Department of Labor Issues Proposed Electronic Disclosure Safe Harbor Rule for ERISA Group Health Plans

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Key Takeaways

- On July 23, 2026, the Department of Labor (the Department) issued a proposed rule that *allows* group health plans to use electronic media to deliver documents and information required under ERISA.
- The proposed rule provides a new *safe harbor* that group health plan administrators may rely on to distribute required ERISA plan disclosures electronically (if the requirements of the safe harbor are met).
- Under the proposed rule, the safe harbor would not apply to other ERISA-covered welfare benefit plans that are not group health plans (such as disability or legal service plans).
- While the proposed rule largely mirrors the 2020 safe harbor electronic distribution for retirement plans, there are some key differences.

Overview

The Department issued a proposed rule that would allow group health plans to distribute ERISA-required plan documents electronically to plan participants. Specifically, the proposed rule states that the administrator of a group health plan satisfies the general delivery requirement under ERISA to ensure "actual receipt of information by plan participants and beneficiaries" by using electronic distribution methods, as long as the notice, access, and other requirements set out in the proposed rule are met.

> ***CPC Comment:*** *This proposed electronic disclosure rule allows group health plans to use electronic delivery for required notices under ERISA, but the rule does not <u>require</u> plans to do so. Plan administrators may continue to use other methods of delivery (e.g., paper mail or the 2002 safe harbor for electronic disclosure) as long as those methods meet the general requirements under ERISA for furnishing required documents.*

The proposed rule for electronic disclosure only applies to group health plans. It does not apply to all welfare plans under ERISA, such as accident, disability, or prepaid legal service plans.

> ***CPC Comment:*** *The Department notes that these other welfare benefit plans have fewer disclosure requirements with different considerations to take into account when changing or expanding electronic delivery and requests comments on whether the proposed safe harbor should be*

extended to other welfare benefits. Employers may wish to consider whether having different delivery processes for group health plans and other welfare benefits is administratively complex and introduces additional costs, particularly for employers who include all health and welfare benefits into one "wrap plan."

Covered Individuals

Under the proposed rule, group health plan administrators may use the electronic disclosure safe harbor for "covered individuals." A covered individual is a participant, beneficiary, or other individual entitled to "covered documents" (described below) and who provides an electronic address, such as an email address or an internet connected mobile computing device such as a smartphone, where the individual can receive a written notice of internet availability (NOIA), detailed below. An electronic address may be provided when the individual begins his or her participation in the plan, as a condition of employment, or otherwise. Also, if an electronic address is assigned by an employer to an employee for employment-related purposes (i.e., a work email address), the employee is treated as if he or she provided the electronic address.

A covered individual may also include a dependent child who is a beneficiary under the group health plan, is age 18 or older, and has provided an electronic address to receive documents electronically.

Covered Documents

Under the proposed rule, the electronic disclosure safe harbor may be used for a broad range of documents required to be disclosed to participants and beneficiaries under ERISA. These include:

- Summary plan descriptions;
- Plan documents;
- Summary of material modifications;
- COBRA notices; and
- Other notices required under Part 7 of ERISA.

The proposed rule permits group health plan administrators to enter into *written agreements* with health insurance issuers (carriers) to provide the required disclosures using the electronic disclosure safe harbor on behalf of the group health plan.

The proposed rule also makes clear that the electronic disclosure safe harbor is available with respect to documents that are *only required to be furnished upon request*. This is different from the 2020 electronic disclosure safe harbor for retirement plans, where documents that must be furnished upon request are exempt from the safe harbor.

CPC Comment: *Plan sponsors will want to keep this distinction related to electronic disclosure for documents required to be furnished upon request for retirement plans and group health plans in* *mind when implementing the electronic disclosure safe harbor for group health plans and whether that distinction will impact administration.*

The proposed rule also requires group health plan administrators to allow covered individuals to request a paper copy of a covered document. The paper copy must be provided promptly and without charge. Additionally, the proposed rule requires that covered individuals have the right to globally opt out of electronic delivery and receive only paper versions of covered documents. The group health plan administrator must establish and maintain reasonable procedures for covered individuals to request paper documents or globally opt out of electronic delivery.

