



# The Compliance Rundown

## Open Enrollment Compliance Reminders & Considerations

Open enrollment can be a stressful time for employers. Planning well in advance and ensuring there is time to strategize and set new goals can help alleviate the missteps. Open enrollment is also a perfect time to address compliance, especially this year with the relaxed regulations that many employers adapted based on their workforce needs. Prior to open enrollment employers may need to determine if changes made for the 2021 plan can or will continue in 2022.

Here is a list of open enrollment compliance reminders & considerations:

<input type="checkbox"/>	<p>COBRA Beneficiaries</p> <ul style="list-style-type: none"> <li>• Are you notifying COBRA beneficiaries of election opportunities? The “Outbreak Period” has relaxed the timing for elections. Therefore, anyone who is still eligible to elect COBRA will need to receive the open enrollment materials.</li> <li>• COBRA beneficiaries have the same rights as similarly situated active employees.</li> </ul>									
<input type="checkbox"/>	<p>Evergreen/Default Elections</p> <ul style="list-style-type: none"> <li>• How is your election process communicated?</li> <li>• Do your plan documents allow for evergreen elections?</li> <li>• If you offer an FSA, are you requiring an annual election?</li> </ul>									
<input type="checkbox"/>	<p>ACA – Offers of Coverage</p> <ul style="list-style-type: none"> <li>• How are offers of coverage being documented?</li> <li>• Are you able to provide proof of employees who waive benefits?</li> <li>• If you are an ALE, can you confirm that at least one of the health plans offered satisfies the ACA's affordability standard? (9.83% for 2021 plan years)</li> </ul>									
<input type="checkbox"/>	<p>Are you providing the mandatory notices?</p> <table border="0"> <tr> <td>• CHIPRA</td> <td>• Summary of Benefits &amp; Coverage (SBC)</td> <td>• WCHRA</td> </tr> <tr> <td>• Medicare Part D</td> <td>• HIPAA Special Enrollment Rights</td> <td>• Initial COBRA Notice</td> </tr> <tr> <td>• Wellness Notices</td> <td>• HIPAA Privacy Notice</td> <td>• Notice of Patient Protections</td> </tr> </table>	• CHIPRA	• Summary of Benefits & Coverage (SBC)	• WCHRA	• Medicare Part D	• HIPAA Special Enrollment Rights	• Initial COBRA Notice	• Wellness Notices	• HIPAA Privacy Notice	• Notice of Patient Protections
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<input type="checkbox"/>	<p>Open Enrollment Guide</p> <ul style="list-style-type: none"> <li>• Is there a disclaimer indicating that if there are discrepancies between the open enrollment guide, summary plan description &amp; plan document that the plan document will control?</li> </ul> <p>★ TIP: Include language in the guide about it also being the Summary of Material Modification (SMM). This prevents the need to create a separate SMM. ★</p>									
<input type="checkbox"/>	<p>Electronic Disclosure</p> <ul style="list-style-type: none"> <li>• If you are providing your documents electronically, do all employees use a computer as an integral part of their duties? If not, have you received affirmative consent to provide them electronically?</li> </ul>									
<input type="checkbox"/>	<p>HIPAA Privacy</p> <ul style="list-style-type: none"> <li>• Enrollment data may be considered “PHI” under HIPAA.</li> <li>• Do you have a HIPAA Policy &amp; Procedure manual?</li> <li>• Are business associate agreements in place?</li> </ul>									
<input type="checkbox"/>	<p>Correcting/Changing Participant Elections</p> <ul style="list-style-type: none"> <li>• Pre-tax elections are irrevocable after the plan year has started unless the participant experiences another permissible midyear change in status event (e.g., marriage).</li> <li>• Pre-tax elections are required by the IRS to be prospective in most situations.</li> <li>• Retroactive election changes are rarely permitted under the tax code.</li> </ul>									

*Not legal advice: Nothing in this alert should be construed as legal advice. The Compliance Rundown is not a law firm and cannot dispense legal advice. If you need legal advice, please contact your legal counsel.*