



EMPLOYEE BENEFITS

# Governmental Plan 2025 Compliance Guide

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From the Brown & Brown Regulatory and Legislative Strategy Group



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# Affordable Care Act (ACA)

The following are certain disclosures, notices and reporting currently required for group health plans under the ACA. This is not an exhaustive list of ACA requirements, nor does it include past requirements that are no longer applicable, or future requirements that are not yet effective.

## Summary of Benefits and Coverage (SBC)

Group health plans (other than excepted benefits and retiree plans) are required to furnish an SBC for each benefit option. The SBC is a uniform explanation of benefits. Regulations specify language and format that must be used. HHS issued final regulations on a new SBC template, and instructions in April 2016. The rules apply to all SBCs created on or after April 1, 2017.

More recently, HHS released a new SBC template that is required to be used with respect to all plan years beginning on or after January 1, 2021. Current and revised SBC templates can be found on the CMS website.

SBCs must be distributed:

1. At initial enrollment;
2. Annually at re-enrollment;
3. Within 90 days after enrollment resulting from a special enrollment right; and
4. Within seven (7) business days of an employee/beneficiary request.

Notice of mid-year material modifications to an SBC must be provided at least 60 days *prior to* the effective date of the change.

## Model Notice to Employees of Coverage Options (“Public Exchange” Notice)

The notice must broadly describe the existence of the Health Insurance Marketplace and the ramifications if an employee purchases individual coverage on the Marketplace instead of enrolling in the employer’s coverage. The notice must be provided to new employees within 14 days of the employee’s start date. This includes employees who are not eligible for the employer’s health benefits.

## Grandfathered Health Plan Disclosure – Grandfathered Health Plans Only

Grandfathered health plans must include language (in any plan materials describing the plan’s benefits), indicating that the plan believes it is a grandfathered health plan under the health care reform law and it must provide contact information for questions and complaints.

## Internal Claims and Appeals and External Review Requirements – Non-Grandfathered Health Plans Only

Governmental group health plans are not subject to ERISA. As a result, the ERISA claims and appeals requirements historically were not applicable to governmental plans. The ACA incorporated the ERISA claims and appeals requirements in the Public Health Services Act, which does apply to governmental group health plans. As a result, governmental group health plans (other than excepted benefits and retiree plans) must implement an internal claims and appeals process that satisfies the ERISA claims and appeals requirements. Group health plans must also implement new procedural requirements for appeals as required by the ACA and make external review available. Model notices have been issued for claim denials/external review decisions. Language generally should be included in plan documents. Employers should confirm that their health plan’s appeals procedures comply with these requirements.

## Selecting a Benchmark Plan

The final market reform rules require self-insured and large insured plans to select one of the three Federal Employees Health Benefit Program (FEHBP) options or a state benchmark plan to define essential health benefits (EHB) for purposes of ensuring the plan imposes no annual or lifetime dollar limits on EHBs. This requirement applies to benefits provided in- or out-of-network.

## Patient Protection Disclosure – Non-Grandfathered Health Plans Only

Plans that require the designation of a primary care physician (PCP) must provide a notice of patient protections under health care reform whenever the plan or issuer provides a participant with a summary plan description or other similar description of benefits under the plan or health insurance coverage. NOTE: Plans that do not require/allow PCP designations are not required to provide this notice. In general, most Preferred Provider Organizations (PPOs) do not require PCP designation; however, we are seeing some carriers request or assign PCPs on PPOs for provider payment under accountable care contracts. We recommend confirming if this notice applies to your plans.

## Medical Loss Ratio (MLR) Reporting

Health insurers of fully insured (including grandfathered) plans are required to report to HHS each year the percentage of their premium revenue that the insurer spent on 1) clinical services for enrollees, 2) “activities that improve health care quality,” and 3) all other non-claims costs, excluding federal and state taxes and licensing or regulatory fees. Insurers in the small group market must spend at least 80% and insurers in the large group market must spend at least 85% of their premium revenues (excluding federal and state taxes and licensing and regulatory fees) on clinical services and quality improvement activities. Insurers that fail to do so will have to rebate the difference to their enrollees. Under the HHS rule, rebates must be paid by September 30 of the year following the year for which the MLR data is reported. In the case of an employer group health plan, rebates must be paid to the policyholder (that is, the employer). Insurers must also report to their enrollees how the rebate was calculated.

The employer may be required to return a portion of the rebate to, or use a portion of the rebate for the benefit of, the plan participants as opposed to simply retaining the entire rebate. More information regarding these requirements is available [here](#). If an employer receives an MLR rebate, it should review its obligations with legal counsel.

## Rescission of Health Plan Coverage

Group health plans may not rescind coverage except for fraud or intentional misrepresentation of a material fact. A rescission includes any retroactive termination or retroactive cancellation of coverage except for a termination or cancellation due to failure to timely pay premiums.

Therefore, if an employee is enrolled in the plan and makes the required contributions, then the employee’s coverage may not be rescinded if it is later discovered that the employee was mistakenly enrolled and not eligible to participate in such coverage. If a mistake was made and there was no fraud or intentional misrepresentation of a material fact, then the employee’s coverage may be canceled prospectively, but not retroactively. In cases where a rescission is permitted, the plan must provide the covered person with at least 30-days advance written notice of the rescission..

## Patient Centered Outcomes Research Institute Fee (PCORI)

Imposed on issuers of insurance policies and sponsors of self-insured health plans starting with the first plan year ending after September 30, 2012. While originally set to sunset with plan years ending on or after October 1, 2019, the 2020 SECURE Act extended the PCORI fee for an additional ten years.

The PCORI fee (as indexed by inflation) will continue to apply to all plan years ending before October 1, 2029. The applicable dollar amount that must be used to calculate the fee imposed by sections 4375 and 4376 for policy years and plan years that end on or after October 1, 2024, and before October 1, 2025, is \$3.47. The fee for plan years ending on or after October 1, 2023 and before October 1, 2024 is \$3.22 per covered member. The fee is reported and paid once per year on IRS Form 720 no later than July 31 of the calendar year immediately following the last day of the plan year for which the fee is owed. For fully insured plans the carrier will make the payment on the employer’s behalf. If a health plan is self-insured or has an HRA integrated with a fully insured plan, the health plan sponsor/employer is responsible for making the payment directly to the IRS. Employers/plan sponsors with a fully insured plan and an HRA can use the “one life per participant” rule - meaning spouses and dependents need not be counted in the PCORI fee calculation.

