

Annual Notices for 2023

Frequently Asked Questions

1. What are the Annual Notices?

The Annual Notices are required communications containing information regarding an employee’s health benefit plan to inform them of their rights, opportunities, and obligations under certain Federal laws.

The Annual Notices that accompany these Frequently Asked Questions (FAQs) include the following communications that are intended to satisfy employer disclosure requirements under applicable Federal law:

- The Medicare Part D Notice of Creditable Coverage (“Medicare Part D Notice”)
- The Women’s Health and Cancer Rights Act Notice
- The Newborn and Mother’s Health Protection Act Notice
- HIPAA Notice of Special Enrollment Rights
- The Children’s Health Insurance Program Reauthorization Act (“CHIPRA”) Notice
- The HIPAA Notice of Privacy Practices (“HIPAA Privacy Notice”)
- Wellness Program Disclosure Statement(s)

2. Who must receive the Annual Notices?

While each Annual Notice may have slightly different distribution requirements, they should be met by providing the Annual Notices at the times of both initial and annual open enrollment.

Notice	Distributee(s)	When Required
<ul style="list-style-type: none">• Medicare Part D Notice	<ul style="list-style-type: none">• Medicare Part D eligible individuals covered under, or who apply for coverage under, an employer plan option that provides for prescription drug coverage	<ul style="list-style-type: none">• Provide no later than October 14th annually (see also FAQ 3 below)
<ul style="list-style-type: none">• The Women’s Health and Cancer Rights Act Notice	<ul style="list-style-type: none">• New enrollees, eligible plan participants	<ul style="list-style-type: none">• Initial enrollment and annually at open enrollment
<ul style="list-style-type: none">• The Newborn and Mother’s Health Protection Act Notice	<ul style="list-style-type: none">• New enrollees, eligible plan participants	<ul style="list-style-type: none">• Initial enrollment and annually at open enrollment
<ul style="list-style-type: none">• HIPAA Notice of Special Enrollment Rights	<ul style="list-style-type: none">• New enrollees, eligible plan participants	<ul style="list-style-type: none">• Initial enrollment and annually at open enrollment
<ul style="list-style-type: none">• CHIPRA Notice	<ul style="list-style-type: none">• New enrollees, eligible plan participants	<ul style="list-style-type: none">• Initial enrollment and annually at open enrollment
<ul style="list-style-type: none">• HIPAA Privacy Notice (include to extent	<ul style="list-style-type: none">• New enrollees and eligible plan participants in a self-	<ul style="list-style-type: none">• Initial enrollment and annually at open

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Notice	Distributee(s)	When Required
applicable)	funded medical plan (Note: carrier generally is responsible for distributing to enrollees of fully insured plans)	enrollment, in lieu of providing notice of right to receive HIPAA Privacy Notice every 3 years (see also FAQ 4 below)
<ul style="list-style-type: none"> Wellness Program Disclosure Statement (include to extent applicable) 	<ul style="list-style-type: none"> New enrollees and eligible employees 	<ul style="list-style-type: none"> Initial enrollment and annually at open enrollment Applies to activity outcome-based wellness programs that do not obtain medical information from participants but provide incentives for participating
<ul style="list-style-type: none"> Notice Regarding Wellness Program (include to extent applicable) 	<ul style="list-style-type: none"> New enrollees and eligible employees 	<ul style="list-style-type: none"> Initial enrollment and annually at open enrollment Applies to wellness programs that require participants to provide medical information (e.g., through completing a health risk assessment or biometric screening) in order to obtain an incentive for participating

3. What are the specific distribution requirements for the Medicare Part D Notice?

At a minimum, the Medicare Part D Notice disclosure must be made at the following times:

- Prior to the first day of the Medicare open enrollment period (October 15th of each year);
- Prior to an individual's initial enrollment period when he or she first becomes eligible to enroll for Medicare;
- Prior to the effective date of coverage for any Medicare eligible individual that joins the employer's plan;
- Whenever the employer no longer offers prescription drug coverage or changes the coverage offered so that it is no longer creditable or becomes creditable; and

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- Upon request.

The phrase “prior to” means that the plan participants must have been provided the Medicare Part D Notice within the past 12 months. Furthermore, as long as the Medicare Part D Notice is provided to all plan participants annually, the first two bullet points will have been met.

4. What specific distribution requirements apply to the HIPAA Privacy Notice?

The HIPAA Privacy Notice is required by Title II of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and must be distributed regarding health plans in which protected health information (“PHI”) is received, used, disclosed, or maintained at the time of an individual's initial enrollment in the plan, and upon request. In addition, at least once every three years, a health plan must notify individuals who are covered by the plan that the HIPAA Notice is available with instructions on how to obtain a copy of the Notice. This notice of availability requirement is waived, however, if the HIPAA Notice is provided automatically to participants with greater frequency, such as when the Notice is included in the Annual Notice distribution.