Initial Notification

Group health plan administrators are required to furnish an initial paper notification to each individual that documents will be furnished electronically. This notice must be provided *before* the plan administrator relies on the electronic disclosure safe harbor. The notification must include specific information regarding the electronic address that will be used for the individual, a statement of the right to request and obtain a paper version of a covered document free of charge, and how to opt out of electronic delivery.

NOIA

Plan administrators for group health plans will be required to furnish a NOIA to each covered individual for each covered document. A NOIA must be provided at the time a covered document is made available on a website where a covered individual can access the covered document.

If a NOIA covers a combined NOIA for more than one covered document as permitted under the rule, the requirements are satisfied if the combined NOIA is furnished each plan year and, if the combined NOIA was furnished in the prior plan year, no more than 14 months following the date the prior plan year's NOIA was furnished. For covered documents only required to be furnished upon request, a NOIA may be furnished after the request, once the covered document is made available on the website.

A NOIA must include:

- A prominent statement about the document (such as "Disclosure About Your Health Plan").
- A statement that reads, "Important information about your health plan is now available. Please review this information."
- Identification of the covered document by name (e.g., a statement that reads: "HIPAA Notice of Special Enrollment Rights is now available").
- A brief description of the covered document if the nature of the document is not conveyed by the name.
- The website address or hyperlink where the document is available.

- A statement that a paper copy of the document is available upon request without charge and how to make the request, and how to opt out of electronic delivery, among other requirements.

A NOIA must be furnished electronically to the address provided by the covered individual and generally only include the content specified above. It must be furnished separately from other documents or disclosures (except as otherwise permitted) and be written in a manner calculated to be understood by the average plan participant. Group health plan administrators may furnish one annual NOIA that incorporates or combines certain content information.

Website

The proposed rule requires plan administrators to establish and maintain an internet website where covered individuals can access the covered documents. The covered document must be available on the website no later than the date on which the covered document is required to be furnished under ERISA. The covered document also must remain on the website until the date that is one year after the date the covered document is made available or, if later, the date it is superseded by an updated version of the covered document. The website must also comply with other format, searching, and confidentiality requirements. For purposes of the rule, “website” includes an internet website or other internet or electronic-based information repository, such as a mobile application.

Plan administrators can rely on plan service providers or other third parties to establish and maintain the website, as long as reasonable procedures for compliance are met and the plan administrator exercises its general obligation under ERISA to prudently select and monitor these service providers.

Email Distribution

Unlike the electronic disclosure rules for retirement plan distributions, this proposed rule does not allow plan administrators to disclose covered documents through email systems. Because many of the covered documents include sensitive information, including protected health information (PHI), the proposed rule is designed to avoid a circumstance where PHI is transmitted to an employee via their company email address and potentially monitored by the employer. Therefore, the proposed rule requires group health plan administrators to establish a website at which covered individuals are able to access covered documents (as described above) and does not permit the disclosure of covered documents through email systems. The Department requests comments on this requirement.

Other Requirements

The proposed rule includes requirements for group health plan administrators once an employee terminates employment (including for retirees). Additionally, the Department sets out requirements if covered documents are temporarily unavailable for a reasonable period due to technical maintenance or temporary technical disruptions. The proposed rule also highlights that compliance with the rule does not determine compliance with other state or federal law requirements, such as HIPAA.

If finalized, group health plan administrators would be able to take advantage of the safe harbor on or after the first day of the calendar year following the publication of the final rule. The Department requests comments on whether the applicability date should be sooner, since the provision is optional, or later, to safeguard plan participants from potential harm. The Department requests comments by September 21, 2026.

Please contact the CPC team with any questions.

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