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The Illinois Consumer Coverage Disclosure Act: An Updated Review

Employer medical coverage disclosure requirement for Illinois employees

The Illinois Consumer Coverage Disclosure Act (the "Act" or "CCDA") became law on August 27, 2021, and it was an addition to Illinois employment law under the jurisdiction of the Illinois Department of Labor (IDOL). The Act requires an employer to compare its medical coverage against Illinois' list of essential health insurance benefits (EHBs) and disclose this information to its Illinois workforce. The disclosure's purpose is to help employees make informed decisions about whether coverage through their employer or the individual market will best meet their needs.

In collaboration with the Illinois Department of Insurance, the IDOL provides a model disclosure form (updated periodically). This Alert addresses the Act's requirements and other related information, including guidance we received directly from the IDOL.

Act requirements

Under the Act, employers offering medical coverage[1] must provide a disclosure to their *medical-eligible* Illinois employees identifying whether the employer's medical plan covers the EHBs required by the State of Illinois for its individual and small group health insurance market.[2] Please note that the Act merely requires disclosure. It does not mandate any actual coverage requirements.

[1] The Act refers to group health insurance coverage, but the disclosure requirement effectively limits this to employer-provided group medical coverage.

[2] This includes coverage available through Get Covered Illinois. Additional information about the EHBs, including copies of the IL state benchmark plan and Allkids dental plan effective from 2020 – 2025, is available on CMS's website. References to the benchmark plan in this Alert includes the Allkids dental plan.

Highlights

Overview

The IL CCDA requires employers offering medical coverage to disclose to their medical-eligible Illinois employees whether the employer's medical plan covers the essential health benefits required by the State of Illinois for its individual and small group health insurance market.

Covered employers can use the model disclosure tool and form (recently updated for 2024) to meet this requirement. The model is a safe harbor, and we recommend employers use it.

Key notes

- The disclosure requirement generally applies to all employers that have one or more employees in Illinois.
- The Act merely requires disclosure and does not require the employer's plan to cover specific services.
- The disclosure obligation belongs to the employer for both fully insured and self-insured coverage. Employers may seek assistance from insurance carriers, TPAs, and/or other third parties.
- A separate disclosure is required for each medical plan option offered to Illinois employees.
- A claim of ERISA preemption may not be worth the effort or expense to avoid the Act's disclosure obligation.

The disclosure must enable employees to easily compare coverage under the employer medical plan with the Illinois benchmark plan and determine the EHBs covered – or not covered – by the employer plan.[3] The disclosure does not require any cost or cost sharing information. A straightforward model disclosure tool and form is available.

The disclosure obligation belongs solely to Covered Employers without regard to whether the employer's medical coverage is fully insured or self-insured. Employers can seek the assistance of insurance carriers, third-party administrators (TPAs), and/or other third parties to complete the disclosure. In our experience, insurance carriers with fully insured policies sitused/domiciled outside of Illinois tend to be reluctant to support the disclosure effort.

Each Plan Option: The Act does not address this, but the IDOL's FAQs and the model disclosure tool and form make clear that employers should prepare and deliver a separate disclosure for each medical plan option offered to Illinois employees.

Covered employers

The Act defines a covered employer as follows:

> *"Employer" means an individual, partnership, corporation, association, business, trust, person, or entity for whom employees are gainfully employed in Illinois and includes the State of Illinois, any State officer, department or agency, any unit of local government, and any school district.*

This includes all private sector, state and/or local government, and church or church-affiliated employers that pay compensation for services rendered to one or more employees (i.e., "gainfully employed") in the State of Illinois.

Covered employees

The Act's definition of a covered employee is as follows:

> *"Employee" means any individual permitted to work by an employer.*

This applies to all full-time, part-time, and seasonal/temporary employees employed in Illinois. The IDOL confirmed to us that the disclosure requirement does not apply merely because an employee is an Illinois resident if the employee primarily works in another state. It is usually easy to determine where an employee performs services based on where they report. However, if an employee works in multiple states, the IDOL performs a base of operations test, looking at a variety of facts and circumstances to determine whether the employee is really an Illinois worker subject to the Act.