*\*The PCORI fee is inflation-adjusted annually based on the Centers for Medicare and Medicaid Services (CMS) annual increase in [national health expenditures](#).*

## Employer Shared Responsibility ("Play or Pay")

Applicable Large Employers (ALEs) subject to the ACA's Employer Shared Responsibility requirement are those employers with 50 or more full-time and full-time equivalent employees on average during the preceding calendar year. ALE status is determined by counting all employees in a controlled group. Under this provision, employers are subject to penalties if they do not offer health coverage (minimum essential coverage (MEC)) to substantially all full-time employees and their dependents, and at least one full-time employee receives a premium tax credit and purchases coverage on the Marketplace (public Exchange). "Full-time employee" is defined as a common-law employee who is employed an average of at least 30 hours of service per week (or at least 130 hours of service per calendar month) determined using the monthly measurement method or the look-back measurement method.

- "Substantially all" is defined as offering MEC to at least 95% of all full-time employees in the applicable month.
- "Dependents" is defined to include only natural/adopted children to the end of the month they attain age 26, but does not include spouses.

If the applicable threshold is not met, and at least one full-time employee receives a premium tax credit and purchases coverage on the Marketplace (public Exchange), the employer is subject to a penalty per each common-law full-time employee that works for the employer, less the first 30 FT employees. The thresholds and corresponding penalties are evaluated on a monthly basis. For 2024, the penalty is \$270.00 per month (1/12 of \$2,970) x the number of full-time employees\* x the number of months in which the threshold is not met. The penalty is indexed each year for inflation, and the 2025 adjusted amount decreased to \$241.67 per employee per month (1/12 of \$2,900).

Rather than evaluating eligibility on a monthly basis, the IRS has outlined an alternative look-back measurement method that can be used by employers with a large population of part-time and/or "variable hour employees" (an employee whose hours of service per week cannot be reasonably determined at date of hire). This allows employers to avoid the penalty if they provide prospective eligibility to employees who met the definition of full-time in the retrospective measurement period.

Even if an ALE offers "substantially all" of its FT employees MEC, the employer may still be subject to a penalty if the coverage isn't offered to a full-time employee, or the coverage offered to full-time employees is inadequate (less than 60% minimum value) or unaffordable (employee-only coverage costs more than 8.39% (in 2024) of household income). The affordability safe harbor percentage increases to 9.02% in 2025. For 2024, the penalty is \$371.00 (1/12 of \$4,460) x the number of full-time employees who receive a premium tax credit or cost sharing assistance per month. For 2025, the inflation-adjusted penalty will be \$362.50 (1/12 of \$4,350) x the number of full-time employees who receive a premium tax credit or cost sharing assistance per month.

*\*The penalty is waived for the first 30 full-time employees.*

The IRS recognizes that employers do not know employees' household incomes and have therefore issued three affordability safe harbors (Federal Poverty Line, Rate of Pay and W-2) that are generally based only on the earnings of the employee. NOTE: If an employer offers an opt-out payment for employees who waive coverage, the amount of the payment may be required to be included in the affordability calculation unless it was in place by December 16, 2015 or it is conditioned on the employee providing reasonable evidence of enrollment by the employee and his/her expected tax family in minimum essential coverage other than individual market coverage.



## Large Employer Reporting

Applicable Large Employers and other entities are required to annually report (regarding the prior calendar year) health coverage information to assist the IRS in administering premium tax credits and making employer penalty determinations. The reports (due after the year ends) must include information related to full-time employee status and coverage information for each month of the calendar year.

There are two reporting requirements:

- 1. Code Section 6055 reporting:** Requires various reporting entities (including employers and insurance carriers) to report information on each individual with minimum essential coverage. The IRS intended to use the information to enforce the individual mandate, but that mandate has since been effectively repealed because the penalty has been reduced to \$0. However, these reports may still be useful in states that have adopted a state-based individual mandate. The forms used for filing returns are 1094-B (transmittal form) and 1095-B (individual statement). Reporting for Applicable Large Employers that are self-funded plan sponsors can be satisfied by submitting the 1094-C and 1095-C forms (referenced below); however, in this situation an employer may still issue the B forms for reporting on enrolled non-employees. A provider of minimum essential coverage will be treated as having satisfied the Section 6055 requirements if the form is made available through the provider's website and certain conditions are met as further described in the [Instructions for Form 1094-B and 1095-B](#).
- 2. Code Section 6056 reporting:** Requires Applicable Large Employers that are subject to the Employer Shared Responsibility (Play or Pay) penalties to report information on the coverage offered to full-time employees. The IRS will use the information to enforce the play or pay penalties. The forms used for filing returns are 1094-C (transmittal form) and 1095-C (individual statement). Self-funded employers that are also Applicable Large Employers will be permitted to satisfy both Code Section 6055 and Code Section 6056 reporting requirements by submitting a combined information return. There are also simplified Section 6056 reporting alternatives that may apply to certain employers/groups of employees. In concept, the reports are similar to Form W-2 reporting – for example, an aggregate filing must be made to the IRS, and an individual statement must be provided to applicable employees.

Employee statements must be furnished no later than the first business day that occurs 30 days on or after January 31 following the end of the calendar year being reported (i.e., 2024 employee statements must be furnished to employees by March 3, 2025). In the alternative, effective for reporting years beginning in 2024 and beyond, employers may satisfy their Form 1095-C delivery obligations to full-time employees by posting a "clear, conspicuous, and accessible notice" that notifies full-time employees of their ability to request their Form 1095-C in paper form from the employer. If an individual requests a paper copy of the Form 1095-C (or 1095-B), the employer is required to provide the paper copy to the requester by the later of January 31 of the year following the reporting year or 30 days following the request, whichever is later. The IRS filing is due no later than the first business day on or after February 28 (if filed by mail) or March 31 (if filed electronically) following the end of the calendar year being reported (i.e., 2024 filings are due February 28, 2025 (if filed by mail) or March 31, 2025 (if filed electronically)). Employers issuing ten or more information returns (including W-2, 1099, 1095-C, and others) must file electronically via the AIR system. See [Instructions for Forms 1094-C and 1095-C](#).

