



# Participant Disclosure Requirements

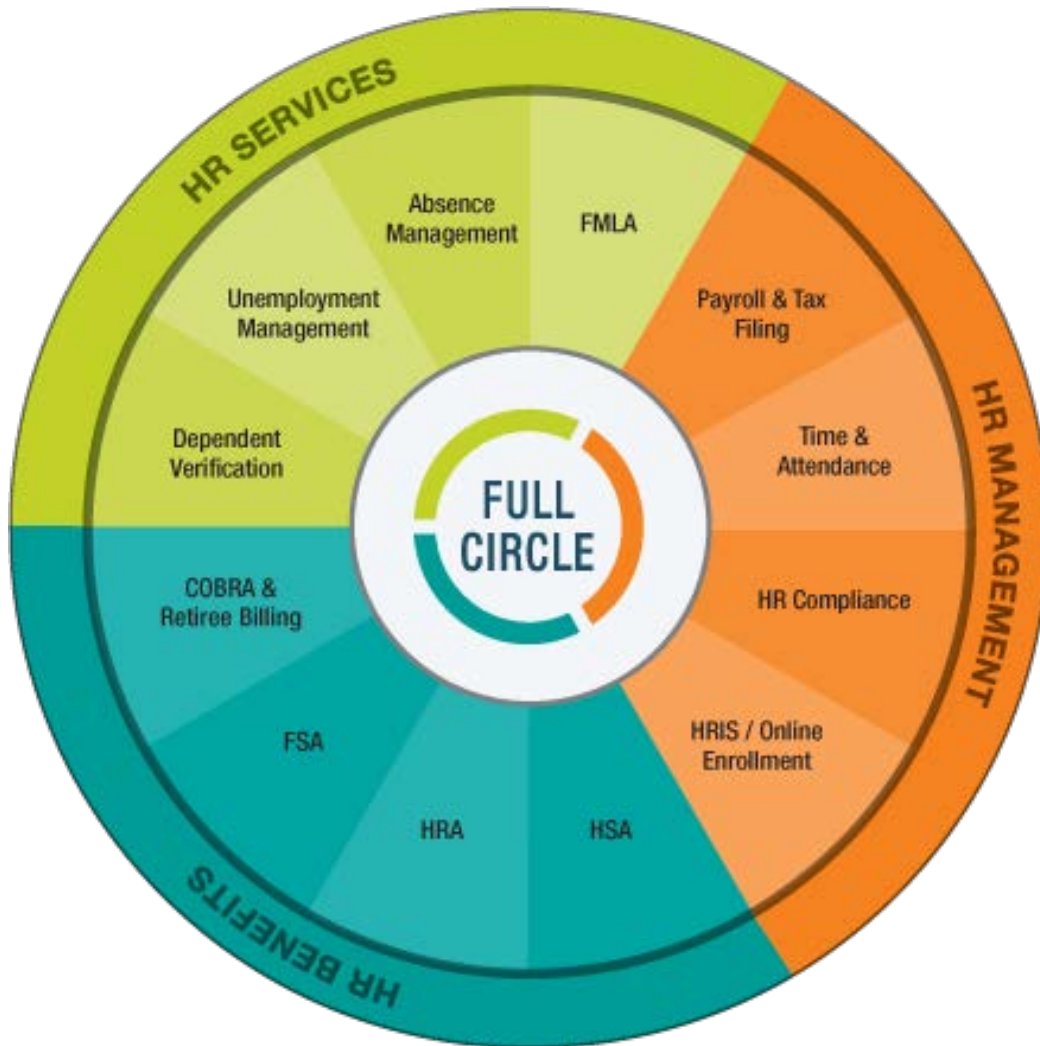
Presented by: Mary Bauman



- HR Benefits
- HR Management
- HR Services

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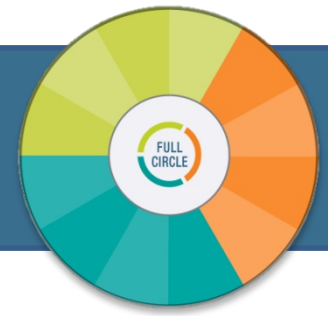
# SPD Requirement

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- The SPD is the ERISA required participant communications document summarizing the terms of the plan
- Time limits for SPD distribution
  - An SPD is required to be distributed within 120 days after a plan is established
  - A new participant must be provided an SPD within 90 days after becoming a participant

# SPD Requirement



- A new SPD must be prepared and distributed generally at least once every five years if any material change is made to the plan (every 10 years if no material change)



# Individuals Entitled to Receive the SPD

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- Enrolled employees (including actively working employees, inactive employees and former employees such as retirees)
- COBRA qualified beneficiaries
- The custodial parent or guardian of alternate recipient children covered by a qualified medical child support order (QMCSO)



