EMPLOYEE COMMUNICATION REMINDERS

Employers have significant responsibilities when it comes to communicating with their employees. Not only should they communicate with employees to establish a good employer/employee relationship, but also they need to send employees several legal notices throughout the year to comply with government regulations. The problem is that employees prefer simple, easy to understand benefit communications. Unfortunately, plan provisions and legal notices are often quite complicated. It is not surprising a recent AFLAC survey found employees would rather clean the bathroom than read open enrollment communications!

The content is not the only complicated aspect of communication. The methods for sending communications are also changing. An employee’s comfort level with different communication media depends heavily on the employee. In general, older employees tend to be more comfortable with print and in-person communications. Younger employees tend to be more comfortable with electronic communication. As the scope of required communications continues to expand, using electronic communication media will likely make sense for most employers.

This Advisor discusses the importance of the following employee communications and key factors employers should consider:

- Legal notice requirements (including required health care notices) and plan descriptions
- New hire communication
- Annual enrollment
- Health and wellness communications
- Communication media

Employers should develop procedures to ensure they are sending all legally required notices and meeting all specific timing and delivery requirements.

We welcome your comments and suggestions regarding this issue of our Benefit Advisor. For more information, please contact your Account Manager or visit our website at www.mma-mi.com.

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LEGAL NOTICE REQUIREMENTS (INCLUDING REQUIRED HEALTH CARE NOTICES) AND PLAN DESCRIPTIONS

Employers sponsoring health plans must provide specific information to employees. Because some notices must be sent each year, many employers choose to include them with their annual enrollment materials. Other communication materials, such as the initial notice of COBRA rights, must be given to plan participants at different times. In addition, ERISA plans must provide summary plan descriptions (SPDs), summary annual reports (SARs) and summaries of material modifications (SMMs) to plan participants.

Satisfying all the requirements is not easy; rules governing delivery methods and timing differ. Employers should have a plan for providing summary plan descriptions as well as annual enrollment materials. These following required or recommended communications should be addressed:

- **Grandfathered health plan options** - Employers must inform plan participants in the summary plan description, as well as in the annual enrollment materials of any grandfathered health plan options.

- **HIPAA special enrollment rights** - New hire and open enrollment communications should describe HIPAA special enrollment rights and inform employees that they will have limited opportunities to enroll in the future if they waive coverage now. The documents should also include time limits for covering new dependents during the plan year.

- **Section 125** - Section 125 requires that employees make an annual, twelve-month election to pay for certain health plans with pre-tax dollars. Employees can make a mid-year election change only when a qualifying change in family status occurs. Both the new hire and annual enrollment benefit communications should summarize these rules.

- **Women’s Health and Cancer Rights Act** - Employers should include information on the Women’s Health and Cancer Rights Act in the SPD and in the annual enrollment materials.

- **Michelle’s Law** - Michelle’s Law requires an annual notice. This law applied to group health plans that required dependent children to be full-time college students in order to remain eligible for health coverage. Under this law, if dependent students became severely ill or injured, the employer would have to cover them for a year if they could not continue going to school full-time. However, for most employers health care reform requirements have made Michelle’s Law a non-issue. Health plans can no longer make eligibility for group health plan coverage contingent on whether an adult child is a student. On the other hand, Michelle’s Law may still apply if an employer requires adult children to be students in order to receive dental and vision coverage.

- **Health Insurance Portability and Accountability Act (HIPAA) privacy notices** - Health plans must notify new plan participants of privacy practices. In addition, health plans must inform plan participants every three years that the privacy notice is available upon request. Remembering to send this reminder every three years is difficult for employers. Therefore, it makes sense to state in annual enrollment communications that the privacy notice is available.

- **Plan changes** - ERISA requires employers to notify plan participants of plan changes and provide a summary of material modifications (SMM). Employers should amend their SPDs whenever they change critical aspects of the plan such as benefits or eligibility. Employers have a significant amount of time to formally amend the plan, but they must notify participants of changes promptly. Materials should state that the annual enrollment plan communications can serve as the SMM.