Reporting is subject to the general reporting penalty provisions under section 6721 (failure to file correct information returns) and section 6722 (failure to furnish correct payee statement). The current penalty for failure to file an IRS return or provide individuals statements is up to \$330 per return (\$660 per employee) with a calendar year maximum penalty of up to \$3,987,000.



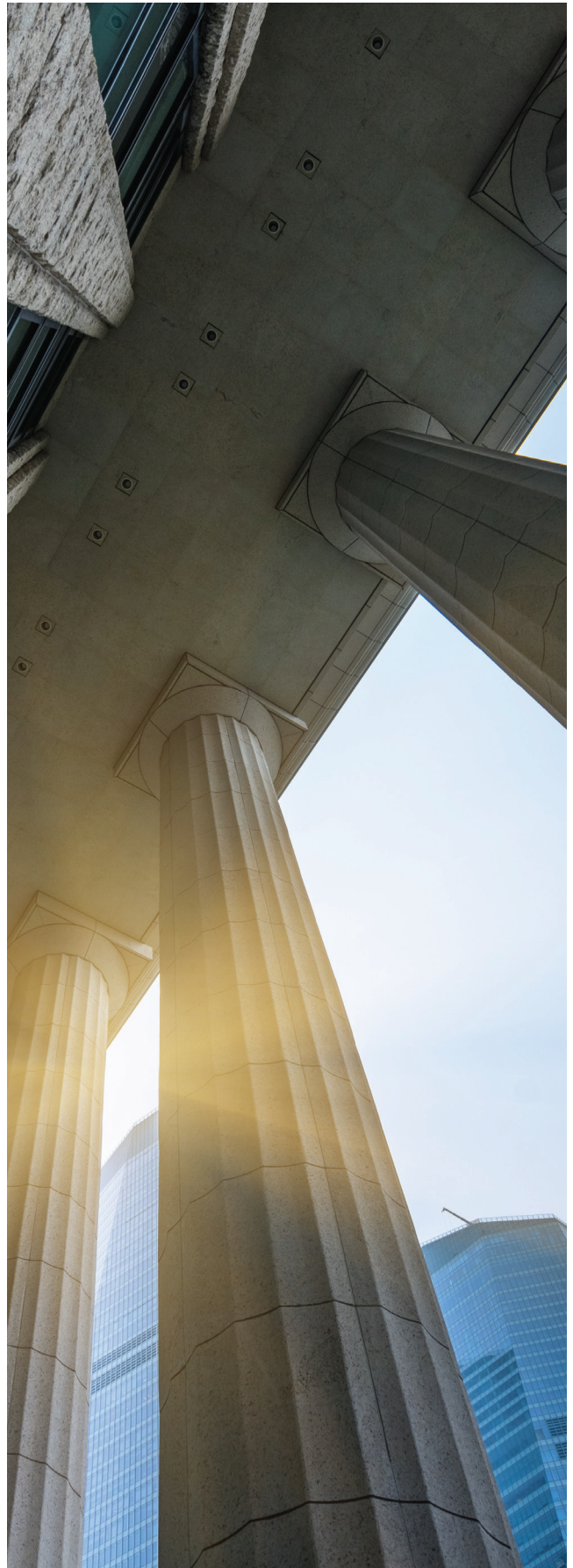
## W-2 Reporting

Employers providing applicable employer-sponsored group health plan coverage are required to report the aggregate cost of applicable employer-sponsored group health plan coverage in Box 12 of an employee's Form W-2 with code "DD". Employers who issued fewer than 250 Form W-2s in the preceding calendar year are not subject to the reporting requirement until further guidance is issued.

## Section 1557 Nondiscrimination

Section 1557 of the Affordable Care Act (ACA) prohibits covered entities from discriminating in health programs on the basis of race, color, national origin, age, disability or sex. On May 6, 2024, HHS issued amended final regulations on Section 1557, with the final regulations becoming effective on January 1, 2025.

These rules apply to "covered entities," which include health programs or activities that receive HHS funding, health programs or activities administered by HHS (such as the Medicare Part D program), and the health insurance Marketplace. From a group health plan perspective, the Section 1557 requirements would only apply to group health plans that receive federal financial assistance, such as plans that receive retiree drug subsidy payments or Employer Group Waiver Plans (EGWPs). Covered entities must take "reasonable steps" to provide an annual notice of nondiscrimination and a notice of the availability of language-assistance services and auxiliary aids (at no cost) to participants, beneficiaries, enrollees, and applicants. The information must be provided in English and the top 15 non-English languages spoken by people in the state where the covered entity operates and must be posted on the covered entity's website. HHS provides sample notices on their website. Accommodations must be provided by the covered entity to ensure that any services available telephonically are accessible to those with disabilities and limited English proficiency. In addition, covered entities must implement policies and training, and a "Section 1557 Coordinator" must be designated to ensure compliance with the Section 1557 requirements. As there may be continued litigation regarding Section 1557 employers that are covered entities should consult with counsel to determine their obligations under Section 1557.



# Consolidated Omnibus Budget and Reconciliation Act (COBRA)

COBRA generally requires all group health plans to provide covered employees and dependents an opportunity to continue coverage under the plan when such coverage would be lost (under the terms of the plan) as a result of a particular event (which are specified in the statute). COBRA imposes a variety of notice requirements on group health plans.

## General Notice

Group health plans must give each employee and each spouse of an employee who becomes covered under the plan a general notice describing COBRA rights.

The general notice must be provided within the first 90 days of coverage. Group health plans can satisfy this requirement by furnishing the notice to employees and spouses, or by including the general notice in the plan's SPD (provided the SPD is distributed to both the employee and the spouse within this time limit). The DOL updated its model COBRA general notice in May 2020 to include information regarding the interaction between Medicare and COBRA coverage.

## Election Notice

Group health plans must also send a COBRA election notice to qualified beneficiaries following a qualifying event. For certain qualifying events (termination of employment, reduction of hours and death of an employee), the employer has 30 days to notify the plan administrator and the plan administrator has 14 days to send the notice to qualified beneficiaries (44 days if the employer is also the plan administrator\*). For other qualifying events (divorce, legal separation and a child ceasing to be eligible), the covered employee or other qualified beneficiary has 60 days to notify the plan administrator, and the plan administrator has 14 days to send the notice.\*\*

The DOL updated its model COBRA election notice in May 2020 to include information regarding the interaction between Medicare and COBRA coverage.