# Individuals Entitled to Receive the SPD



- Spouses and other enrolled dependents of deceased employees and retirees
- Representatives and guardians of enrolled incapacitated persons



# Information Required to be Included in SPD

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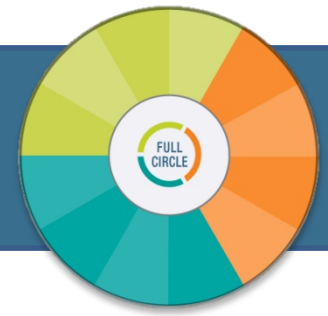
- Plan name
- Name, address, telephone number and taxpayer identification number (EIN) of the employer sponsoring the plan/plan administrator
- Names of any participating related employers
- The type of plan (e.g., group health plan, disability plan, etc.)

# Information Required to be Included in SPD



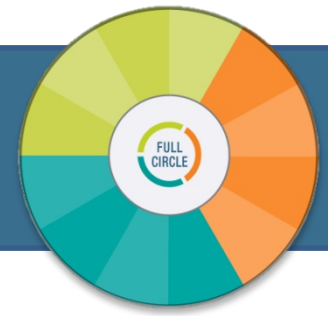
- The type of administration (e.g., self-administration, insurer administration, etc.)
- Plan fiscal year and 3-digit plan number for 5500 purposes

# Information Required to be Included in SPD



- Name and address of individual (identification can be by name or title) designated as agent for service of legal process. The employer cannot serve in this capacity. In addition, a statement that service of legal process may be made upon the plan administrator or a plan trustee

# Information Required to be Included in SPD



- Name, title and address of each trustee, if any
- If applicable, a statement that the plan is maintained pursuant to one or more collective bargaining agreements and notice of the participants' right to obtain a copy of the agreement(s)
- A description of the eligibility and participation rules

# Information Required to be Included in SPD



- QMCSO procedures or a statement that a copy of the QMCSO procedures are available without charge
- A description of cost-sharing provisions, including deductibles
- A description of plan benefits
- A description of any annual or lifetime caps or other limits
- A description of the rules governing the use of network providers

# Information Required to be Included in SPD



- In the case of plans with provider networks, a listing of network providers must be furnished either as part of the SPD or as a separate document provided the SPD contains a statement that provider lists are furnished automatically, without charge, as a separate document
- A description of the provisions requiring pre-authorization or utilization review



# Information Required to be Included in SPD



- A summary of plan exclusions and other limitations on benefits such as the coordination of benefit rules and the subrogation/reimbursement provisions
- A description of the plan's claim and appeal procedures
- A summary of the rules governing the authority of the plan sponsor to amend or terminate the plan

# Information Required to be Included in SPD



- A thorough explanation of COBRA
- The sources of contributions to the plan (e.g., from the employer, employees, etc.) and the identity of any funding medium such as a trust
- The identification of any insurer and a description of the role of the insurer
- A statement of participants' rights under ERISA

# Information Required to be Included in SPD



- A description of a female participant's rights regarding coverage for a minimum length of hospital stay after child birth



# Optional SPD Provisions

# Optional SPD Provisions



- The procedures for a participant to elect continued health coverage under USERRA in the event of a military leave
- HIPAA privacy notice to participants
- Medicare Part D notice of creditable/non-creditable coverage



# Satisfying the SPD Requirement

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- Compliance with the SPD requirement can be a problem for a fully-insured health plan because the booklet/certificate from the insurer/HMO often does not contain all the information required to be included in an SPD
- Many employers with fully-insured health plans satisfy the SPD requirement by creating a “wrap” document to supplement the booklet/certificate. These two documents together can satisfy the SPD requirement



# SMM Requirement



# SMM Requirement



- An SMM must be provided to each participant within 210 days after the end of a plan year in which a material change is made to the plan
- A special rule applies if an amendment causes a material reduction in covered services or benefits under a health plan

# SMM Requirement



- In that case, the SMM must be provided no later than 60 days after the date the health plan amendment is adopted
- Examples of material reductions for this purpose include the elimination or reduction of a benefit, an increase in deductibles or copays, a reduction in the HMO service area or the addition of a pre-authorization requirement

# SMM Requirement



- If a mid-year plan change affects the information in the SBC, an updated SBC must be provided to participants at least 60 days in advance



# Other Rules for SPDs and SMMs

# Other Rules for SPDs and SMMs



- Must be written in a manner designed to be understood by the average participant
- Must be distributed in a permissible manner
  - First-class mail
  - Second or third-class mail with postage guaranteed and address correction requested
  - Hand delivery
  - Electronic if certain requirements are satisfied
- Maintain records of distribution



