Proskauer

DOL Proposes E-Delivery for Group Health Plan Disclosures

Compensation & Benefits Blog on **September 1, 2026**

In late July, the Department of Labor proposed new regulations that would extend the "notice-and-access" electronic disclosure model that the DOL finalized in 2020 for retirement plans to group health plans. The proposed rule closely tracks the current notice-and-access model for retirement plan disclosures, but with some modifications for health plans, as explained below.

Comments on the proposed rule are due by September 21, 2026. The following are important points about the proposal:

Proposal is limited to group health plans. The new safe harbor would be available only for "group health plan" disclosures. Disability, life, severance, and other welfare plan disclosures remain outside the safe harbor. This may result in inefficiency, as health plan disclosures are often bundled with other welfare plan disclosures (which won't be covered by the new group health plan safe harbor). The DOL requested comment on whether to expand the safe harbor to other welfare plans.

Opt-out regime: an initial paper notification, then a notice each time a document is posted. Similar to the retirement plan notice-and-access model, two notices would be required:

- **Initial paper notice**: First, before relying on the safe harbor for an individual, the administrator must furnish a paper notification stating that covered documents will be furnished electronically, identifying the electronic address to be used, providing any instructions needed to access the documents, cautioning that documents need not remain posted for more than one year, and explaining the rights to request free paper copies and to opt out entirely.
    - Unlike the retirement plan safe harbor, if an individual is receiving electronic disclosures under the existing 2002 e-delivery safe harbor (consent or wired at work) before the effective date of the final rule, the initial notice may be furnished *electronically* to such individual.

- **Notice of Internet Availability (NOIA)**:Second, the administrator must furnish a notice of internet availability (NOIA) at the time each covered document is posted (subject to the combined notice rule described below). Each NOIA would have to include the following:
    - Prominent statement reading “Disclosure About Your Health Plan”
    - Statement that “Important information about your health plan is now available. Please review this information.”
    - Identification of the covered document by name (plus a brief description if the name alone would not convey its nature)
    - Website address or hyperlink sufficiently specific to provide ready access to the document (a login page with a prominent link to the document is acceptable)
    - Statements of the right to request a free paper copy and to opt out of electronic delivery, with instructions
    - Statement about the one-year posting period
    - Contact telephone number for the administrator

No direct email delivery alternative. The retirement plan notice-and-access safe harbor permits an administrator to deliver a covered document directly to an email address instead of posting it to a website. The proposal would *not* extend that alternative to group health plans. In the regulatory preamble, the agencies noted potential HIPAA privacy concerns with health information being transmitted to a company email account subject to employer monitoring.

Combined annual NOIA. Like the retirement plan safe harbor, an administrator could furnish a single NOIA covering the SPD and any other documents required to be provided annually. The combined NOIA must be furnished each plan year and no more than 14 months after the prior year’s notice. Additionally, covered documents that must be furnished with annual enrollment materials, or that must be included with materials describing plan benefits, may be included in a combined NOIA delivered at the time of annual enrollment. Combining notices does not change the deadline by which underlying documents must be posted and distributed to the covered individual.

Broad scope of covered documents, including documents furnished only on request. A "covered document" under the proposed rule would be any document that the plan administrator is required to furnish to participants and beneficiaries under Title I of ERISA, including the summary plan description (SPD), summaries of material modifications (SMMs), summary annual reports (SARs), as well as COBRA and HIPAA notices. Importantly, the proposed regulations would also amend the claims procedure regulations to permit claims and appeals determinations to be sent under the safe harbor. Unlike the retirement plan safe harbor, the proposal would also extend the safe harbor for documents required to be furnished upon request to participants and beneficiaries.

Covered individuals. A "covered individual" would be a participant, beneficiary, or other individual entitled to covered documents who provides the employer, plan sponsor, or administrator with an electronic address: (1) Email address, or (2) smartphone number capable of receiving electronic messages. Employer-assigned work email addresses suffice, so long as they are assigned for employment-related purposes that include delivery of covered documents. A dependent child who is a beneficiary would be a covered individual in his or her own right once the child attains age 18 and provides an electronic address.

Website standards and a one-year retention floor. The proposed rule includes several requirements related to the website and retention requirements for the posted documents:

- Covered individuals must be able to access the covered documents for at least one year or, if later, until superseded by a subsequent version.
- Documents must be presented in a widely available format that can be read online and printed clearly, electronically searchable by numbers, letters, or words, and capable of being permanently retained electronically.
- "Website" is defined broadly to include a mobile application or other electronic information repository to which covered individuals have reasonable access. A secure participant portal will generally be needed for disclosures containing protected health information (such as explanation of benefits), but the portal must be accessible outside the workplace.

Participants entitled to unlimited free paper copies and to execute global opt-out from electronic delivery. Plan administrators must promptly furnish a paper copy of a covered document free of charge, and the administrator *may not charge* for additional paper copies of the same document. (This is different from the retirement plan safe harbor, which requires only one free paper copy of any covered document.) Separately, covered individuals must be permitted to globally opt out of electronic delivery and receive only paper copies.

Reasonable procedures required. Plan administrators must maintain reasonable procedures for participants to submit requests for paper copies or make global opt-out elections. In addition, the delivery system must be designed to alert the plan administrator to an invalid or inoperable electronic address; if a NOIA bounces, the administrator must promptly cure the problem (for example, by using a secondary address or obtaining a new one) or treat the individual as having opted out and mail a paper copy of the document identified in the undelivered NOIA as soon as reasonably practicable. Separately, the plan administrator needs to maintain reasonable procedures to verify the accuracy of electronic addresses for employees who terminate from employment, which may include obtaining a new electronic address for such individual.

Existing delivery methods not affected. The new safe harbor would be an additional option, not a replacement. The general obligation to use a method "reasonably calculated to ensure actual receipt" remains, and administrators may continue to rely on paper delivery or on the 2002 safe harbor (for participants who are "wired at work" or who affirmatively consent).

Effective date proposed but not yet settled. The DOL proposed that the new safe harbor become applicable on the first day of the first calendar year following publication of the final rule. The DOL requested comment on this proposed timeline.

* * *

There is no option for plan administrators and employers to rely on the proposal before it is finalized. In the meantime, plan administrators should continue to rely on paper delivery, the 2002 safe harbor, or another permissible method.

Related Professionals

- **Jennifer Rigterink**
  Senior Counsel
- **Robert M. Projansky**
  Partner