- **Premium assistance** - The government requires health plans to notify employees that premium assistance is available under Medicaid or the Children’s Health Insurance Program (CHIP). Employers should include this notice in
both the new hire and annual enrollment communications.

- **Notice of creditable or non-creditable coverage** - Health plans must provide the Medicare Part D notice of creditable or non-creditable coverage annually. Employers should include this information in both the new hire and annual enrollment communication materials. Some employers prefer to notify employees shortly before open enrollment for Medicare Part D, which runs from October 15 to December 7 each year.

- **Exchange Notice** - Employers must provide the exchange notice to all new hires within 14 days of their start date. This requirement is relatively new.

- **COBRA General Notice** - Employers must send a COBRA General Notice within 90 days of the effective coverage date when an employee or spouse first enrolls in health plan coverage. Most employers have a process to make sure this notice goes out when a new hire enrolls for coverage. However, employers need to make sure they send out a notice when an employee adds a spouse, when an employee elects coverage at open enrollment or any time an employee or spouse is added after initial eligibility.

- **Summary of Benefits and Coverage (SBC)** - The Summary of Benefits and Coverage (SBC) is a new communication requirement under health care reform. It is a four-page summary designed to make the communication process consistent. Most of the content is government-specified language.

Employers with self-funded plans must provide SBCs to participants. If an employer wholly insures a medical plan, distributing SBCs is a shared responsibility with the insurance carrier. Employers must provide SBCs at the following times:

- When employees apply for group coverage—employers must send SBCs as soon as practical, but no later than seven business days after they receive the application.
- By the first day of coverage (if any provision is changed from application).
- When there is any change in information required on an SBC—employers must send a new, updated SBC to the employee no later than the first day of coverage.
- Upon renewal—employers must provide an SBC no later than 30 days before the first day of the new policy year.
- Upon request—if an employee requests an SBC, employers must provide it within seven business days.

While many of these notices are required annually, some are necessary only when the employee is hired or enrolls in a health plan. Employers should create a process to make sure plan participants receive all necessary notices within the required timeframes.

Employers may decide whether to add or modify existing communications because of specific health care reform provisions. Organizations may choose to inform employees of the following issues:

- **Medicaid expansion**: Many employers are located in states that have expanded Medicaid eligibility. Employers should inform low-income employees who are potentially eligible for Medicaid of this option. It may be more appealing to them than employer-sponsored coverage. Medicaid provides comprehensive coverage at little or no cost to eligible individuals. Keep in mind, employers cannot force employees to take Medicaid instead of a group health plan, nor can they exclude Medicaid-eligible individuals from coverage under the plan. Employers can’t provide a specific financial incentive to elect Medicaid. Opt-out bonuses paid for other coverage (such as coverage under a spouse’s plan) can be paid if someone elects Medicaid. Employers can also provide information about Medicaid. An employer will not have to pay a penalty under the employer mandate if an employee elects Medicaid rather than employer-sponsored coverage.
Variable-hour employees:
Some employees work variable hours. To comply with the “play or pay” rules, employers set a period of time to measure hours worked. Employers must offer coverage to employees that work full-time during the measurement period or pay a penalty. The measurement process will become an annual event. Employers will want targeted communications for these variable-hour employees. Employees need to understand that if they meet the 30-hour a week threshold, the employer will offer coverage for the stability period. These employees need benefit information and an opportunity to elect coverage. The employer may choose to notify those averaging fewer than 30 hours a week that they are not eligible for coverage and direct them to the Exchange where they may be eligible for subsidized coverage.

Concerns regarding the Cadillac Tax: Employers have spent well over a decade trying to inform employees of health care cost. Based on the preliminary discussions about the benefits included in the Cadillac tax calculations, many employers are concerned about hitting the tax thresholds. A 2015 International Foundation of Employee Benefit Plans survey found nearly 90 percent of employers have calculated whether their health plan will trigger the Cadillac tax, and 60 percent say that if there are no changes, their plan will face the tax. Because of this tax, employers may cut benefits, limit or eliminate medical Flexible Spending Accounts, or place caps on pre-tax contributions to Health Savings Accounts. All these options will affect employees. Some employers have already started carving back benefits to avoid triggering the tax. Employers may want to start informing employees of the potential impact of the Cadillac tax so they understand the changes that may occur in 2018 and beyond.