As a general rule, if a health plan is a fully insured plan or HMO, the responsibility for providing the privacy notice will rest with the insurance carrier. This is because most employers choose not to handle PHI with respect to the fully insured plans and HMOs that it sponsors, and thus, they will not have access to PHI other than summary health information and enrollment or disenrollment information (which HIPAA provides an exception for). As such, the overall responsibility for HIPAA compliance remains with the carrier.

However, if the employer is a sponsor of a self-insured health plan, including health care flexible spending accounts, or an employer sponsoring a fully insured plan has elected to receive PHI, the plan sponsor has the obligation to furnish the HIPAA privacy notice, and otherwise comply with HIPAA's privacy and data security requirements. This is due to the fact that PHI that is created, maintained, used, and disclosed by the health plan can be readily shared with the plan sponsor or a subcontractor (known as a business associate).

5. How can the Annual Notices be distributed?

The Annual Notices can be distributed to employees and other plan participants by first class mail, directly (in person), and/or electronically, as long as the distribution method complies with the electronic distribution requirements of the Federal government.

In addition, if there is an Intranet website that contains information about the health plan's customer services or benefits, the Annual Notices can ALSO be posted on the website. Note that the HIPAA Privacy Notice is required to be posted on the Intranet website, if one exists.

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6. May the Annual Notices be sent along with other employee communication materials?

Yes, the Annual Notices can be sent with other employee communication materials, such as open enrollment information, enrollment confirmation statements, or new hire packets, to alleviate printing excessive amounts of paper.

7. How can the Annual Notices be provided electronically?

In order to receive disclosure material electronically (for example, via email or by posting on the company's website), the following specific requirements must be met:

- Appropriate and necessary measures must be taken that are reasonably calculated to ensure that the system for furnishing documents results in actual receipt of the information by the individual (for example, sending by return-receipt or conducting periodic reviews or surveys to confirm the delivery system is working as intended) .
- In order to post a required disclosure on a company website, any of the following methods is acceptable:
 - 1) Adding a prominent link from the website's homepage to the separate section of the website that contains the disclosure;
 - 2) Providing directions on the website for how to replace a lost or forgotten password (to the extent one is needed); and
 - 3) Maintaining the documents on the website for a reasonable period of time following giving notice to the employees of their availability.
 - 4) Each individual must be notified at the time a document is furnished electronically, of the significance of the document when it is not otherwise reasonably evident as transmitted and that the individual has a right to request and receive a paper version of the document. The notice requirement applies to all recipients and must be complied with each time an electronic disclosure is made.
- The system for furnishing documents must protect the confidentiality of personal information relating to the individual's accounts and benefits (for example, measures designed to preclude unauthorized receipt of or access to this information by individuals other than the individual for whom the information is intended should be implemented).
- The disclosures in electronic format must be prepared and furnished in a manner that is consistent with the style, format, and content requirements applicable to the particular document.
- The employee recipient must be notified at the time the electronic distribution is furnished, of the significance of the document and his or her responsibility to provide a copy of the electronic disclosure to eligible dependents under the group health plan.
- Participants must have the ability to effectively access documents furnished in electronic format at any location where they are reasonably expected to perform their duties as employees and with respect to whom access to the employer's or plan sponsor's electronic information system is an integral part of those duties, including employees who work at home or who may be traveling.

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- 1) If a participant does not meet these criteria and has no work-related computer access, the individual must have **affirmatively consented**, to receive the documents through electronic media.
- 2) The consent must be in a manner that reasonably demonstrates the individual's ability to access information in the electronic form that will be used. Requiring the consent to be furnished electronically constitutes a reasonable demonstration of the individual's ability to access the internet.

8. Are there other requirements that must be met when obtaining consent from the individual?

Individuals where affirmative consent is needed must be first provided with a clear and conspicuous statement (in electronic or non-electronic form) indicating the following:

- The types of documents to which consent would apply;
- That the consent can be withdrawn any anytime without charge;
- The procedures for withdrawing consent and for updating recipients' addresses;
- The right to request a paper version of an electronically furnished copy free of charge; and
- Any hardware and software requirements for assessing and retaining the documents. If there is a change in hardware or software requirements after the individual consents that may make it impossible to receive or retain the information, the individual may renew consent after being given a statement of the new requirements and the right to withdraw without consequences.

9. Are employees required to certify they've read the information that they received?

No, there is no legal requirement to show that the individual has actually read the Annual Notices. However, employers should retain records to support the fact that they have distributed the Annual Notices and thus, have fulfilled any compliance obligations under Federal law.

10. When must the Wellness Program Disclosure Statement be provided?

The Wellness Program Disclosure Statement must be included in all communication materials that describe any health-contingent wellness program offered by a group health plan. A health-contingent group health plan requires individuals to meet a standard related to a health factor, such as a program in which participants receive a reward for not smoking, or for attaining a particular result on a biometric screening.

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If you have any further questions regarding the Annual Notices please do not hesitate to contact us:

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