# Documents Which Must be Provided to Participants Upon Written Request

## Documents Which Must be Provided to Participants Upon Written Request



- The latest updated SPD (including interim SMMs)
- The latest Form 5500 annual report
- Any applicable collective bargaining agreement(s)
- Any applicable trust agreement

## Documents Which Must be Provided to Participants Upon Written Request



- The latest plan document, including any other contract or instrument under which the plan is established or operated
- Participants can ask to review these documents at the principal office of the plan administrator
- Participant can ask for copies of these documents



## Documents Which Must be Provided to Participants Upon Written Request



- The plan administrator may impose a reasonable copying charge of up to 25¢ per page or the actual cost, if less
- If the plan administrator does not provide the documents within 30 days, the participant can file a lawsuit in federal court to compel disclosure and the court may impose a statutory penalty of up to \$110 per day



# Summary Annual Report (SAR)

# Summary Annual Report (SAR)



- An SAR is a summary of the information in a plan's Form 5500 which is required to be provided to participants
- Not required if the plan is not required to file Form 5500
- Not required for unfunded self-funded health plans
- As a result, the SAR only pertains to self-funded plans funded through a trust or fully-insured plans with 100 or more participants

# Summary Annual Report (SAR)

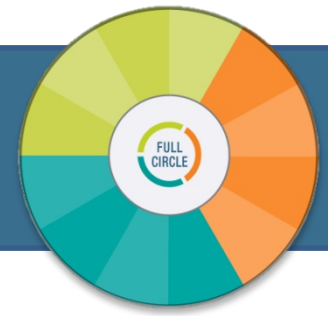


- The U.S. Department of Labor (DOL) has a model form for SARs
- The SAR must be provided within 9 months after the end of the plan year (or 2 months after the extended due date for Form 5500, if later)



# Participant Notifications and Disclosures

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- Participants entitled to notifications include
  - Active employees
  - Inactive employees receiving some type of extension of coverage (e.g., due to FMLA, COBRA, etc.)
  - Retirees
  - Dependents generally are not required to be provided with separate notices unless the dependent has an independent right to coverage

# Participant Notifications and Disclosures



- A child enrolled pursuant to a QMCSO
- A child who is a COBRA qualified beneficiary
- A surviving spouse receiving coverage
  - Key exception: spouses and dependent children living at a separate address need COBRA notices

# Participant Notifications and Disclosures



- Permissible forms of distribution
  - Hand delivery
  - First-class mail
    - Consider certificate of mailing or certified mail without return receipt for COBRA notices
  - Second and third-class mail with postage guaranteed and address correction requested
    - Not recommended for COBRA notices



# Participant Notifications and Disclosures



- Posting or leaving copies in a common meeting area such as a break room is generally impermissible
- Electronic notice is permissible if certain requirements are satisfied
  - First, disclosure may be made electronically to a participant who has the ability to access documents at any location where the participant reasonably could be expected to perform employment duties and whose access to the employer's electronic information system is an integral part of his/her employment duties

# Participant Notifications and Disclosures



- Example – employee with computer terminal at his/her desk
- Example – employee who is set up with a computer to work from home
- Making a computer kiosk generally available for use by participants does not satisfy this requirement

# Participant Notifications and Disclosures

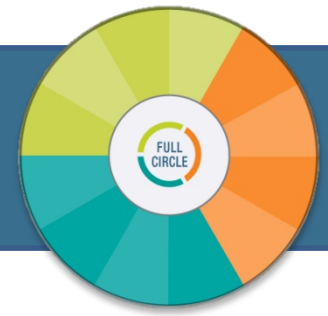


- Second, disclosure may be made electronically to a participant who does not fall into the first category but who has access to a computer (e.g., a home computer) and who consents to receiving notices electronically
  - Example – worker in a manufacturing facility does not regularly work with a computer at work but has a personal computer at home and consents to receiving notices electronically
- If a participant doesn't fall into one of these two categories, the participant must be provided with a paper copy of the SPD, SMM, etc.



# Required Participant Notifications

# Required Participant Notifications



- Notifications required upon initial enrollment
  - HIPAA notice of special enrollment rights – must be provided with enrollment materials
  - SPD
  - Initial notice of COBRA rights

# Required Participant Notifications



- Women’s Health and Cancer Rights Act (WHCRA) – summarizing the plan’s coverage for mastectomies and breast reconstructive services
- Medicare Part D certificate of creditable coverage/non-creditable coverage
- HIPAA notice of privacy practices
- Summary of Benefits and Coverage (SBC)
- ACA Notice of Exchange Availability
- Notice of ACA Grandfathered Status (if applicable)
- CHIP

