



## SPDs - What Are They and Who Needs Them?

### What is an SPD?

The DOL defines the SPD as the “Primary vehicle for informing participants and beneficiaries about their plan and how it operates. Must be written for average participant and be sufficiently comprehensive to apprise covered persons of their benefits, rights, and obligations under the plan. Must accurately reflect the plan’s contents as of the date not earlier than 120 days prior to the date the SPD is disclosed.”

### Who needs to provide SPDs?

Plan administrators. Under ERISA, the plan administrator - not the insurer or the TPA - is responsible for the SPD. This is true even where another party prepares or distributes the SPD and where that other party has contractually obligated itself to perform such services. Carriers do not furnish SPDs.

### What plans require an SPD?

Virtually every employee benefit plan. All Health: Medical, EAP, Dental, Health Care FSA, Vision, HRA, Disability & Life/AD&D.

### Are there exceptions?

Yes. Because governmental and church plans are exempt from Title I of ERISA, the SPD requirements do not apply to them. Also,

- Cafeteria plans are exempt from the SPD requirement. (However, component plans within a cafeteria plan, e.g., health coverage, health flexible spending arrangements, or group term life insurance, will be subject to ERISA.)
- Employer-provided day care centers are exempt from the SPD requirement.
- An unfunded or insured welfare plan maintained by an employer for the purpose of providing benefits to a select group of management or highly compensated employees would not need to provide an SPD.

Unlike the Form 5500 exemption for small plans, there is no small plan exemption from the SPD requirement.

### Who receives the SPD?

The employer must distribute the SPD to all participants covered under the plan but not to beneficiaries. Although beneficiaries and participants not covered by a plan won’t be distributed an SPD, they have a right under ERISA Section 104(b)(4) to receive a copy of the latest SPD after making a written request to the plan administrator.



## When must plan participants receive the SPD?

For a participant newly covered under an existing plan, an SPD must be automatically furnished within 90 days after the participant first becomes covered under the plan. For new plans, the plan administrator must automatically furnish an SPD within 120 days after the plan first becomes subject to ERISA. In addition, a plan administrator must automatically furnish an updated SPD at least every five years if there have been any material changes made within that five-year period. If no material changes were made during the immediately preceding 10-year period, a copy of the most recently distributed SPD must be furnished by the plan administrator within 210 days following the last day of the 10th plan year after a material change would have been reflected in the most recently distributed SPD.

## Who creates the SPD?

An employer can create the SPD themselves, employ a TPA, law firm or consulting company. If someone other than the employer creates the SPD, the employer is still responsible for the distribution. The following are the steps to drafting an SPD.

- Assemble existing documentation:
  - This documentation might include the participant booklet or certificate of insurance; additional insurer-provided booklets (insured plans); existing wrap SPDs and Summaries of Material Modification (SMM) prepared by the plan sponsor; the contract with the insurer; internal documents that describe benefits (such as initial enrollment and open enrollment materials, election change forms, claims forms, new employee information, and policies and guidelines for human resources and supervisory employees); benefit descriptions prepared by an employer- or third-party administrator (TPA) (if self-funded); other TPA documents (e.g., a description of the TPA's claims procedures, a TPA services contract addressing which party is responsible for different aspects of plan administration);
  - Documents about changes in state and federal law that impact the plan and may need to be described in the SPD;
  - Notices that have been distributed to employees (e.g., COBRA notices, Notice of HIPAA Privacy Rights); or
  - Employer-related changes (e.g., changes in EIN, plan number or contact information; changes in ownership or otherwise due to mergers, acquisitions or closures).
- Review existing documentation for ERISA compliance;
- Determine how many plans exist;
- Determine what form the SPD will take (wrap, mega-wrap, stand-alone);
- Check for ERISA-required content;
- Check specifically for content required for group health plans; and

- Review and adopt the plan.

## How are SPDs distributed?

SPDs must be furnished in a way “reasonably calculated to ensure actual receipt of the material.” In addition, because it must be furnished to all participants covered by the plan an SPD must be delivered using one or more methods “likely to result in full distribution.”

- An SPD can be provided in paper format as long as it is free of charge, and can be distributed along with other plan materials and communications.
- An SPD can also be provided electronically but there are a number of stipulations:
  - Employees must have the ability to effectively access the document in electronic form at any location where they are employed and can access the employer’s information system.
  - The employer must have proof either electronically or in writing that the employee received it.
  - The file format must be easily accessible, such as a PDF file
- And the SPD must be provided in paper format at no charge, upon request.
- The SPD can also be posted and available on an employer’s website as long as employees have been notified it is there.