*\*The plan administrator is not the same as the COBRA administrator.*

*\*\*During the "Outbreak Period" resulting from the COVID-19 National Emergency, certain COBRA deadlines are extended, potentially for up to one year. Additional information about these extensions is available [here](#).*

## Notice of Unavailability

Group health plans must send a notice of unavailability of COBRA coverage if the plan administrator determines that an individual is not eligible for COBRA coverage. This notice must be furnished within 14 days of the administrator's receipt of the coverage election notice furnished by the covered employee or other qualified beneficiary for qualifying events that include divorce, legal separation or a child ceasing to be eligible.

## Notice of Early Termination

Group health plans must send a notice of early termination of COBRA coverage to qualified beneficiaries if COBRA coverage terminates earlier than the maximum period of coverage. The notice must be provided by the plan or COBRA administrator as soon as practicable after the decision to terminate COBRA coverage is made.

## COBRA Notice of Insufficient Payment

If a COBRA premium payment is insufficient by an "insignificant amount," a notice must be provided of the insufficient payment. (In addition, a reasonable period of time, such as 30 days, must be given to pay the insufficient amount.)



# Health Insurance Portability and Accountability Act (HIPAA)



## Special Enrollment Rights

Special enrollment is available under group health plans (other than excepted benefits) in the following situations:

- A loss of eligibility for group health coverage or health insurance coverage;
- The acquisition of a new spouse or dependent by marriage, birth, adoption or placement for adoption; and
- Becoming eligible or ceasing to be eligible for Medicaid or CHIP coverage and/or for Medicaid or CHIP premium assistance subsidies.

Plans must notify eligible employees of their special enrollment rights upon their initial eligibility to enroll in the plan.

Governmental plans were previously allowed to opt-out of complying with HIPAA special enrollment (and other HIPAA portability) requirements. The ability to opt out was eliminated by the Affordable Care Act (ACA).

## Privacy and Security Requirements

Covered entities and business associates must create and implement policies and procedures to comply with the security rule's standards, implementation specifications, and other requirements. Policies and procedures may be changed at any time, but the changes must be documented.

## Notice of Privacy Practices

A HIPAA Notice of Privacy Practices must be provided to participants and beneficiaries upon enrollment and when there are material changes to the notice, generally within 60 days of the material change. Every three years, the notice must be re-issued, or participants must be notified that a Notice of Privacy Practices is available and how to obtain it.

On April 26, 2024, the Office for Civil Rights at the Department of Health & Human Services published its "Final Rule to Support Reproductive Health Care Privacy." The final rule, which is effective December 23, 2024, adopts a "purpose-based prohibition" on the disclosure and use of reproductive healthcare-related information of covered individuals under HIPAA. Among other requirements covered entities must update their HIPAA Policies and Procedures by the effective date. The final rule also requires HIPAA covered entities to update their Notice of Privacy Practices to reflect the final rule by February 16, 2026.

## Nondiscrimination Requirements

Group health plans (other than excepted benefits) may not discriminate with respect to eligibility, benefits and contributions on the basis of health status-related factors.

# Other Laws

## Children’s Health Insurance Program Reauthorization Act (CHIPRA)

Since 2009, special enrollment rights to immediately enroll in an employer’s health plan arise if an individual becomes eligible for a state premium assistance subsidy under Medicaid or CHIP. The subsidy helps low-income individuals pay for employer coverage, transferring them from government-sponsored health programs to employer health plans. CHIPRA imposes a notice requirement on employers who maintain health plans with participants residing in one of the states providing a premium assistance subsidy. The notice must be provided annually to all employees residing in each premium assistance subsidy state, including employees not enrolled in the plan. Model notice language, which is periodically updated, is available on the DOL website and includes contact information for each state offering a premium assistance subsidy. Before distributing the notice each year, you should check the DOL website for any updates to the model. (The DOL typically updates the notice each January 31 and July 31.)

## Mental Health and Substance Abuse Parity

The Mental Health Parity Act of 1996 prohibits group health plans from having lower annual or aggregate lifetime dollar limits for mental health benefits than for medical/surgical benefits. The Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) broadened the “parity” requirements by making them applicable to substance use disorder benefits and by mandating parity for financial requirements and treatment limitations.

The MHPAEA rules generally apply to all group health plans except HIPAA excepted benefits and plans sponsored by an employer that averaged 50 or fewer employees during the prior calendar year (100 or fewer employees for non-federal governmental employers in states that define small employer as 100 or fewer employees). Self-insured non-Federal governmental plans previously had the ability to opt out of complying with this law. However, these plans can make no new elections

to opt out of compliance with the MHPAEA effective December 29, 2022. Government plans may not renew opt out elections expiring on or after June 27, 2023, subject to a limited exception for plans subject to multiple collective bargaining agreements.

Under the MHPAEA rules, the plan generally may not impose a financial requirement (deductible, copay, etc.) or quantitative treatment limitation to a mental health/substance abuse benefit in a classification that is more restrictive than the predominant requirement or limitation applied to substantially all medical/surgical benefits in the same classification. Plans must be tested for compliance with the parity law. While not required to be done annually, it should be done when there is a change to plan design (e.g., to a cost sharing or utilization management provision) that affects a financial or treatment limitation within a defined classification or sub-classification.

Plans also may not impose nonquantitative treatment limits (NQTLs) for mental health/substance abuse benefits unless certain conditions are met. Group health plans must complete a comparative analysis that demonstrates that the processes, strategies, evidentiary standards or other factors used to apply any NQTL to the plan’s mental health and substance use disorder benefits are comparable to, and applied no more stringently than, the processes, strategies, evidentiary standards and other factors used to apply NQTLs to medical or surgical benefits.

On September 23, 2024, the Departments published final rules that provide more clearly defined standards to ensure that group health plans sponsors, and health insurance carriers and other stakeholders do not apply more stringent limits NQTLs on access to mental health (MH) and substance use disorder (SUD) benefits as compared to medical/ surgical (M/S) benefits within a health plan or policy. The final rules also establish additional content requirements for the NQTL comparative analyses. These comparative analyses must be provided to HHS upon request.

Additional information regarding these final rules and requirements is available in our prior articles [Final Rules on Requirements Related to MHPAEA](#), and the [MHPAEA Quick Reference Guide](#).



