

COMMERCIAL INSURANCE

EMPLOYEE BENEFITS

PERSONAL INSURANCE

RISK MANAGEMENT

SURETY



PARKER | SMITH | FEECK

## Q&A FROM ASSUREX GLOBAL WEBINAR

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### EMPLOYEE BENEFIT TECHNOLOGY AND COMPLIANCE

**Q.** If we use a third party administrator to operate our COBRA are we subject to any penalties if they do not do their job.

**A.** Using a third party administrator or technology solution to administer COBRA responsibilities for a health plan does not shield the health plan sponsor from any negative consequences of COBRA violations. In other words, the plan sponsor could still be the target of qualified beneficiary lawsuits, excise taxes, and statutory penalties. However, in some cases service agreements with these parties will include indemnification provisions under which the employer can recover amounts from the third party if the failure was due to an oversight or mistake on their part.

**Q.** If we have a strong mobile device policy, will this protect our agency from HIPAA Privacy and Security concerns.

**A.** HIPAA privacy and security policies are a good start. Furthermore, mobile devices becoming a larger part of work culture, it is important to make sure these policies are up to date and include provisions to address mobile device use. That being said, policies on their own will not adequately protect an organization from HIPAA privacy and security risks. It is important to train staff with access to ePHI on policies at regular intervals.

**Q.** Can 1095 Forms be provided to employees online on an employee self-service portal in addition to a hard copy?

**A.** Form 1095 is permitted to be distributed to employees in the same manner Forms W-2 are permitted to be distributed, for non-electronic distributions (including hand-deliver or by mail). The employer is permitted to also post the Forms on a website that employees can access in addition to providing a paper copy. If employers are attempting to use an electronic distribution as the only method, they must receive affirmative consent from the individual that electronic distribution is acceptable. The consent must be received in a manner that demonstrates the employees ability to receive the distribution electronically.

**Q.** Do we need to send a Cobra notice when a dependent reaches the age of 26 and comes off the plan?

**A.** A dependent reaching the plan's limiting age (26 in most cases) is a COBRA qualifying event. Under the regulations, plans are permitted to require a qualifying event notice from the qualified beneficiary to the plan. Technically, plans are permitted to require a dependent child to alert the plan that they have attained the plan's limiting age before they send a COBRA election notice. However, the plan can only enforce this provision if it is clearly communicated in the COBRA Initial Notice. Further, in most cases, plan sponsors will simply provide the election notice even without this formal qualifying event notice from the dependent. This is especially true when the employer maintains dependent birth records.



**Q.** Are premium deductions on an employee's paystub considered PHI?

**A.** This can be considered PHI in some cases. For example, it is only PHI in the employer's hands if the employer is obtaining the statement via its health plan records. A billing statement provided directly to an employer by an employee would not be PHI in the employer's hands. Further, premium and FSA elections generated by the employer for enrollment purposes is not PHI. Finally, claims information (for example FSA distributions) would be considered PHI.

**Q.** What if the group renews with the same plan, do they need an updated SBC with the new/current year date?

**A.** Yes, the SBC should be updated every year to reflect the correct plan year. The SBC must be distributed every year upon renewal, reissuance, or reenrollment.

**Q.** Under DOL rules, can employees who don't regularly use a computer sign a consent to receive ERISA notice distributions electronically?

**A.** Yes, the DOL safe harbor allows for electronic distribution of ERISA documents for two classes of employees. 1. Employees with daily workplace access as a part of their regular duties. 2. Employees who affirmatively consent to receive distributions electronically. Additional requirements must also be met for both categories of employees.

**Q.** If you post an SBC on the online benefit enrollment platform, does it matter if an employee doesn't have access to a computer at their regular workplace?

**A.** If the employee is using online enrollment, the SBC could be provided online as part of the enrollment process. The individual must have the option to receive a paper copy of the SBC upon request. When this is the case, the DOL electronic distribution safe harbor (requiring either regular workplace access or affirmative consent) does not have to be met.

**Q.** If an employee's spouse is not covered, does the Initial COBRA Notice still have to be sent to the uncovered spouse?

**A.** If an employee's spouse is not covered under the plan, the Initial Notice does not need to be provided to the spouse. However, if the spouse becomes covered, the notice would need to be provided at that time.

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