## What must be included in an SPD?

According to the Federal Register, 29 CFR 2520.102-3, the following information shall be included in the summary plan description of both employee welfare benefit plans and employee pension benefit plans:

1. ERISA Section 102 and accompanying DOL regulations require the following items of basic plan-identifying information to appear in the SPD:
  - The name of the plan;
  - In the case of a single employer plan, the name and address of the employer whose employees are covered by the plan;
  - The plan sponsor's employer identification number (EIN) assigned by the IRS;
  - The plan number assigned to the plan by the plan sponsor;
  - The type of welfare plan (group health plan, disability plan, prepaid legal service plan, etc.);
  - The type of administration of the plan (e.g., contract administration, insurer administration, sponsor administration);



- The name, business address and business telephone number of the plan administrator as that term is defined in ERISA Section 3(16);
  - The name, title and address of the principal place of business of each trustee of the plan (if the plan has a trust);
  - The name of the person designated as agent for service of legal process and the address at which process may be served on such person. In addition, a statement that service of legal process may be made on a plan trustee (if any) or the plan administrator;
  - A statement referring to the collective bargaining agreement and information on how to obtain a copy of that agreement if the plan is maintained pursuant to one or more collective bargaining agreements; and
  - The date of the end of the plan year and whether the records of the plan are kept on a calendar policy or fiscal-year basis.
2. A statement of the eligibility requirements for participation and any conditions that must be met in order to receive benefits.
  3. A general description of the benefits the plan provides and excludes.
  4. A statement clearly identifying circumstances that may result in disqualification and ineligibility, and in denial, loss, forfeiture, suspension, offset, reduction or recovery of any benefits that a participant or beneficiary may reasonably expect the plan to provide.
  5. Detailed descriptions regarding plan amendment and termination, including the following:
    - A clearly stated summary of any plan provisions governing the authority of the plan sponsors or others to terminate the plan or to amend or eliminate plan benefits, and the circumstances, if any, under which the plan may be terminated or benefits may be amended or eliminated;
    - A summary of any plan provisions governing the benefits, rights and obligations of participants and beneficiaries under the plan on termination of the plan or amendment or elimination of benefits under the plan (e.g., a description of any right to obtain a conversion policy on termination of coverage); and
    - A summary of any plan provisions governing the allocation and disposition of plan assets upon termination.
  6. Clear identification of circumstances that may result in recovery of benefits by the plan (e.g., by exercise of subrogation or reimbursement rights).
  7. Disclosure of sources of contributions to the plan (e.g., employer contributions, employee contributions or both) and the method by which the amount of contributions is calculated. The regulations also require that SPDs include “a summary of any provisions that may result in the imposition of a fee or charge on a



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participant or beneficiary - the payment of which is a condition to the receipt of benefits under the plan.”

8. Description of the procedures to be followed in presenting benefit claims and appealing benefit denials.
9. A statement describing the ERISA rights of participants and beneficiaries.

Information if the plan permits recovery of amounts paid in error (e.g., payments to providers that should not have received payment).

## **Additional requirements for group health plans:**

1. Along with a general description of benefits, the following information must also be contained in a group health plan SPD:
  - Any cost-sharing provisions, including premiums, deductibles, coinsurance and copayment amounts for which the participant or beneficiary will be responsible;
  - Any overall or benefit-specific annual or lifetime caps or other limits on benefits under the plan;
  - The extent to which preventive services are covered under the plan;
  - Whether, and under what circumstances, existing and new drugs are covered under the plan;
  - Whether, and under what circumstances, coverage is provided for medical tests, devices and procedures;
  - Provisions governing the use of network providers, composition of the provider network and whether (and under what circumstances) coverage is provided for out-of-network services;
  - Any conditions or limits on the selection of primary care providers or providers of specialty medical care;
  - Any conditions or limits applicable to obtaining emergency medical care; and
  - Any provisions requiring pre-authorizations or utilization review as a condition to obtaining a benefit or service under the plan.
2. Description of certain information when a “health insurance issuer” is responsible in whole or in part for the financing or administration of a group health plan. In such a case, the SPD must include a) the name and address of the health issuer; b) whether, and to what extent, benefits under the plan are guaranteed under a contract or policy of insurance issued by the health issuer; and c) the nature of any administrative services (e.g., claims processing and payment) provided by the health issuer.





3. Information regarding procedures for obtaining pre-authorizations, approvals or utilization review decisions. In addition, group health plans may have multiple claims procedures requiring description because of the different types of benefits offered (e.g., pre-service, urgent care, post service, concurrent claims) and the different decisions that are considered adverse benefit determinations for purposes of the claims procedures.
4. Information about COBRA continuation coverage, including “information concerning qualifying events and qualified beneficiaries, premiums, notice and election requirements and procedures, and duration of coverage.”
5. A reference to continuation coverage rights that may apply under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA).

Moreover, the existence of numerous “federal mandates” such as HIPAA, Qualified Medical Child Support Orders and others, as well as requirements under health care reform, will necessitate special SPD disclosure for affected group health plans, either due to express requirements or simply because it makes sense to include descriptions of the applicable rules in a group health plan SPD.

## **Penalties**

Criminal penalties including jail time may be imposed on any individual or company that willfully violates any requirement of Title I of ERISA, which includes the SPD rules.

*This Legislative Brief is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice.*