Interestingly, the Act indicates an employer must pay compensation to one or more employees for services rendered (i.e., gainful employment) to be a covered employer, but the definition of "employee" does not appear to require a covered employee to be compensated. This should be a moot point in most instances since employers rarely offer medical coverage to unpaid workers.[4]

This definition obviously includes owners who are IRS Form W-2 employees, and we believe it also includes partners, LLC members taxed as partners, and other owners who perform employee functions for compensation on behalf of the employer.

[3] Consistent with its FAQs, the IDOL confirmed merely providing copies of the employer medical plan SPD and insurance carrier booklets along with the Illinois benchmark plan documents does not qualify as good faith compliance with this disclosure obligation.

[4] We cautiously recommend covered employers provide the required disclosure to all individuals working in Illinois who are eligible for medical coverage.

Excludable individuals

Employers do not have to provide the disclosure to the following individuals:

- Ineligible employees – The Act does not apply to employees who are ineligible for medical coverage.
- Staffing agency employees (with an exception) – A client-employer does not have to provide the disclosure to staffing agency employees if they are ineligible for the client-employer's medical coverage, which is usually the case. In those instances, the disclosure obligation belongs to the staffing agency if the employee is eligible for the staffing agency's coverage. If a staffing agency employee is eligible for the client-employer's medical coverage, the joint employer doctrine will likely require the client-employer to provide the disclosure.
- Independent contractors – Unless misclassified, independent contractors should not qualify as a covered employer's employees under the Act. Employers also rarely offer medical coverage to independent contractors.
- Former employees – The Act's definition of employee excludes former employees, including former employees participating in retiree coverage, COBRA, or other forms of continuation coverage.

Remote Employees: A remote employee working from their Illinois home is not a covered employee if the employee primarily performs services for an out-of-state employer and/or location, and the employer determines this is the employee's correct work location. Among other things, this means the employer administers the employee as an employee of the out-of-state location for income and payroll tax reporting purposes. We recommend employers discuss this with their usual labor & employment counsel and/or HR advisors before excluding them from the Act's disclosure requirements.

Illinois model disclosure tool and form

The IDOL and Illinois Department of Insurance collaborated to publish the Act's model disclosure tool and form (recently updated for 2024). The Act and available guidance do not require covered employers to use the model, but the model is a compliance safe harbor, and we strongly recommend employers use it. The Act requires the disclosure to help employees easily compare and determine the EHBs covered – or not covered – by the employer's medical plan. An employer should include a copy of the current Illinois benchmark plan information with the disclosure.[5]

The IDOL confirmed an employer cannot satisfy its disclosure obligations by providing a covered employee with the plan's summary plan description (SPD) or summary of benefits and coverage (SBC) along with the Illinois benchmark plan information or a separate list of the EHBs. Instead, the Act requires the employer to distribute a separate notice comparing the EHBs covered under the Illinois benchmark plan and the employer's medical plan.

The model includes both the list of the EHBs and the ability for employers to confirm whether their medical plan covers them. The model merely requires employers to confirm by indicating "Yes," "Yes, partially" or "Partially," or "No" for each EHB. Employers should only answer "Yes" if the plan's coverage completely matches the EHB coverage under the Illinois benchmark plan. If the employer's plan only covers a portion of the EHB services described in the benchmark plan, the employer should answer "Yes, partially" or "Partially," and briefly explain the discrepancy.[6]

[5] This also includes the Allkids Dental Plan for pediatric dental care EHBs.

[6] The use of short bullets should be sufficient to describe the discrepancy in coverage.

Remember, we believe the available guidance indicates employers must prepare and provide a separate disclosure for each medical plan option offered to Illinois employees. This is similar to the requirement for SBCs.

A sample screenshot of the model is below. The page numbers refer the reader to the respective pages in Illinois' benchmark plan for additional information.

