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Year-End Health Plan Checklist—Annual Notices Plus Other Items to Consider Distributing

Clients ask us from time-to-time for an annual checklist of health plan notices that they need to send so that they can make one annual distribution of materials and be certain that they have complied with applicable requirements. The Legal & Research Group has put together the year-end checklist of health plan notices that follows. As the checklist shows under the “Annual Disclosure Requirements” heading, there are few health plan notices that are strictly required on an annual basis, and even those are not generally tied to the end of the calendar year. However, year-end is a useful time to look back and determine whether annual requirements have been met.

Year-end is also a useful time to plan for distribution of materials during the new year, and an annual distribution of other health plan items that are not required annually can be helpful because it can operate as a failsafe, helping to ensure that notice requirements are met. Notices of this type are listed under the checklist heading “Disclosure Requirements That Annual Notices Will Fulfill (At Least In Part).” While these items are not necessarily required to be distributed each year, some employers distribute them annually for the reasons noted.

Each checklist item includes a short explanation and a reference to the chapter in *Willis’ On-line Compliance Manual* where you can find additional details on the checklist item. In most cases, the *Compliance Manual* provides a form for preparing the checklist item as an exhibit to the chapter, with a revisable version of the form available in the Exhibits Library.

We hope that you will find this checklist useful as the year draws to a close.

Annual Disclosure Requirements

Annual WHCRA Notice

The Women’s Health and Cancer Rights Act (WHCRA) requires an annual notice to all participants in group medical plans of their rights to post-mastectomy breast reconstruction. See *Willis Employee Benefits Alert #85 Women’s Health and Cancer Rights Act: Annual Notice Reminder* for additional details. Also see Chapter 9 of the *Compliance Manual* and Exhibit 9-16.

SAR

A summary annual report is required for many health plans that are required to file a Form 5500. The SAR must be sent each year within 210 days after the end of the plan year. See Chapter 1 of the *Compliance Manual* and Exhibit 1-06

Notice of Opt-Out by Self-Funded, Governmental Plan

Self-funded, governmental plans are able to opt out of HIPAA’s portability, nondiscrimination, and renewability requirements, as well as the requirements of the Mental Health Parity Act, the Newborns and Mothers Health Protection Act, and the WHCRA. These plans opt out by filing an election to do so with the Centers for Medicare & Medicaid Services. A plan that opts out must notify participants annually that it has done so. See Chapter 9 of the *Compliance Manual* and Exhibit 9-01.

Disclosure Requirements That Annual Notices Will Fulfill (At Least In Part)

Medicare Part D Creditable Coverage Notice

The laws governing Medicare Part D require all employer-sponsored group medical plans that cover prescription drugs to notify Part-D eligible individuals who are enrolled or seeking to enroll whether the plan provides “creditable coverage.” Determining exactly who is entitled to the notice presents several difficulties, and the notice is required at five different times, at least one of which requires annual distribution of the notice. Accordingly, most employers distribute the notices to all plan participants at least once a year. See *Willis Employee Benefits Alert #84 — Medicare Prescription Drug Annual Requirements*. Also see Chapter 12 of the *Compliance Manual* and Exhibits 12-01, 12-02, and 12-03.

Initial COBRA Notice

COBRA requires that each participant (and his or her covered spouse) be notified of COBRA rights when coverage under a plan begins. COBRA also allows a plan to condition certain COBRA rights on participants’ or others providing timely notices. DOL regulations stipulate, however, that plans cannot deny COBRA rights based on failure to provide a notice if those required to receive the initial notice have not received it or an SPD. In many cases, employers do not know (or do not have documentation showing) whether an individual received an initial notice upon enrollment. To remedy those situations, and to be certain that participants and spouses have the latest information on the conditions they must meet to obtain COBRA coverage, some employers send the initial COBRA notice to all participants (and their covered spouses) every year. See *Willis Employee Benefits Alert # 16 — DOL Finalizes Rules on COBRA Notices*. Also see Chapter 2 of the *Compliance Manual* and Exhibits 2-01, 2-02, 2-03, and 2-04.

