GBS Health Benefits Compliance

Answers to Frequently Asked Questions about Summary Plan Descriptions (SPDs)

One of the most important documents participants must automatically receive when becoming covered under a health benefit plan that is subject to the federal Employee Retirement Income Security Act (ERISA) is a summary of the plan, called the Summary Plan Description or SPD. Many employers are confused about this very important ERISA-required disclosure, which can put them at risk.

Key Points

- The SPD informs participants about their rights and benefits under the plan.
- The SPD must be written in a manner calculated to be understood by the average plan participant and must include certain types of information, such as the plan's eligibility rules for benefits.
- Plan changes must be communicated to participants, either through an updated SPD or Summary of Material Modifications (SMM).

There are serious legal consequences associated with not complying with ERISA's requirements for SPDs. For example, a plan sponsor can be charged up to $110 per day if it does not provide the SPD within 30 days after a participant's request.

This Compliance Overview includes questions and answers on the most common misunderstandings related to complying with the SPD requirement and outlines how employers can avoid costly penalties and various legal risks.

Delivery Requirements

- An SPD must be provided to new participants automatically (within 90 days).
- The SPD must also be provided within 30 days of a participant's request.
- Common distribution methods include hand delivery, mail and electronic delivery.
- Federal regulations include a safe harbor for the electronic delivery of SPDs.

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1 Isn't the information distributed by carriers considered an SPD?

ERISA requires plan administrators (typically the employer that sponsors the group health plan) to maintain and distribute SPDs that accurately reflect the contents of the plan and that include specific information required under federal law—**much of which is typically missing from the benefit summaries and insurance certificates distributed by insurance companies**.

While carriers do provide plan information, they typically will not provide all of the required provisions that must be included in an SPD. Thus, an employer/plan administrator will not be compliant with SPD requirements and may face the risk of penalties and other complications if participants only receive a benefits booklet/summary or certificate of insurance.

2 Can the SPD just be made available upon request?

The SPD is required to be distributed to all participants in a manner reasonably calculated to ensure actual receipt. The following are examples of acceptable methods of delivery:

- Hand delivery to employees at their worksites (merely posting information in a common area is not acceptable);
- Inclusion within a periodical distributed to employees (for example, a union newsletter or company publication);
- U.S. mail; or
- Electronic media (for example, by email or intranet), if it is reasonably expected that eligible employees will receive it and if certain DOL electronic delivery requirements are satisfied.

Electronic Disclosure Guidelines

As a general rule, materials required to be furnished under ERISA may be provided electronically if the plan administrator takes necessary measures reasonably calculated to ensure that the system for furnishing documents results in receipt of the material. **Ways to ensure receipt of an SPD include using return receipts or notice of undelivered email features or conducting periodic reviews or surveys to confirm receipt.** In addition, in order to provide materials electronically:

- The administrator must take steps reasonably calculated to ensure that the system protects the confidentiality of personal information relating to the individual's accounts and benefits;
- The electronically delivered documents must be prepared and furnished in a manner consistent with the style, format and content requirements applicable to the particular document;
- Notice must be provided to each participant, beneficiary or other individual, at the time the document is electronically furnished, that informs the individual of the significance of the document when it is not otherwise reasonably evident as transmitted (e.g., the attached document describes changes in the benefits provided by your plan) and of the right to request and obtain a paper version of such document; and
- The participant, beneficiary or other individual must be furnished a paper version of the electronically furnished documents upon request.

With limited exceptions, affirmative consent to receive documents through electronic media must also be obtained. More information on this requirement, as well as information regarding the distribution of SPDs in general, can be found in DOL Reg. §2520.104b.

3 My company has never distributed an SPD, so why now?

Every employer that sponsors a group health plan must comply with this ERISA requirement, or the employer runs the risk of exposure to a number of serious problems, including:

- Failing a DOL audit, which is happening with greater frequency to companies of all sizes; and
- Penalties of up to $110/day per participant or beneficiary for failing to provide an SPD or plan document within 30 days of receiving a request.

Perhaps most importantly, distributing SPDs to plan participants will protect against disgruntled employees if issues regarding benefit plan coverage arise.

4 Isn't the SPD the same as a Plan Document?

In addition to an SPD, all ERISA-covered benefit plans (including group health plans and other welfare plans) must, by law, be administered in accordance with a **written Plan Document**. ERISA, as amended by the Health Insurance Portability and Accountability Act (HIPAA) and other federal laws, requires the Plan Document to contain certain specified provisions. Many employers assume that insurance contracts for fully insured products are written Plan Documents. **Insurance companies, however, draft their contracts to comply with state insurance laws and as a result, the contracts do not contain many of the required or recommended provisions that protect the plan, the employer and plan fiduciaries.** The Plan Document does not have to be distributed automatically—rather, it must be kept on file with the employer/plan administrator should a participant or beneficiary request it.

5 Will employers be compliant if they distribute Wrap SPDs to plan participants?

Not necessarily. A Wrap SPD is designed to incorporate or "wrap around" existing certificates of insurance and benefit plan booklets to provide the information necessary to comply with ERISA's reporting and disclosure requirements. **To be compliant with ERISA's reporting and disclosure requirements, the Wrap SPD and accompanying benefit plan component documents must be distributed to plan participants**. The Wrap SPD and benefit plan component documents do not have to be distributed at the same time as long as plan participants receive all the required documents with the most current information that applies to plan benefits.

6 Does a new SPD have to be distributed if there is a change to the benefit plan?

ERISA requires plan administrators to notify plan participants of material plan changes by **either** updating the SPD **or** preparing a Summary of Material Modifications (SMM) describing the change and distributing it to plan participants.

When to Distribute an SMM or Updated SPD

The following are some basic timelines for distributing an updated SPD or SMM:

- Under the Affordable Care Act, group health plans and carriers are required to provide **at least 60 days' advance notice** to participants before the effective date of any material modification to the plan that would affect the content of the Summary of Benefits and Coverage (SBC) and that is not reflected in the most recently provided **SBC unless the change occurs in connection with a renewal or reissuance of coverage**;

- If a change occurs in connection with a renewal or reissuance of insurance contracts and results in a material reduction in covered services or benefits, then participants must be notified **within 60 days after the modification is adopted**; and
- If neither of the two preceding rules applies, the plan administrator has until **210 days after the end of the plan** year to notify participants of the change; however, it is always prudent to notify participants of any material modifications as soon as possible.

Links and Resources

Reporting and Disclosure Guide for Employee Benefit Plans, a Department of Labor (DOL) publication

DOL final SPD regulations from Nov. 21, 2000

ERISA Section 102 and DOL Reg. §§ 2520.102-1 through 2520.102-4 – SPD requirements

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This document is not intended to be exhaustive, nor should any information be construed as tax or legal advice.