Employer communication requirements have gotten much more complicated over the last decade. Employers should ensure they have a process for issuing all legally-required notifications.

ANNUAL ENROLLMENT
Employers are often torn when it comes to handling annual enrollment communications. On the one hand, employers want to issue simple and concise communications. On the other hand, they want employees to have all the information they need to make informed choices at open enrollment. In addition, employers are burdened with a set of annual legal notices that will increase the size and complexity of communication. It makes sense to include these notices at the same time you explain benefit changes, however, to keep things simple, the employer should consider providing the legal notices in a communication separate from open enrollment materials.

Annual enrollment materials describe plan design and employee contribution changes. Employers should use them to explain plans and benefit options. Risk-averse employees often choose the most costly plan. They would rather pay a known, albeit high, premium, than assume the risk that may come with a lower-value plan option. Showing these employees how to assess the potential costs may help make them more comfortable with choosing a less expensive plan that requires more member cost-sharing. Most employers want employees in plans with a greater level of cost-sharing because these plans typically have lower utilization rates.

The Exchanges have not had much impact on employer plans. The silver and bronze plans typically have deductibles that substantially exceed most employer plans. Everyone anticipated employees would look at the Exchange and it would become a viable alternative to employer plans. However the cost and coverage levels in the Exchanges do not compare favorably to most employer-sponsored plans. The Exchanges have become an option for part-time employees or other employees that are not covered by an employer plan.

Employers should look at annual enrollment communication as an opportunity to inform employees of health plan cost and coverage. It gives employers a chance to update employees on the effect of health care reform. It also may be an opportunity to share plan
results compared with benchmarks. If an employer finds that employees do not understand certain health plan provisions, this communication is a good way to explain how the plan operates.

It makes sense to decide key messages before drafting open enrollment communications. If an employer is making sizable changes, it is best to use a multi-message campaign to inform employees over time. For example, employers offering a consumer driven health plan for the first time will need to help employees understand the concept. One option may be a four-step message campaign to introduce a new consumer driven plan. The first message should introduce the concept and explain why the organization is offering the plan. The second message should stress the increased financial obligations and employee responsibilities. This bulletin should provide real resources employees can access to estimate the cost of services. It should also give real examples of both medical services and prescription drugs. The third bulletin should describe the new plan design and focus on potential out-of-pocket employee cost. The fourth bulletin should explain Health Savings Accounts (HSAs) if they are offered along with a high deductible health plan.

Many employers struggle to balance keeping it simple and providing enough material to help employees make informed decisions. Employers may decide to keep it simple by launching a multi-message communication strategy. Employees are more likely to pay attention to shorter missives than read a book on their benefit options for the following year.

NEW HIRE COMMUNICATION

Employers can describe benefits available to newly hired employees in a number of places. For example, the employee handbook may cover vacation and sick pay as well as health plan and retirement benefits.

New hire communications can be challenging. Employers want their communications to be clear and concise so that employees have a strong grasp of the benefit plans. These communications also need to include key government requirements, including the initial COBRA notice, SPDs, SBCs and the HIPAA privacy notice. These notices all have different delivery and timing requirements.

Employers should create a process to communicate benefit information effectively. When communications are hand-delivered, it makes sense to ask new employees to sign a receipt.

Some communications, such as the initial COBRA notice, must be sent to the employees’ homes to ensure all plan participants receive the notice. Employers should create a process for distributing these notices.

To ensure they are sending all required communications within the required time period, employers should create a new hire checklist covering each necessary communication.

If feasible, employers may want to meet with newly hired employees to explain benefits. The meetings do not necessarily have to be one-on-one; they could be held monthly for all new hires. These meetings would be an opportunity for new hires to meet one another and discuss benefits. During the meeting, employers could explain how to enroll for benefits, make changes and deal with potential claim issues. HR departments are strapped for resources, and often employees will go directly to HR whenever they have a benefit problem. Employers can use these meetings to inform employees that they can and should work directly with the carriers to resolve their issues.

