>.</p>	<p>All group health plans (other than certain “excepted benefits” such as stand-alone dental and vision plans).</p> <p>Plans must use standardized format prescribed by regulation.</p> <p>Insurers are required to prepare SBCs for their plans. Third party administrators typically provide for the plans they administer.</p>	<p>Plan participants.</p>	<p>Employer must distribute SBC to plan participants:</p> <ul style="list-style-type: none"> <li>▪ at enrollment;</li> <li>▪ within 90 days of enrollment due to a HIPAA special enrollment event; and</li> <li>▪ within seven (7) days of participant’s request.</li> </ul> <p>60-day advance notice of certain changes is also required.</p> <p>Do not combine with other notices.</p> <p>Provide by first-class mail, in-person delivery, or electronically</p>

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## Required/Recommended Health Plan Notices

Document	Type of Information	To Whom	When/How
<p><b>Employer Notice of Health Insurance Marketplace Coverage Options (“Exchange Notices”)</b></p> <p><a href="#">Model Notices &amp; FAQs</a></p>	<p>Notice regarding the availability of Marketplace coverage. Two versions: one for employers who do not offer a health plan and one for those that offer a health plan to some or all employees. May use DOL model notices or modified versions, provided the notice meets certain content requirements.</p>	<p>All employees, including those not eligible for benefits.</p>	<p>Provide to new hires within 14 days of hire. <b>Not</b> required annually.</p> <p>Provide to new employee as separate document.</p> <p>Do not combine with other health plan notices.</p> <p>Provide by first-class mail, in-person delivery or electronically.</p>

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## Required/Recommended Health Plan Notices

Document	Type of Information	To Whom	When/How
<p><b>Patient Protection Notice (aka Physician’s Designation Notice)</b></p> <p><a href="#">Patient Protection Model Notice</a></p>	<p>Notice that provides rules regarding access to and designation of certain providers (e.g. Primary Care Providers, OB/GYNs, pediatric). Non-grandfathered plans only.</p>	<p>Plan participants.</p>	<p>Notice must be furnished upon enrollment.</p> <p>Provide by first-class mail, in-person delivery, or electronically.</p>
<p><b>Notice of Grandfathered Health Plan</b></p> <p><a href="#">Grandfathered Health Plan Model Notice</a></p>	<p>Notice that a plan is “grandfathered” and not required to meet certain ACA standards.</p>	<p>Employees eligible to enroll in the plan.</p>	<p>Include with plan material describing benefits (enrollment material, SPD).</p> <p>Recommended at OE.</p> <p>Provide by first-class mail, in-person delivery, or electronically.</p>

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### Required/Recommended Health Plan Notices

Document	Type of Information	To Whom	When/How
<p><b>Notice of Special Enrollment Rights</b></p> <p><a href="#">Special Enrollment Rights Notice</a></p>	<p>Notice that describes the group health plan's special enrollment rules regarding the right to enroll mid-year after loss of other coverage, marriage, birth of a child, adoption, or placement for adoption. Must provide opportunity to enroll if requested within at least 30 days from date of event.</p> <p>Include information about 60-day special enrollment opportunity due to eligibility - or loss of eligibility - for Children's Health Insurance Program (CHIP) or Medicaid coverage.</p>	<p>Employees eligible to enroll in a group health plan.</p>	<p>At or before the time an employee is initially offered the opportunity to enroll in the group health plan.</p> <p>Recommended at OE.</p> <p>Provide by first-class mail, in-person delivery, or electronically.</p>

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### Required/Recommended Health Plan Notices

Document	Type of Information	To Whom	When/How
<p><b>Notice of Creditable (or Non-Creditable) Prescription Drug Coverage</b></p> <p><b>"Medicare Part D Notice"</b></p> <p><a href="#">Creditable &amp; Non-Creditable Coverage Model Notices</a></p>	<p>Notice that explains whether a plan's prescription drug coverage is "creditable" or "non-creditable" (comparable or not) to Medicare Part D prescription drug coverage.</p>	<p>Plan participants that may be Medicare-eligible, including dependents. Provide to all potential health plan enrollees.</p>	<p>Annually before October 15 (start of Medicare OE).</p> <p>Also required when (a) participant becomes Medicare-eligible and/or (b) plan's prescription drug status changes.</p> <p>If included with other health plan notices or other information, place on first page or provide specific language on first page directing reader to notice location.</p> <p>Recommended at OE if occurs before October 15.</p> <p>Provide by first-class mail, in-person delivery, or electronically.</p>

