DOL Proposes New Electronic Disclosure Safe Harbor

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On July 22, 2026, the Department of Labor ("DOL") issued proposed regulations creating a new electronic disclosure safe harbor for group health plans. If finalized, the proposal would provide an alternative to the DOL's existing electronic disclosure rules and would allow group health plans to furnish required ERISA disclosures electronically using a notice-and-access framework similar to the electronic disclosure safe harbor currently available for retirement plans.

The proposal is intended to modernize disclosure requirements by expanding the ability of group health plans to provide required notices electronically.

If finalized "as is," the rule would apply beginning on the first day of the first calendar year following the date the fine rule is published.

Background

Under the DOL's existing 2002 electronic disclosure safe harbor, electronic delivery generally is available only for:

- Participants who are "wired at work," meaning they have work-related access to the employer's electronic information system and electronic access is integral to their job duties; and
- Other participants and beneficiaries who affirmatively consent to receive documents electronically.

For individuals who are not "wired at work," the current safe harbor requires affirmative consent and a number of related disclosures regarding electronic delivery, withdrawal rights, hardware and software requirements, and access procedures. Many plan sponsors found this process administratively burdensome and were challenged to provide documents electronically for individuals who are not "wired at work."

In 2020, the DOL adopted a separate electronic disclosure safe harbor for pension benefit plans, providing additional flexibility to electronic delivery of plan information. This new proposed rule would extend a similar notice-and-access approach to group health plans.

Proposed Electronic Disclosure Safe Harbor

Under the proposal, a group health plan administrator could satisfy ERISA's disclosure requirements by posting required documents to a website or other electronic repository and providing participants and beneficiaries with a Notice of Internet Availability.

Covered Individuals

The proposed safe harbor would apply to participants, beneficiaries, and other individuals entitled to receive ERISA disclosures who provide an electronic address, such as:

- A personal email address;
- A work email address; or
- A company-issued or personal smartphone number capable of receiving electronic notices.

In addition, dependent children who are beneficiaries under the plan and have attained age 18 would be eligible to receive disclosures directly if they provide their own electronic address.

Covered Documents

The proposed safe harbor would broadly apply to any document or information that a group health plan administrator is required to furnish under Title I of ERISA. Briefly, this includes:

- Summary Plan Descriptions ("SPDs")
- Summary Material Modifications ("SMMs")
- Summary Annual Reports ("SARs")
- COBRA notices
- HIPAA notices (i.e., special enrollment, wellness notices; not HIPAA privacy notices)
- Children's Health Insurance Program Reauthorization Act ("CHIPRA") notices
- Summary of Benefits and Coverage ("SBCs," where applicable)
- Claims and appeals notices

If a health insurance carrier and a group health plan sponsor enter into a written agreement under which the issuer agrees to provide the information required under ERISA, the carrier may also utilize this safe harbor.

Unlike the electronic disclosure safe harbor for retirement plans, the proposal would also permit use of the safe harbor for documents that are furnished only upon participant request.

Note. As proposed, the safe harbor only applies to certain group health plan documents. It does not extend to all welfare benefits, including life insurance and disability plans. Employers that use a wrap plan document and wrap SPD that incorporates health plan benefits and other welfare plan benefits may be challenged to use the safe harbor under the proposed rule (at least for furnishing the SPD). Hopefully, this can be addressed through the notice and comment period and the relief extended to other welfare benefits.

Notice of Internet Availability ("NOIA")

To utilize the new safe harbor, group health plans generally would provide a NOIA each time a covered document is made available on the website, including when a document is provided upon request. In certain circumstances, annual combined NOIAs could be used.

The NOIA would be required to include:

- The title or subject line: "Disclosure About Your Health Plan;"
- A statement informing the individual that important health plan information is available;
- Identification by name or a brief description of the document being provided;
- A website address or hyperlink providing access to the document;
- Information regarding the right to obtain paper copies free of charge;
- Information regarding the right to opt out of electronic delivery; and
- Contact information for the plan administrator or designated representative.

The notice must be written in a manner calculated to be understood by the average plan participant and generally must be furnished separately from other communications.

Website Requirements

The proposal would require plan administrators to ensure that covered documents are posted on a website or electronic repository that satisfies specific requirements.

Among other requirements:

- Documents must be available no later than the date they otherwise must be furnished under ERISA;
- Documents generally must remain available for at least one year or until superseded by a newer version;
- Documents must be presented in a format suitable for reading online and printing, and in a format that allow the covered document to be permanently retained;
- Documents must be electronically searchable; and
- The website must protect the confidentiality of personal information.

Note. The proposed rule would permit use of secure websites, portals, and mobile applications. However, the DOL specifically declined to create an email-delivery alternative similar to the one available for retirement plans because group health plan disclosures often contain sensitive health information, including protected health information ("PHI").

Availability of Paper Documents

The proposal includes several safeguards intended to protect participants and beneficiaries who prefer paper communications:

- *Free Paper Copies:* Participants and beneficiaries would have the right to request paper copies of covered documents free of charge. Importantly, unlike the retirement plan safe harbor, the proposal would require group health plans to provide additional paper copies free of charge upon request.

- *Right to Opt Out:* Covered individuals would have the right to globally opt out of electronic delivery and instead receive all disclosures in paper form. Plan administrators would be required to establish reasonable procedures for processing paper-copy requests and opt-out elections.

- *Invalid Electronic Addresses:* Administrators would be required to monitor for invalid or inoperable electronic addresses. If an electronic notice is returned as undeliverable, the administrator would need to take reasonable steps to obtain a valid electronic address or revert to paper delivery.

Initial notification

Before relying on the safe harbor, administrators would be required to provide an initial notification explaining:

- Disclosures will be provided electronically;
- Which electronic address that will be used for the individual;
- How to access documents;
- How long the document will be available electronically;
- The right to obtain free paper copies; and
- The right to opt out of electronic delivery.

Special Rules

The proposed regulations include several additional provisions addressing:

- Employees who separate from employment and lose access to employer-provided email addresses;
- Annual combined notices for certain recurring disclosures;
- Temporary website outages and technical disruptions; and
- Compliance with other applicable laws, including HIPAA privacy and security requirements.

The DOL also proposes corresponding amendments to the ERISA claims regulations to allow adverse benefit determinations and appeal decisions to be furnished using the new safe harbor.

Employer Action

At this time, the proposed regulations are not final and no action is required. Employers should not rely on this safe harbor for electronic delivery of notices until it is finalized.

- If finalized, the new safe harbor would give employers significantly greater flexibility to deliver health plan disclosures electronically without obtaining affirmative consent from most participants and beneficiaries.
- Employers currently relying on paper delivery or the existing 2002 electronic disclosure safe harbor may want to evaluate whether the new notice-and-access framework could improve administrative efficiency.
- Plan sponsors should continue coordinating with carriers, third-party administrators, COBRA administrators, and other vendors regarding responsibility for furnishing required notices.
- Employers should also ensure vendors have processes in place to maintain and support any electronic disclosure platforms used for compliance purposes.