HEALTH AND WELLNESS

Rising costs have prompted many employers to take a deeper interest in employee health. An analysis of health plan costs shows that employee health and lifestyle choices have a direct impact on health plan cost. Consequently, many employers have launched health and wellness activities for their workforce. They see the value in helping employees improve their health.

As a result, most employers have adopted formal or ad hoc wellness initiatives. These initiatives should be scheduled throughout the year to hold employee interest. In many cases, if an employer contracts
with a wellness vendor, the vendor will typically send information to employees targeting health issues. Employers without a wellness vendor may also choose to send health communications throughout the year. You can choose topics related to your employees' medical issues.

One of the best practices for a successful wellness program is to create a “brand” and look for the wellness program. Is brand and look will let employees know whenever a communication is health-related. It is also important to vary wellness-related communications. Different issues affect different employees. You can have fun with these. For example, because February represents women’s heart health month, you can target February communications for heart health. You may sponsor an end-of-the-month healthful potluck, where employees exchange recipes for the dishes they bring.

Wellness communications should be ongoing if employers hope to improve health. The key messages of your wellness program should be repeated. Consider hanging posters promoting good nutrition and physical activity in common areas. Signature lines in email can stress key messages. By varying the message media and format, employers may be able to reach employees over time.

**COMMUNICATION MEDIA**

Communication is much more interesting these days. Technology has advanced enormously during the last decade. New technology provides employers with a host of communication options. However, employers need to be mindful of their employee base when they select media. Younger employees tend to welcome electronic communication, whereas older employees are often more comfortable with written documents.

Communications are evolving to the point that employers can choose from many options, such as videos, Powerpoint slideshows with recorded voice work, mobile apps and others. It may make sense to use more than one communication medium and stagger messages throughout the year. To the extent you can make communications fun and engaging, employees will likely absorb more of the message.

For legally required communications, the government may specify the permitted communication media. For example, if an SBC will be electronically distributed, it must meet ERISA requirements. You’ll find a summary of the ERISA requirements at: [http://www.mcgrawwentworth.com/Benefit_Advisor/2007/BA_Issue_2.pdf](http://www.mcgrawwentworth.com/Benefit_Advisor/2007/BA_Issue_2.pdf).

The following two Reform Updates summarize additional information on distributing SBCs electronically:


Legally required communications must be distributed according to the requirements. Unfortunately, these electronic delivery requirements often differ, depending on the communication. As technology advances, the government is loosening some electronic delivery restrictions. Hopefully, the government will eventually standardize the electronic delivery requirements so the process will be more streamlined for employers.

Delivering documents electronically saves on printing and postage costs. However, it will be ineffective if your employees are not comfortable accessing these documents. It is imperative that your employees be able to access the medium you choose for your communications.
CONCLUDING THOUGHTS

Employee communication is a challenge for most employers. Employers need to create a communication plan that explains all of the company benefits and includes government required notices.

Health care reform has pushed health insurance into the mainstream media. This focus has caused some employees to take a greater interest in their benefit plans. Those that are not interested soon become interested in how benefits work when they have a problem with the plan. Employers should try to create communication materials that will hook their audience in an attempt to garner some interest in the key message.

Employers struggle to provide helpful communication because:

• The specific language required in legal notices is not always clear.
• Health plan designs are more complex than ever. It is difficult to describe complicated plan designs simply.

• Health and wellness communications can be difficult to understand.

However, employers should work diligently to simplify communications whenever they can. They should try to read company communications from the perspective of someone unfamiliar with the benefits. Having employees from other departments proofread the communications will also help to make sure the message is clear.

In addition, selecting benefits is often a family decision. Employees need to access information at home so that they can involve their spouses in the process. Employers should do their best to make sure employees can access benefit information both at work and at home.

Open enrollment is generally the time employers think about communication. Unfortunately, it is also an extremely busy time of year. If employers want to change their communication process, materials or media, they should make these changes after open enrollment. This is the point where employers tend to be more aware of communication strategy shortcomings. If you want to change key elements of communications, it is best to tackle changes before the open enrollment season hits.

If you have any questions, please contact you MMA-MI Account Manager.