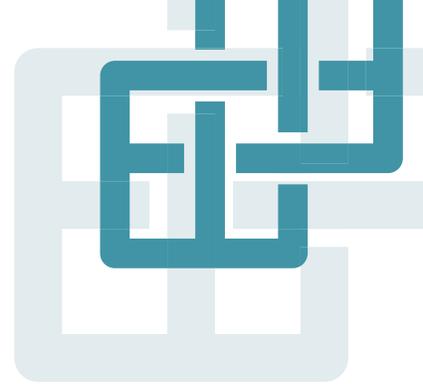


# CLIENT ALERT

## Annual Notice Requirement February 01, 2017

Employers are required to provide certain Federal Notices to participants in a Group Health Plan. This Client Alert is a reminder of those Notices and their distribution requirements. In most cases these Notices can be combined and provided to participants at one time for administrative ease.

Below please find a brief description of the following Federal Notices:



**1** CHIP Notice

**2** WHCRA Notice

**3** Grandfathered Group Health Plan Disclosure Notice

**4** Marketplace Notice

**5** Notice of Privacy Practices



## 1. CHIP Notice

If a Group Health Plan provides benefits for medical care to participants or dependents in a state that provides a premium assistance subsidy for the purchase of Group Health Plan coverage, the employer sponsoring the Plan is required to provide the Children's Health Insurance Program (CHIP) notice. The CHIP Notice must be provided annually and it must inform each employee regardless of whether the employee is enrolled in the Group Health Plan, of potential opportunities for premium assistance in the state in which the employee resides. Because the state in which the employee resides may or may not be the same as the state in which the employer or the Group Health Plan, are located, the Department of Labor (DOL) designed the CHIP Notice as a national notice that includes all applicable states.

The CHIP Notice provides a list of states along with contact information (current as of July 31, 2016) that offer qualifying premium assistance programs. The DOL intends to update this list annually on its [Website](#) and if necessary update the CHIP Notice.

An employer may choose to send a CHIP Notice to all of its employees if it is administratively easier than determining which employees reside in states that provide premium assistance.

This Notice must be distributed annually by the employer. There is not a specific date or month required for distribution as long as it is done once per year (Calendar Year or Plan Year).

The CHIP Notice which can be combined with other Notices can be sent by first-class mail, be provided electronically, be included in new hire packets, annual enrollment materials, or through payroll distribution. The regulations require that the "delivery method used must be calculated to ensure actual receipt of the material and full distribution". In addition, electronic distribution can be used but that method has specific requirements that are outlined below.

[Click Here for the sample CHIP Notice](#)

## 2. WHCRA Notice

The "Women's Health and Cancer Rights Act" (WHCRA) passed in 1998, requires Group Health Plans to make certain benefits available to participants who have undergone a mastectomy. In addition, the Act requires that the WHCRA Notice describing these benefits be provided to each new enrollee at enrollment time and an annual notice to be provided to each participant thereafter. The attached WHCRA sample notice can be utilized for the initial, as well as the annual notification.



This Notice must be distributed annually by the employer. There is not a specific date or month required for distribution as long as it is done once per year (Calendar Year or Plan Year).

The WHCRA Notice which can be combined with other Notices can be sent by first-class mail, be provided electronically, be included in new hire packets, annual enrollment materials, or through payroll distribution. The regulations require that the “delivery method used must be calculated to ensure actual receipt of the material and full distribution”. In addition, electronic distribution can be used but that method has specific requirements that are outlined below.

[Click Here for the sample WHCRA Notice](#)

### **3. Grandfathered Group Health Plan Disclosure Notice (For Grandfathered Plans Only)**

To maintain status as a Grandfathered Group Health Plan the Plan must include a Notice that it believes it is a Grandfathered Group Health Plan within the meaning of section 1251 of the Patient Protection and Affordable Care Act and must provide contact information for questions.

The Grandfathered Group Health Plan Disclosure Notice must be provided to each participant whenever any information is distributed that describes the Plan’s benefits (i.e. annual enrollment material, Schedule of Benefits etc.).

It is not required that the Grandfathered Group Health Plan Disclosure Notice be provided in a separate mailing but the employer would need to provide this Notice each time any materials are distributed that describe the Plan’s benefits.

This Notice can be sent by first-class mail, be provided electronically, be included in new hire packets, annual enrollment materials, or through payroll distribution. The regulations require that the “delivery method used must be calculated to ensure actual receipt of the material and full distribution”. In addition, electronic distribution can be used but that method has specific requirements that are outlined below.

