

The Health and Welfare “Wrap” Document: What It Is and Why You Want One

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When it comes to telling their employees about certain benefits, many employers have for decades (since 1974 to be exact) flouted a particular provision of the law with impunity. The law to which we refer is the Employee Retirement Income Security Act (ERISA), and the provision relates to the requirement that the employer tell employees about the salient plan terms by providing them with a Summary Plan Description or “SPD.” The Affordable Care Act alters the regulatory landscape on this score. And while the ACA did not change the requirements that apply to SPDs, it radically changes the surrounding compliance environment. Complying with the SPD requirements all of a sudden looks not only like a good idea, but it also rises—dare we say—to a best or at least highly recommended practice.

In response to this changing environment, we recommend using a “wrap document,” which as we explain below, allows employers to satisfy the ERISA SPD and other disclosure requirements.

Employers typically offer their employees at least some employee benefits. These offerings often include so-called “health and welfare” benefits: medical, dental and vision coverage, life and disability insurance, and wellness and employee assistance plans, among others.

Health and welfare plans subject to ERISA (and they are almost always subject to ERISA) are required to satisfy a number of reporting and disclosure rules – *reporting* to a governmental agency, *disclosure* to participants - which can vary depending on the type of plan and number of participants. These include, but are not limited to:

- *Disclosure*:
 - All plans subject to ERISA are required to distribute a “summary plan description” (SPD) to participants, which describes (in a readable, summary form) the key terms of the plan (such as benefits offered, eligibility requirements, and costs) and includes other mandated information (such as plan sponsor information).
 - Major medical plans are required to provide certain other disclosures to participants, including those pertaining to grandfathered plans, special enrollment rights, claims procedures, breast reconstruction benefits, and newborns’ and mothers’ rights.
 - Plans subject to COBRA (including medical, dental, and vision plans) must provide notices of COBRA rights.
- *Reporting*: large plans (100+ participants) subject to ERISA must file an annual form 5500 with the IRS and DOL.

Almost daily, my colleagues and I encounter employers who are not in compliance with these rules. One common mistake employers make is assuming that the certificates and booklets provided by insurers contain all of the provisions necessary to satisfy the SPD requirement – but that is rarely the case. Smaller employers often assume that there is a small employer exemption to the SPD requirement (not true); other employers believe that their health and welfare plans are not subject to ERISA (rarely true). With respect to the reporting requirements, many employers are unaware of the 5500 requirement, or believe that it applies only to 401(k) and other retirement plans (not the case).

To be sure, these requirements are daunting, especially for already overburdened human resources specialists. One way to make compliance easier is through a welfare wrap document.

What is a welfare wrap document?

This is a document that contains all of the “bells and whistles” required for an ERISA SPD, as well as certain other disclosures required under ERISA and COBRA. The wrap document also incorporates the certificates and booklets of each benefit by reference, thereby creating a complete SPD. By using a wrap document, an employer can satisfy the ERISA SPD requirement, and many other disclosure requirements, by using one document for all of the employer’s health and welfare benefits.

Why else does a wrap document make sense?

Glad you asked! Here are a few more reasons:

- By combining all of the benefits into one document, the employer can file one 5500 (rather than a separate 5500 for each benefit).
- By carefully explaining medical benefit eligibility terms, the wrap document serves as a talisman to ward off Internal Revenue Code Section 4980H “employer shared responsibility” penalties. Specifically, if distributed broadly, the wrap document can help provide evidence of an offer of coverage in the event of an IRS audit. (For more information on the 4980H “offer” of coverage, see [here](#). For more information on 4980H generally see our comprehensive health care reform coverage [here](#).)

Note that, in our view, a wrap document should not be used as the sole mechanism for an “offer” of coverage. Wrap documents are generally distributed to enrolled plan participants, while a 4980H “offer” should be made prior to enrollment. We will discuss wrap plan distribution requirements in future blog posts.

- Thanks to the Affordable Care Act, health and welfare benefits are on the IRS and DOL’s radar like never before. Increased audit activity is a certainty in the coming years. A wrap document is a good way for employers to show auditors that they are attentive to their health and welfare benefits plans and in compliance with ERISA and other laws affecting health and welfare benefits.
- A wrap plan helps employers avoid a number of penalties associated with ERISA, Internal Revenue Code, and COBRA noncompliance. We will discuss these penalties in more detail in future blog posts.

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