## Michelle's Law

Michelle's Law requires group health plans to continue coverage for dependent college students who take a medically necessary leave of absence or switch to part-time student status due to a serious illness or injury. The leave must be medically necessary, begin while the child is suffering from illness or injury and cause the child to lose coverage. Coverage must extend for one year after the first day of leave. This requirement applies only if a group health plan requires student status for children age 26 or older.

Since the ACA requires coverage for all dependent children up to age 26, regardless of student status, Michelle's law typically no longer impacts group health plans. Self-insured governmental plans may opt-out of complying with this law.

## Newborns' and Mothers' Health Protection Act

The Act and its regulations provide that health plans and insurance issuers may not restrict a mother's or newborn's benefits for a hospital length of stay that is connected to childbirth to less than 48 hours following a vaginal delivery or 96 hours following a delivery by cesarean section.

However, the attending provider (who may be a physician or nurse midwife) may decide, after consulting with the mother, to discharge the mother or newborn child earlier. The Act specifies a notice that must be included in the plan document verbatim. Self-insured governmental plans may opt out of complying with this law.

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

WHCRA requires group health plans to cover reconstructive surgery following a mastectomy. Notices about this law must be provided upon enrollment and annually thereafter. Self-insured governmental plans may opt out of complying with this law.

## National Medical Support Notices (NMSNs)

Under the NMSN rules, when a plan administrator determines the NMSN was appropriately completed it must notify the employee, child and custodial parent that coverage is or will become available and furnish the custodial parent a description of the coverage available and the effective date of the coverage. This includes, if not already provided, a summary plan description (or similar document used by a governmental plan) and any forms, documents or information necessary to effectuate such coverage, as well as information necessary to submit claims for benefit.

# No Surprises Act and Related Transparency Requirements

The No Surprises Act, which was passed as part of the Consolidated Appropriations Act, 2021, imposes various transparency and surprise medical billing requirements on group health plans. The No Surprises Act builds on the health plan transparency requirements contained in the Affordable Care Act, which were addressed in final regulations released in October 2020. These requirements have been implemented in stages over the last couple of years. The following is a list of key provisions by effective date:

- Effective for plan years beginning in 2022:
  - » Surprise medical bill rules
  - » Health plan ID card changes
  - » Prohibition on gag clauses
  - » Provider directory requirements
  - » Continuity of care requirements
- Effective July 1, 2022:
  - » Publicly available machine-readable file containing in-network provider rates for covered items and services and out-of-network allowed amounts
- Effective December 27, 2022:
  - » Prescription drug cost reporting (first report covering 2020 and 2021 due by 12/27/22; future reports for a calendar year due by the following June 1)
- Effective for plan years beginning in 2023:
  - » Requirement to make price comparison information available to participants
- By December 31, 2023:
  - » Health plans and issuers (i.e., Reporting Entities) must attest their compliance with the gag clause prohibition rules by submitting a Gag Clause Prohibition Compliance Attestation (GCPCA) to CMS by December 31, 2023, attesting to their compliance beginning December 27, 2020, through the attestation date. The GCPCA is due to CMS by December 31 of each calendar year thereafter.
- Effective at a future date (after issuance of regulations):
  - » Advance EOB requirements (not yet effective)

Additional information regarding these requirements is available in our prior articles [Requirements for the Surprise Billing Under the No Surprises Act](#), [Guidance on Health Plan Transparency Rules Delays Some Compliance Dates](#), [Health Care Cost Transparency Reporting for Group Health Plans](#), [Departments Issue Further FAQ Guidance on the No Surprises Act and Transparency in Coverage Final Rules](#), and [Gag Clause Prohibition Compliance Attestation](#).

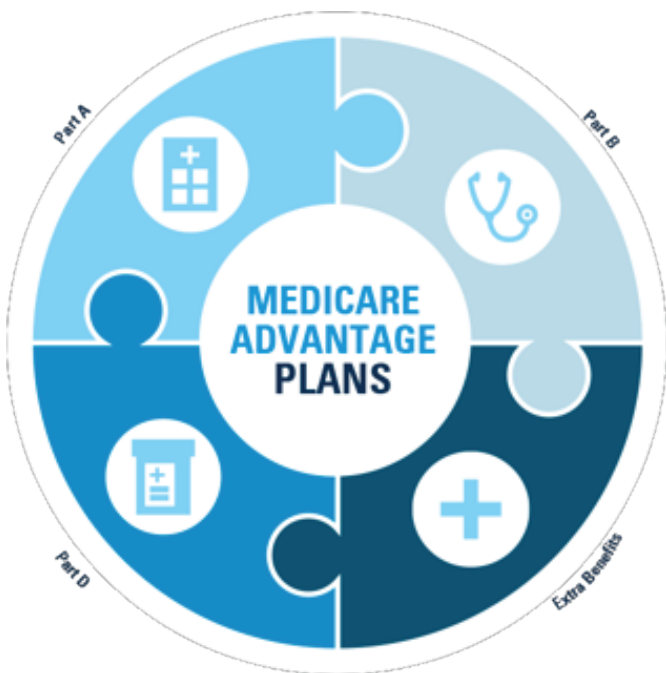


# Medicare Requirements

## Medicare Part D Creditable Coverage Notice

Employer-sponsored group health plans that provide prescription drug coverage must notify Medicare-eligible plan participants whether the plan's drug coverage is creditable or non-creditable. The notice must be provided to Medicare beneficiaries who are active employees and those who are retired, as well as Medicare beneficiaries who are covered as spouses or dependents under active or retiree coverage. The notice must be provided prior to the participant's effective date of coverage, prior to an individual's initial enrollment period in Part D\*, by October 15 of each year, upon a change in creditable coverage status and upon request.

*\*An annual notice to all participants by October 15 will satisfy this requirement.*



## Plan Sponsor's Medicare Part D Creditable Coverage Disclosure

Online disclosure is due to CMS no later than 60 days after the beginning of the plan year. This requirement applies to sponsors of group health plans that provide prescription drug coverage to Medicare Part D eligible individuals.

## Application for Retiree Drug Subsidy (RDS)

Plan sponsors must apply for the retiree drug subsidy annually by submitting a valid application and a valid retiree list to CMS no later than 90 days prior to the beginning of the plan year. (Requests for extension must be approved by CMS.)

## Reconciliation for Retiree Drug Subsidy (RDS)

Plan sponsors taking the subsidy are required to report the total gross covered retiree plan-related prescription drug costs and actual cost adjustments annually to CMS by the last day of the fifteenth month following the end of the plan year.