# Required Participant Notifications



- **Note**: The notices for COBRA, the WHCRA, Medicare Part D and HIPAA privacy can be included in the SPD. The SPD is only required to be distributed to participating employees and not their dependents. On the other hand, the COBRA notice must be distributed to spouses and should also be distributed to dependent children if living at a separate address

# Required Participant Notifications



- Annual notice requirements
  - WHCRA
  - Medicare Part D certificate of creditable/non-creditable coverage
  - SBC
  - Grandfathered Status (if applicable)
  - CHIP
  - Qualified small employer health reimbursement arrangement (“QSEHRA”) notices



# Required Participant Notifications



- Once every 3 years notice requirement – the HIPAA notice of privacy practices must be distributed once every 3 years. Alternatively, the plan may notify participants that they may receive a new copy of the notice at least once every 3 years. If notification is provided annually, this requirement will be deemed satisfied

# Required Participant Notifications



- Notices due by each January 31
  - W-2 reporting of health benefit costs
  - 1095-C

# Required Participant Notifications



- Notices required upon termination of participation
  - COBRA notice/election form
  - Notice of conversion privilege (fully-insured plans)



# Questions



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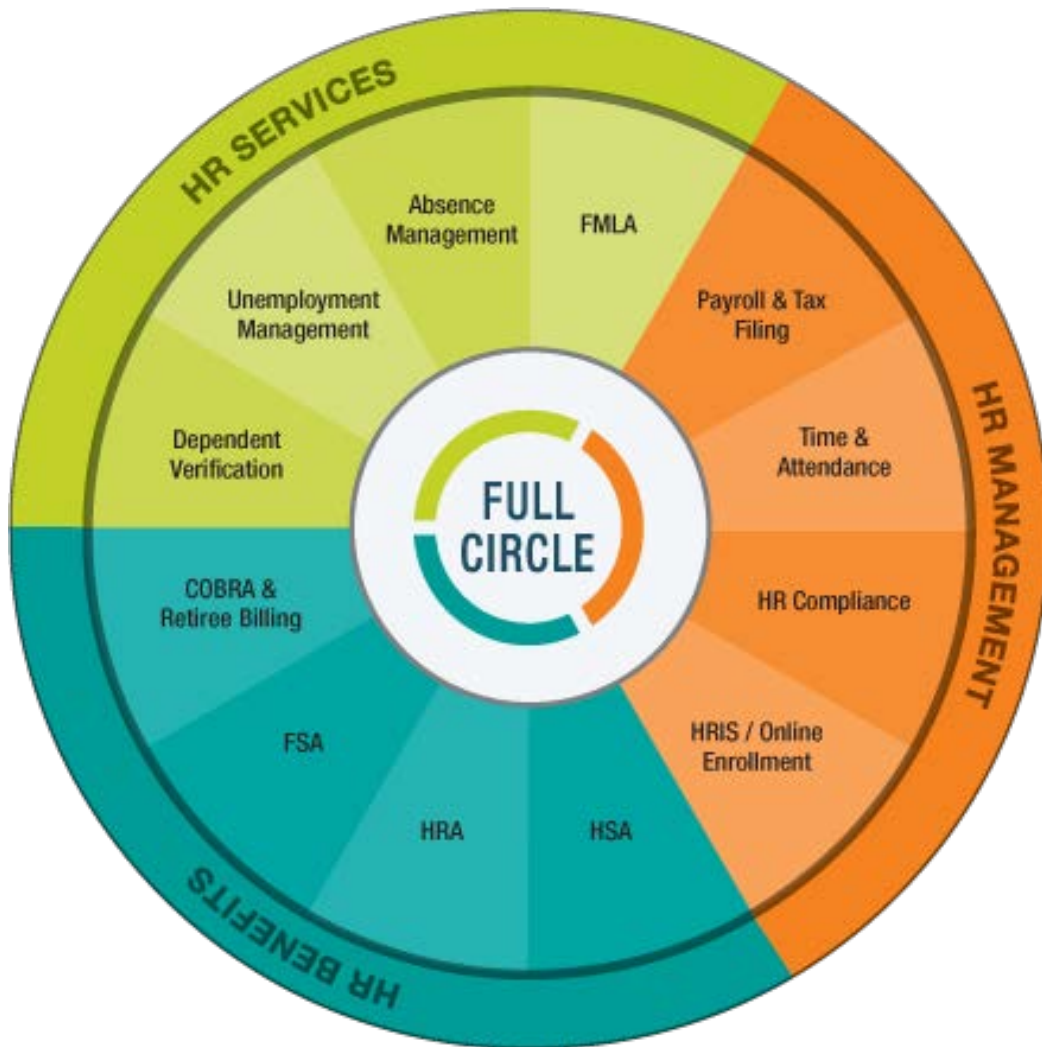
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