HIPAA Notice of Privacy Practices

The HIPAA privacy rules require that health plans or their insurers distribute a notice to participants of their privacy rights. After distributing the notice for the first time HIPAA requires that plans give the notice to new participants and redistribute the notice if it is revised. In addition, HIPAA requires plans to send a reminder to participants every three years that the full notice which explains their privacy rights in detail is available and what they should do to receive one. It is difficult to remember a triennial notice requirement, so sending this reminder notice annually might be easier than sending it every three years and the annual mailing will fulfill the requirement. See *Willis Employee Benefits Alert # 61 — Reminder: Redistribution of HIPAA Privacy Notice*. Also see Chapter 10 of the *Compliance Manual* and Exhibit 10-26.

SPD/SMM

ERISA requires a summary plan description to be sent to each participant in a plan within 90 days of becoming a participant and again every five years (assuming there have been changes made to the plan in the interim). The five-year SPD must incorporate all the amendments or changes made to the plan in the intervening years. If there are significant changes in the meantime, an SMM must be sent notifying participants of any material changes within 210 days after the change becomes effective or within 60 days after the adoption of any change that is a material reduction in covered benefits or services provided under the plan. Sending a new SPD every year will certainly cover the requirement that the SPD be sent every five years and, depending on the timing, it may also obviate the need to send an SMM. See Chapter 1 of the *Compliance Manual* and Exhibits 1-04 and 1-05.

Although not intended to be an exhaustive list of all plan requirements, this checklist may be a helpful tool for employers to use to help with the administration of their plans.

U.S. Benefit Office Locations

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|-------------------------------------|------------------------------------|-------------------------------------|------------------------------------|
| Anchorage, AK (907) 562-2266 | Atlanta, GA (404) 224-5000 | Austin, TX (800) 861-9851 | Baltimore, MD (410) 527-1200 |
| Birmingham, AL (205) 871-3871 | Boise, ID (208) 340-0645 | Boston, MA (617) 437-6900 | Cary, NC (919) 459-3000 |
| Charlotte, NC (704) 376-9161 | Chicago, IL (312) 621-4700 | Cincinnati, OH (513) 762-7661 | Cleveland, OH (216) 861-9100 |
| Columbus, OH (614) 766-8900 | Dallas, TX (972) 385-9800 | Denver, CO (303) 218-4020 | Detroit, MI (248) 735-7580 |
| Eugene, OR (541) 687-2222 | Farmington, CT (860) 284-6147 | Florham Park, NJ (973) 410-1022 | Ft. Worth, TX (817) 335-2115 |
| Grand Rapids, MI (616) 437-9864 | Greenville, SC (864) 232-9999 | Houston, TX (713) 625-1023 | Jacksonville, FL (904) 355-4600 |
| Knoxville, TN (865) 588-8101 | Las Vegas, NV (702) 562-4335 | Long Island, NY (516) 941-0260 | Los Angeles, CA (213) 607-6300 |
| Louisville, KY (502) 499-1891 | Memphis, TN (901) 248-3100 | Miami, FL (305) 373-8460 | Milwaukee, WI (414) 271-9800 |
| Minneapolis, MN (763) 302-7100 | Mobile, AL (251) 433-0441 | Mountain View, CA (650) 944-7000 | Naples, FL (239) 514-2542 |
| Nashville, TN (615) 872-3700 | New Orleans, LA (504) 581-6151 | New York, NY (212) 344-8888 | Omaha, NE (402) 778-4851 |
| Orlando, FL (407) 805-3005 | Philadelphia, PA (610) 964-8700 | Phoenix, AZ (602) 787-6000 | Pittsburgh, PA (412) 586-1400 |
| Portland, OR (503) 224-4155 | Roswell, NM (505) 317-3397 | St. Louis, MO (314) 721-8400 | San Diego, CA (858) 678-2000 |
| San Francisco, CA (415) 981-0600 | San Juan, PR (787) 725-5880 | Seattle, WA (206) 386-7400 | Spokane, WA (206) 386-7400 |
| Tampa, FL (813) 281-2095 | Washington, DC (301) 530-5050 | Wilmington, DE (302) 477-9640 | |

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