## Medicare Mandatory Reporting Requirements

Insurers, third party administrators and administrators of self-insured and self-administered group health plans must collect specific information from plan participants and report this information to CMS.

# Other Compliance Requirements

## Compulsory Short-Term Disability

Laws require employers to provide coverage for non-work-related short-term disability benefits for employees in five states – California, Hawaii, New Jersey, New York and Rhode Island; and one U.S. territory - Puerto Rico. In some cases, providing this coverage is optional for governmental employers.

## State Paid Family Leave Laws (PFL)

Many states have enacted laws and regulations that impact employees in their state. For example California, Colorado, Connecticut, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, Oregon, Vermont (applies to state workers as of July 2023 with expansion to private employers starting July 2024) and Washington, plus the District of Columbia currently require covered employers to provide job-protected, paid leave for various reasons including to bond with a new child, care for a loved one with a serious health condition or help relieve family pressures when someone is deployed on active military service.

Delaware, Maine, Maryland and Minnesota have also enacted PFL laws that go into effect for private employers on various dates on or after January 1, 2024.

Other states are in the process of considering similar legislation. Employers are therefore well advised to consult with legal counsel to help ensure compliance with the various state specific laws which impact their operations.

In some cases, compliance with these requirements is optional for governmental employers.

## Family and Medical Leave Act (FMLA)

FMLA entitles eligible employees of covered employers to take unpaid, job-protected leave for certain reasons.

General employer requirements:

- Allow eligible employees to take up to 12 weeks of unpaid leave during a 12-month period for certain statutory reasons, or up to 26 weeks in a single 12-month period to care for a service member or an injured/ill veteran
- Continue the employee's group health benefits and any employer contributions while on leave
- Restore the employee to the same or equivalent job and reinstate benefits upon return from leave
- Not take any adverse action against an employee for taking FMLA leave
- Provide employees with:
  - » A general notice about the FMLA (through a poster and/or an employee handbook upon hire);
  - » An eligibility notice;
  - » A rights and responsibilities notice; and
  - » A designation notice.

Employers are responsible for designating any leave taken as FMLA leave and for notifying an employee of the designation. Note that additional state leave laws may apply.

## The Uniformed Services Employment and Reemployment Rights Act (USERRA)

Requires employers to provide certain re-employment and benefits rights to employees who take a leave of absence for service in the military. The maximum period of coverage under the election to continue employer-sponsored health care benefits while on active duty is 24 months. Upon resumption of employment, the employee is entitled to his/her most recent employment status, pay and benefits.

## State Law Benefit Laws

Since governmental plans are not subject to ERISA, there is no general preemption of state law available to governmental plans. Depending on the state, state law might address what benefits may be provided, to whom they may be provided and in what form. In addition, some states have special continuation coverage requirements that apply to governmental employers. State law may also regulate self-insured plans sponsored by governmental employers and may include limits or restrictions on the ability to self-insure, have filing and reporting requirements and include other benefit mandates, etc.

## Electronic Distribution Rules

Unlike ERISA plans where a general set of applicable rules exist regarding electronic distribution of required documents and notices, there is no general rule of applicability regarding electronic distribution for governmental plans. Certain laws that require governmental plans to distribute certain notices/documents have rules regarding the electronic distribution of those documents (e.g., Summaries of Benefits and Coverage (SBCs), HIPAA Notices of Privacy Practices, etc.). When no specific requirements apply to a document, a governmental plan might choose to follow the DOL's general regulations regarding electronic distribution (based upon the theory that HHS likely would not find a violation where the general DOL regulations on electronic distribution are followed). However, specific legal advice should be obtained before doing so.



# Internal Revenue Code – General Requirements

## Cafeteria Plans

In order to enable employees to make pre-tax salary reduction contributions for health and welfare benefits, an employer must establish a Section 125 plan (a/k/a a cafeteria plan). The terms of a cafeteria plan must be set forth in a written plan document. Participants must make elections prior to the first day of the plan year. If the cafeteria plan document allows, mid-year election changes can be made in accordance with IRS regulations.

## Self-Insured Group Health Plans

The terms of a self-insured group health plan must be set forth in a written plan document as required under IRS regulations.

## Flexible Spending Account (FSA)

The Internal Revenue Code defines eligible FSA expenses and annual maximums (employers can set lower maximums). The maximum salary reduction contribution to a healthcare FSA for plan years beginning in 2023 is \$3,050. The limit for plan years beginning in 2024 has not yet been determined but it is projected the IRS will announce an increase in the annual limit to between \$3,150 and \$3,200. The maximum annual tax exclusion for dependent care FSA benefits is typically \$5,000 per household.

Healthcare FSA plans may allow participants to carry over up to \$610 in unused funds to the plan year beginning in 2024. The indexed carry over limit from 2024 elections to 2025 is projected to be between \$630 and \$640. A healthcare FSA plan can include the carryover provision or the up to 2½ month grace period, but cannot include both provisions.

## Domestic Partner Benefits – Imputed Income

The general rules for excluding from income the value of health care benefits provided for employees, their legal spouses and their dependent children generally do not apply to domestic partners and their dependent children (unless they qualify as the employee's tax dependent – which is rare). The value of coverage for a domestic partner and his or her children may be subject to federal, FICA, state, local and any other applicable payroll taxes.

NOTE: The June 2015 Supreme Court ruling in *Obergefell v. Hodges* requires all states to license and recognize same-sex marriages. As a result, employers no longer need to impute federal or state income tax on benefits for same-sex spouses. However, imputed income still applies to domestic partners who are not legally married, unless the domestic partner is a tax dependent.

## Heroes Earnings Assistance & Relief Tax Act

Cafeteria plans may permit distribution of unused healthcare FSA account balances when reservists are called to active duty for 180 days or more.

## Life Insurance Plans

IRC Section 79 requires employers to impute income for the fair-market value of employer-sponsored group-term life insurance benefits in excess of \$50,000. Voluntary/ Supplemental life insurance rates that straddle Table I (which are found in Table 2-2 of IRS [Publication 15-b](#)) and/or supplemental life insurance that is paid for by the employee on a pre-tax basis may also be subject to imputed income.



## Disability Plans

If the cost of coverage under a disability plan is fully or partially subsidized by the employer without imputing income to the employee for the cost of such coverage, or the disability plan is paid for by employees on a pre-tax basis, upon disability of the employee, the disability payments made under the plan to the employee will be subject to federal/state income taxation (in proportion to the employer subsidy or pre-tax share).

