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| March 23, 2020 | LEGAL ALERT Notice Requirements When Making Health Plan Design Changes As employers work to stay financially solvent during the COVID-19 pandemic, many are looking to change their health plan designs in order to ensure employees have access to the care they need while balancing the financial impact on the business. The type of change contemplated dictates when notice must be given to employees.   |  |  |  | | --- | --- | --- | | **Type of Change** | **Notice Requirement** | **Which Plans** | | Changes to any information found in the Summary of Benefits and Coverage ([SBC](https://www.cms.gov/files/document/sample-completed-sbc-accessible-format-11-2019-v2)) which includes deductibles, out of pocket limits, whether or not referrals are needed for specialists, copays, coinsurance, whether or not preauthorization is needed, services the plan does not cover, and what additional services are covered by your plan. | Prior to implementing any change that would require an updated SBC, plan participants must be given 60 days **advance**notice in the form of an updated SBC. This is a firm requirement. | This notice requirement is for ALL group health plans, regardless of whether or not they are subject to ERISA. | | Modifications to a summary plan description (SPD) that constitute a material reduction in covered services or benefits. For example, a decrease in employer contributions, or a material modification to plan terms. | Notice must be provided within 60 days of making the change. Practically speaking, employers should strive to give notice prior to making the change, but under ERISA, they have until 60 days after the change to inform employees. Notice should be provided in the format of a [Notice of Material Modification](https://www.dol.gov/general/topic/health-plans/planinformation). | This notice requirement is only for group health plans subject to ERISA. | | All other changes (not a material reduction in benefits and no impact on the SBC) | Notice must be provided within 210 days after the end of the plan year, in the format of a [Notice of Material Modification.](https://www.dol.gov/general/topic/health-plans/planinformation) | This notice requirement is only for group health plans subject to ERISA. |     Assuming that these changes occur mid-year and that the employer has a Section 125 Plan so that employee contributions are handled on a pre-tax basis, then if the employer were to change benefits and/or contributions, the employee could:   * Drop coverage for themselves and any covered dependents. * Not change which dependents are being covered, except to delete coverage for themselves and all covered dependents. * At the employer’s decision, employees (and covered dependents) could choose a different plan option assuming more than one plan is offered.   Mid-year changes in benefits and/or contributions would not trigger either a full or partial open enrollment.  If an employee’s spouse or dependent child under age 26 was to lose coverage due to a layoff or furlough at their employer, then this would be a change in status event that would allow the employee to add dependents onto their plan. | |
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