Electronic Delivery Rules

The following notices may be provided electronically in accordance with DOL Safe Harbor:

- Summary Plan Description (SPD)
- Summary Annual Report (SAR)
- Summary of Material Modifications (SMM)
- Notice of Special Enrollment Rights
- Women's Health Care Rights Act Notice (WHCRA)
- Michelle's Law Notice
- Wellness Program Disclosure
- Notice of Grandfathered Status
- Patient Protections Notice
- Notice of Coverage Options
- Medicare Part D Creditable Coverage Disclosure (however, any email including this notice should include a statement that the employee is responsible for providing this information to a Medicare-eligible beneficiary)
- Summary of Benefits and Coverage (SBC) and Uniform Glossary
- HIPAA Notice of Privacy Practices may be provided by email, if the recipient has agreed to receive an electronic notice and that agreement has not been withdrawn. If the health plan has a website (unusual), the notice must be posted there.
- The DOL posters that are updated regularly and are posted on a wall in a common area should also be provided electronically to work from home employees.
- Includes state and local-specific posters

COBRA notices are best to send by mail with tracking

How:

<u>Individuals with work-related computer access:</u> Any plan participant (e.g., employee) may receive ERISA disclosures electronically when the participant:

- Has the ability to access documents at any location where the participant reasonably could be expected to perform employment duties; and
- Has access to the electronic information system as an integral part of those employment duties

An employer provided computer kiosk that is made available to employees WILL NOT satisfy this requirement.

<u>Individuals with No work-related computer access:</u> (e.g., COBRA, severance or retirees or spouses/children) Individuals without work related computer access (including non-employees) may receive disclosures electronically when:

- Affirmative consent is provided in a manner that reasonably demonstrates the individual's ability to access information in the electronic format that will be used (e.g., if email will be used, the consent is provided via email); and
- Notice is provided (electronically or in writing) that explains the following before any disclosures may be issued electronically:
  - Types of documents to be provided electronically
  - Notice that consent can be withdrawn without charge
  - Procedures for withdrawing consent and updating information
  - Right to request a paper version and whether a charge may apply; and
  - The electronic delivery system and the hardware/software needed to use it
- Any change in hardware or software requirements that create a material risk to an individual who provided affirmative consent will not be able to access or retain the electronic documents, then:
  - The plan administrator must provide the individual with a statement of the revised hardware or software requirements and give the individual the right to withdraw consent, without charge and without conditions that were not disclosed at the time of the initial consent; and
  - The individual must provide a new affirmative consent

Documents may be posted to a website for delivery when:

- Appropriate and necessary means are used to ensure posting on the website results in actual receipt:
  - Adding a prominent link from the website's home page to the separate section that contains the documents
  - If a password is needed, provide directions on the website for how to replace a lost or forgotten password; and
  - Maintain documents on the website for a reasonable period of time following the notice to employees of their availability
- The documents are prepared and furnished in accordance with all applicable requirements.
- Written or electronic notice is provided to employees directing them to the website at the time the document is posted describing the significance of information and the right to request a paper copy; and
- A paper copy is provided upon request

Vendor Solutions

- Many payroll companies provide online dashboards for clients and these notices may be already available.