## Nondiscrimination Requirements Section 125\* – Cafeteria Plans

Cafeteria plans (that allow employees the ability to contribute to benefits on a pre-tax basis) sponsored by governmental employers are subject to two nondiscrimination tests: Eligibility Test and Benefits and Contributions Test. The nondiscrimination tests are designed to prevent the plan from favoring highly compensated employees to an impermissible degree. The tests apply with respect to any health and welfare benefits offered by the employer to which employees make pre-tax, salary reduction contributions. In some cases, benefits offered through a Section 125 plan are also subject to separate nondiscrimination requirements under the tax code provision that applies to that specific benefit as further discussed below.

*\*Cafeteria plan regulations are proposed; final regulations are pending.*

## Section 105(h) – Self-Funded Health Plans

Self-funded health plans (including healthcare FSAs and HRAs) are subject to two nondiscrimination tests: Eligibility Test and Benefits Test. Per the Affordable Care Act (ACA), this testing was to also apply to fully insured plans. However, the compliance date has been delayed until regulations or other guidance is issued and it appears the IRS has no plans to do so for the foreseeable future.

## Section 129 – Dependent Care Assistance Plans

Dependent care assistance plans (including dependent care FSAs) are subject to four nondiscrimination tests: Eligibility Test, Benefits Test, 55% Average Benefits Test and 5% or More Owner Concentration Test.

NOTE: Until further guidance is issued, Brown & Brown recommends that most nondiscrimination tests be performed at least annually.\* In addition, Brown & Brown recommends that the 55% Average Benefits Test under Section 129 be performed as early in the year as possible in case adjustments are necessary for highly compensated/key employees.

*\*IRS regulations do not specify when or how often nondiscrimination testing should be performed.*



# Wellness Program Requirements

## HIPAA Wellness Requirements

Wellness programs that require individuals to meet a standard related to a health factor (activity-based or outcome-based) in order to obtain a reward or avoid a penalty under a group health plan are subject to a variety of requirements under HIPAA, including limits on the amount of reward/penalty, requirements regarding earning the reward/avoiding the penalty through alternative means and certain notice requirements.

## Americans with Disabilities Act (ADA)

New rules, effective the first day of the plan year beginning on or after January 1, 2017, require employers who offer wellness programs that collect employee health information (e.g., via health risk assessments, biometric screenings) in exchange for an incentive to comply with certain requirements to ensure the wellness program is voluntary. Key requirements include a limitation on the amount of incentive that may be provided and a requirement to provide a notice to employees informing them of what information will be collected, how it will be used, who will receive it and what will be done to keep it confidential. The EEOC has issued a sample notice. A federal court ordered a portion of the ADA wellness rules (specifically the portion addressing the maximum size of the incentive that may be provided under a program subject to the ADA) to be vacated as of January 1, 2019.

The EEOC is in the process of developing new regulations. In the interim, it appears the notice portion of the rules continues to apply but it is unclear what size incentive can be provided.

Employers with wellness programs that collect medical information should consult with counsel to discuss compliance with the ADA.



## Genetic Information Nondiscrimination Act (GINA)

GINA restricts the ability of health plans (including wellness programs that are part of or tied to health plans) and employers to collect and use genetic information, including family health histories (which generally includes information about a spouse or child's health conditions).

Regulation issued under GINA Title II allowed limited collection of information about a spouse's current health conditions as part of a wellness program, but that portion of the regulation was vacated along with parts of the ADA wellness regulations and the regulations under GINA Title I do not specifically allow the collection of information about a spouse's current health conditions.

Employers with wellness programs that include health risk assessments should consult with counsel to discuss compliance with GINA.

# General Notice Timeline

## Generally, all new employees should receive:

- CHIPRA Notice
- Notice of Exchange

## Notices eligible employees should receive when enrollment is offered or upon enrollment:

- COBRA General Notice (Spouse must also receive)
- HIPAA Notice of Privacy Practices
- HIPAA Notice of Special Enrollment Rights
- Medicare Part D Creditable Coverage or Non-Creditable Coverage
- Summary of Benefits and Coverage (SBC)
- Women's Health and Cancer Rights Act (WHCRA) Enrollment Notice (unless employer has opted out)
- Fixed Indemnity Notice (if applicable) \*

## Notices participants should receive on an annual basis:

- HIPAA Notice of Privacy Practices (once every three (3) years)
- Medicare Part D Creditable Coverage or Non-Creditable Coverage
- Summary of Benefits and Coverage (SBC)
- Women's Health and Cancer Rights Act (WHCRA) (unless employer has opted out)
- Other potential notice requirements:
  - » Patient Protection Disclosure (with SPD or similar benefit description)
  - » Notice of Grandfathered Status (with materials describing benefits)
  - » Wellness Program Disclosure (in all materials describing terms of wellness program and/or before collection of medical information)

## Notices that all employees should receive on an annual basis:

- CHIPRA Notice

## Potential notices a terminated employee may receive:

- COBRA Election Notice
- Conversion/Portability Notice (fully insured benefits)

## Other:

- Balance Billing Notice (must be posted on a public website and provided with any Explanation of Benefits issued with respect to an item or service to which the surprise medical bill requirements apply)

## General reporting requirements:

- W-2 Reporting (i.e., aggregate cost of employer sponsored coverage, imputed income for life insurance, imputed income for domestic partner coverage, dependent care assistance benefits)
- Medicare Part D Creditable/Non-Creditable Coverage Disclosure Notice to CMS
- Section 6055 and 6056 reporting
- PCORI Fee
  - » Medical plans that are self-funded (if fully insured the carrier reports and pays)
  - » Self-funded prescription drug plans
  - » Some dental or vision plans
  - » Health Reimbursement Arrangements (HRAs) (Special Rules)
  - » Retiree-only health plans
  - » Some FSAs

*\*NOTE: On December 4, 2024, the U.S. District Court for the Eastern District of Texas issued a final judgment in the Manhattan Life Insurance and Annuity Co. et al. v. U.S. Department of Health and Human Services et al. case, vacating (i.e., striking down) the provision in the final regulations requiring hospital/fixed indemnity plans to provide a written notice in order to qualify as a HIPAA exempted benefit. At this time, the applicability of this judgment vacating the written notice provision is unclear because the court did not clarify whether this judgment applies to (1) only the plaintiffs in the case, (2) anyone within the jurisdiction of the District Court, or (3) nationwide. Given the lack of clarity around to whom this judgment applies, employers choosing not to provide the hospital/fixed indemnity plan notice in reliance on the Manhattan Life case should consult with legal counsel on whether the court decision is applicable to the employer and its plan.*

