

Illinois DOL Releases Guidance for Consumer Coverage Disclosure Act

December 1, 2021

Quick Facts

- A new disclosure requirement from the Illinois Department of Labor (IDOL) requires employers sponsoring health plans in Illinois to disclose a written list of offered benefits compared to the list of essential health benefits offered by the State of Illinois.
- According to the rule, because the requirement is on employers, not insurance plans, the disclosure is not preempted by the Employee Retirement Income Security Act (ERISA).
- The IDOL provided a sample chart of essential health benefits employers can use to fulfill the disclosure requirement.
- There are penalties for failure to comply.

Background

On August 27, 2021, the Consumer Coverage Disclosure Act (CCDA) was signed into law in Illinois. While the CCDA went into effect immediately, the statute language promised guidance from the IDOL was released on November 16, 2021. The CCDA creates a new disclosure requirement for employers sponsoring employee health plans to disclose a written list of offered benefits that is compared to the list of essential health benefits issued by the State of Illinois. The IDOL provided an [FAQ document](#) for more information.

New Disclosure Requirements

By the language of the statute, this disclosure requirement applies to all Illinois employers, regardless of whether their plan is fully insured or self-funded. This definition includes any entity that has workers employed in Illinois. There is an argument to be made that ERISA preempts this new statute; however, until that is brought up in a courtroom, the enforcing agency will apply the requirement to all Illinois employers. The purpose of this new disclosure is to allow employees to easily compare the benefits offered by their employer to the list of essential health benefits provided by [Get Covered Illinois](#), the state's Marketplace.

Disclosure Content

In the disclosure, employers must provide both a written list of benefits in their own group health coverage and a comparison of those benefits to the essential health benefits in a format that easily compares the two. The IDOL has provided the spreadsheet that includes a [chart listing all of the essential health benefits](#) that employers may fill out and then use as the disclosure to fulfill this new requirement. This form is what was released on November 16, 2021. Use of this specific form is not required to comply with the new disclosure requirements, but employers would still need to ensure that their own disclosure fulfills all requirements of the CCDA.

Disclosure Distribution

The disclosure must be made to all employees eligible for an employer's group health plan:

- Upon the employee's date of hire;
- On an annual basis thereafter; and
- Upon request.

Employers are required to maintain records of distribution for one year.

Penalties for Failure to Comply

The IDOL can request the required record of distribution of the new disclosure from employers. If a violation is found in the record, or there is no record, the IDOL will issue a notice to comply within 30 days. If the employer fails to comply within those 30 days, the following penalties may be imposed:

- For employers with fewer than 4 employees:
 - First offense not to exceed \$500
 - Second offense not to exceed \$1,000
 - Third or subsequent offense not to exceed \$3,000
- For employers with 4 or more employees:
 - First offense not to exceed \$1,000
 - Second offense not to exceed \$3,000
 - Third or subsequent offense not to exceed \$5,000

Other circumstances, including good faith effort, may be considered when determining the appropriate penalty amount.

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