[Click Here for the sample Grandfathered Group Health Plan Disclosure Notice](#)



## 4. Marketplace Notice

Under the Affordable Care Act (ACA) all applicable employers are required to provide each employee a written notice regarding coverage options available through the Health Insurance Marketplace.

The Marketplace Notice requirement applies to all employers that are subject to the Fair Labor Standards Act (FLSA). Most employers fall into this category, but there are exceptions. The following link may assist employers in making the determination if they are subject to the [FLSA](#).

Initially the Marketplace Notice needed to be provided to all current employees including COBRA beneficiaries no later than October 1, 2013. Beginning October 1, 2013 the employer was required to provide this Marketplace Notice to new employees at the time of hiring only, there is no requirement to provide this annually to all employees.

The DOL has published two model Marketplace Notices: one to be used by employers offering health coverage and one to be used by employers not offering coverage.

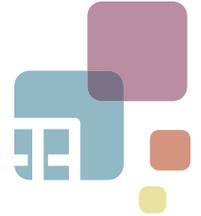
The DOL has indicated that employers may use these models or a “modified version”, as long as the Notice contains the required information. The model notices are available at [www.dol.gov/ebsa/healthreform](http://www.dol.gov/ebsa/healthreform) under Affordable Care Act Regulations and Guidance, Notice to Employees of Coverage Options. The model notices also include a Spanish version of each Marketplace Notice.

Each model notice contains two parts. Part A provides required general information regarding the marketplace. Part B requests optional information which is not mandatory to provide, about the employer and health coverage, if any, sponsored by the employer.

The Marketplace Notice can be sent by first-class mail, be provided electronically, or be included in new hire packets. The regulations require that the “delivery method used must be calculated to ensure actual receipt of the material and full distribution”. In addition, electronic distribution can be used but that method has specific requirements that are outlined below.

The sample Marketplace Notices can be found here:

- [Marketplace Notice for Employers who provide coverage](#)
- [Marketplace Notice for Employers who do not provide coverage](#)



## 5. Notice of Privacy Practices

HIPAA Regulation require that participants be provided with a detailed explanation of their privacy rights, the Plan’s legal duties with respect to Protected Health Information (PHI) and the Plan’s uses and disclosures of PHI.

To meet that requirement a Group Health Plan is required to distribute the HIPAA Notice of Privacy Practices upon enrollment in the Plan and upon request.

In addition at least once every three years the Group Health Plan must notify participants that the Notice of Privacy Practices is available and how to obtain the Notice. This requirement may be satisfied by either providing a copy of the Notice of Privacy Practices or providing a reminder that the Notice of Privacy Practice is available, with information on how to obtain a copy.

The Notice of Privacy Practices which can be combined with other notices can be sent by first-class mail, be provided electronically, be included in new hire packets, annual enrollment materials, or through payroll distribution. The regulations require that the “delivery method used must be calculated to ensure actual receipt of the material and full distribution”. In addition, electronic distribution can be used but that method has specific requirements that are outlined below.

[Click Here for the sample Notice of Privacy Practices Notice](#)



## Electronic Distribution of Notices

The Department of Labor rules for electronic distribution vary depending on whether employees have work related computer access or not. These rules are as follows:

Employees with work-related computer access:

Employees with work-related computer access must have the ability to access documents at any location where they reasonably could be expected to perform employment duties. In addition, access to the employer's electronic information system must be an integral part of their employment duties. In addition:

- A notice must be provided to each recipient at the time that the electronic document is furnished, detailing the significance of the document.
- The notice must advise the participant of their rights to have the opportunity, at their work site, to access documents furnished electronically and to request and receive (free of charge) paper copies of any documents received electronically.
- The employer must take necessary measures to ensure the electronic transmittal will result in actual receipt of information by the participants (i.e. return-receipt).

## Employees without work-related computer access:

For Employees without work-related computer access, an employer must obtain an affirmative consent form from the employee to receive notices electronically. Before obtaining the consent, the employer must specifically identify the documents that will be provided electronically and provide the ability to withdraw the consent at any time. In addition:

- A notice must be provided to each recipient at the time that the electronic document is furnished, detailing the significance of the document.
- The notice must advise the participant of their rights to have the opportunity to request and receive (free of charge) paper copies of any documents received electronically.
- The employer must take necessary measures to ensure the electronic transmittal will result in actual receipt of information by the participants (i.e. return-receipt).

If you have any questions regarding annual notices please contact your BAS account manager.