# Due Dates and Links

Benefit Notice	Due Date	Link
<b>ACA</b>		
<b>Summary of Benefits and Coverage (SBC)</b>	With open enrollment materials (or at least 30 days prior to the start of the plan year if enrollment is automatic), with initial application materials (or if the plan does not distribute written application materials for enrollment, no later than the first date on which the participant is eligible to enroll in coverage), within 90 days of special enrollment, no later than seven (7) business days following a request	Model SBCs and instructions, as well as final regulatory guidance, are available on the DOL's website at: <a href="#">SBC's and Instructions Link</a>
<b>Marketplace (Public Exchange) Notice</b>	Within 14 days of date of hire	If you offer a health plan: <a href="#">Marketplace Notice</a> If you do not offer a health plan: <a href="#">Marketplace Notice</a>
<b>Grandfathered Health Plan Disclosure – Grandfathered Health Plans Only</b>	In any materials describing benefits available under the plan	Model notice is available on the DOL's website: <a href="#">Grandfathered Health Plan Disclosure Link</a>
<b>Patient Protection Disclosure – Non-Grandfathered Health Plans Only</b>	Whenever a SPD or similar description of benefits is distributed (only applies HMO/POS)	<a href="#">Patient Protection Model Notice</a>
<b>Internal Appeals and External Review Requirements – Non-Grandfathered Health Plans Only</b>	Language required in SPD	Model notice is available on the DOL's website: <a href="#">Internal Appeals and External Review Requirements Link</a>
<b>COBRA</b>		
<b>General Notice</b>	Within the first 90 Days of Coverage	Click on “COBRA Model General Notice” <a href="#">General Notice Link</a>
<b>Election Notice</b>	Employer has 30 days to notify the plan administrator and the administrator has 14 days to send the notice (44 days total if the employer is also the administrator)	Click on “COBRA Model Election Notice” <a href="#">Election Notice Link</a>

Benefit Notice	Due Date	Link
<b>HIPAA Notices</b>		
<a href="#">HIPAA Notice of Special Enrollment Rights</a>	At or before initial enrollment period	<a href="#">Notice of Special Enrollment Rights can be found here</a> (page 138)
<a href="#">Notice of Privacy Practices</a>	Upon Enrollment and within 60 days of material change, every three (3) years participants must be provided a new notice or notified that a notice of privacy practices is available	<a href="#">Notice of Privacy Practices Link</a>
<a href="#">Fixed Indemnity Notice</a>	<p><b>NOTE:</b> On December 4, 2024, the U.S. District Court for the Eastern District of Texas issued a final judgment in the Manhattan Life Insurance and Annuity Co. et al. v. U.S. Department of Health and Human Services et al. case, vacating (i.e., striking down) the provision in the final regulations requiring hospital/fixed indemnity plans to provide a written notice in order to qualify as a HIPAA excepted benefit. At this time, the applicability of this judgment vacating the written notice provision is unclear because the court did not clarify whether this judgment applies to (1) only the plaintiffs in the case, (2) anyone within the jurisdiction of the District Court, or (3) nationwide. Given the lack of clarity around to whom this judgment applies, employers choosing not to provide the hospital/fixed indemnity plan notice in reliance on the Manhattan Life case should consult with legal counsel on whether the court decision is applicable to the employer and its plan. For employers choosing to proceed with providing the hospital/fixed indemnity notice as a part of the hospital/fixed indemnity plan’s “marketing, application and enrollment materials”, the notice requirements are detailed in the following summary.</p> <p>For plan years beginning on or after January 1, 2025, a hospital/fixed indemnity plan will qualify as a HIPAA excepted benefit only if a hospital/fixed indemnity notice is prominently display on the first page of any “marketing, application, and enrollment materials that are provided to participants at or before the time participants are given the opportunity to enroll” (or reenroll) in that coverage. The notice must be in at least 14-point font and must be on the first page of any applicable paper or electronic materials (subject to the ERISA safe harbor for electronic distribution). These materials likely include benefit guides, enrollment packets, and online enrollment systems.</p> <p>A model notice is included in the final regulations that is titled: Short-Term, Limited-Duration Insurance and Independent, Non-coordinated Excepted Benefits Coverage.</p>	<p>See Short-Term, Limited-Duration Insurance and Independent, Non-coordinated Excepted Benefits Coverage Final Rules, and the Fixed Indemnity Notice on page 23389 of those Final Rules, here:</p> <p><a href="#">Fixed Indemnity Notice Requirements</a></p>

Benefit Notice	Due Date	Link
<b>Other Law Notices</b>		
Children’s Health Insurance Program Reauthorization Act (CHIPRA)	At enrollment and annually	<a href="#">CHIP Model Notice - United States Department of Labor</a>
Newborns’ and Mothers’ Health Protection Act	Must be included in the SPD	<a href="#">Newborns’ and Mothers’ Health Protection Act Link</a> (page 140)
Women’s Health and Cancer Rights Act (WHCRA) Notices	At enrollment and annually	<a href="#">WHCRA Model Notices can be found here.</a> (page 141)
No Surprises Act (NSA)	Group health plans and health insurance issuers must post notice on plan website and include notice of rights and protections on EOBs	<a href="#">Balance Billing Model Notice</a>
<b>Medicare Notices</b>		
Medicare Part D Notice of Creditable (or Non- Creditable) Coverage	Prior to October 15 each year, prior to an individual’s initial enrollment period in Part D, prior to an individual’s effective date of coverage under the employer’s plan, upon change in creditable coverage status and upon request	<a href="#">Model Notice for Creditable Coverage Link</a>  <a href="#">Model Notice for Non-Creditable Coverage Link</a>
<b>Wellness Notices</b>		
EEOC notice	At enrollment and annually if applicable	<a href="#">EEOC Notice Link</a>



## How Brown & Brown Can Help

Connect with your Brown & Brown service team to learn more about how we can help find solutions to fit your unique needs.



Find Your Solution at [BBrown.com](https://www.BBrown.com)

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