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## Required/Recommended Health Plan Notices

Document	Type of Information	To Whom	When/How
<p><b>Notice of HIPAA Privacy Practices (self-funded health plans)</b></p> <p><a href="#">Model Notice of Privacy Practices</a></p>	<p>Notice describing the plan's self-funded health plan policies and procedures regarding protected health information (PHI), including uses and disclosures of PHI, plan sponsor obligations, individual rights, privacy officer, etc.)</p> <p>Plan sponsor provides for its <i>self-funded health plans</i> (including health FSA). Insurers provide for insured health plans.</p>	<p>Plan participants.</p>	<p>Upon enrollment in the health plan and thereafter, a notice of its availability (or the notice itself) must be provided every three years. Must redistribute within 60 days of a material revision to the plan's privacy practices.</p> <p>Recommend including full notice in enrollment materials.</p> <p>Provide by first-class mail, in-person delivery, or electronically.</p>

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## Required/Recommended Health Plan Notices

Document	Type of Information	To Whom	When/How
<p><b>Employer Children's Health Insurance Program (CHIP) Notice</b></p> <p><a href="#">CHIP Model Notice</a></p>	<p>Notice to all employees explaining that premium assistance may be available under Medicaid program or CHIP.</p>	<p>All employees who reside in any state offering premium assistance for Medicaid and/or CHIP. Not required in all states (check current model notice for listed states).</p>	<p>Distribute the notice at least annually before start of each plan year. <u>Must be a separate document but can be provided with enrollment materials.</u></p> <p>Recommended at OE. Provide by first-class mail, in-person delivery, or electronically.</p>
<p><b>Women's Health and Cancer Rights Act (WHCRA) Notice</b></p> <p><a href="#">WHCRA Model Notice</a></p>	<p>Notice describing required benefits for mastectomy-related reconstructive surgery, prostheses, and treatment of physical complications of mastectomy.</p>	<p>Plan participants.</p>	<p>Notice must be furnished upon enrollment and annually. Recommended at OE to satisfy both requirements. Provide by first-class mail, in-person delivery, or electronically.</p>
<p><b>Newborns' and Mothers' Health Protection Act Notice</b></p> <p><a href="#">Newborns' Act Model Notice</a></p>	<p>Notice regarding minimum maternity and newborn hospital stays.</p>	<p>Plan participants.</p>	<p>Notice recommended at enrollment (but not required).</p> <p>Provide by first-class mail, in-person delivery, or electronically.</p>

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## Required/Recommended Health Plan Notices

Document	Type of Information	To Whom	When/How
<b>Wellness Program Notice of Reasonable Alternative Standards</b>  <a href="#">Prohibiting Discrimination Against Participants Information</a>	Notice describing availability of alternative standards for employees for whom it is unreasonably difficult or inadvisable to meet the program's standard.	Wellness program participants, if program is a health-contingent wellness program (i.e., provides incentives for employee participation in certain activities such as biometric screening or meeting certain health standards such as BMI).	Provide in materials describing program incentives and standards. Wellness programs maintained by vendors should include this notice in materials provided to employees.
<b>Wellness Program Notice</b>  <a href="#">Wellness Notice</a>	Notice describing the medical information a wellness program will collect and how it will be used and protected from disclosure.	Wellness program participants.	Furnish before employees provide any health information. Provide with enough time to decide whether to participate in the program. Provide in any format that will be effective in reaching employees being offered an opportunity to participate in the wellness program. May provide with enrollment materials/notices.

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# QUESTIONS?

THANK YOU FOR ATTENDING!

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