- Prescription drugs
- Preventive and wellness services and chronic disease management
- Rehabilitative and habilitative services and devices (services and devices to help people with injuries, disabilities, or chronic conditions gain or recover mental and physical skills)

2020-2024 Illinois Essential Health Benefit (EHB) Listing (P.A. 102-0630)				Employer Plan Covered Benefit?
Item	EHB Benefit	EHB Category	Benchmark Page # Reference	
1	Accidental Injury -- Dental	Ambulatory	Pgs. 10 & 17	
2	Allergy Injections and Testing	Ambulatory	Pg. 11	
3	Bone anchored hearing aids	Ambulatory	Pgs. 17 & 35	
4	Durable Medical Equipment	Ambulatory	Pg. 13	
5	Hospice	Ambulatory	Pg. 28	

Insurance carriers and/or TPAs are in the best position to assist with the disclosure's preparation. If they are reluctant to participate, such as an out-of-state insurance carrier, the employer's insurance broker or consulting firm may be able to help. Please contact your MMA client service team for more information.

Note: Although the Act requires employers to disclose EHBs covered by their medical plans, self-insured ERISA plans and large group fully insured plans do not have to actually cover them (these plans may use Illinois as a benchmark plan to define EHBs for Affordable Care Act purposes). Under Illinois insurance law, a large group is an employer that averaged 51 or more employees during the prior calendar year and employed at least two employees at the start of the current plan year. By contrast, small group fully insured plans (<51 employees) and individual health insurance coverage subject to Illinois insurance law must cover the EHBs.

Delivery requirement and methods

Employers must provide the disclosure to medical-eligible employees in three situations:

1. To new hires –The Act does not specify a timing requirement, but an employer should be able to include the disclosure as part of a new hire packet or related communications.

2. Annually – An employer can satisfy this in connection with open enrollment, through a separate packet of legal notices, or separately. If an employer missed this disclosure and the next open enrollment period is many months away, we believe providing the disclosure late is better than not at all.[7]

3. Upon request – Again, the Act does not specify a timing requirement, but we recommend an employer provide the disclosure within 30 days of the request (sooner is better). The Act does not address whether an employer must provide the disclosure to an authorized representative requesting a copy on behalf of the employee, although we believe employers should be prepared to honor these requests. Employers may wish to discuss this with their labor & employment counsel and/or HR advisors.

[7] We recommend employers use the information currently available when preparing the disclosure in connection with open enrollment. The IDOL typically does not address any updates regarding the CCDA until after January 1st of each year.

Mid-Year Plan Design Changes: If an employer makes mid-year plan design changes affecting their existing disclosure, it is unclear how long the employer has to provide an updated disclosure to covered employees. Clients may wish to consult legal counsel before planning on a lengthy delay to update the disclosure.

The Act allows for electronic delivery via email or by posting a copy of the disclosure and benchmark plan information on a website as long as employees can regularly access the information. Presumably, employers relying on website delivery will need to notify employees how to access the disclosure and be prepared to address this upon hire, annually, and upon request. The Act does not indicate the employer must host the disclosure on its own website, and hosting it on an insurance carrier's or TPA's web portal appears to satisfy the requirement.

We believe an employer could satisfy delivery by providing a written copy of the disclosure with internet or intranet information on how to access the benchmark plan information separately.

ERISA preemption defense (but is it worth it?)

An ERISA plan may generally claim preemption from any state law that relates to it (i.e., affects it), such as a law requiring or prohibiting coverage for a particular service or treatment. However, ERISA does not preempt state laws regulating insurance (for fully insured coverage), banking, or securities. This is why state insurance law mandates or restrictions apply to fully insured ERISA coverage, while self-insured ERISA plans can choose to ignore them.

While Illinois clearly believes the disclosure requirement is not subject to ERISA preemption,[8] the Act may be vulnerable to ERISA preemption claims by both self-insured and – in an unusual twist – fully insured ERISA plans. An Illinois law requiring employers to compare their ERISA plans with Illinois' EHB requirements and disclose the results to employees should fit within ERISA's preemption protection as relating to an ERISA plan. In theory, a fully insured ERISA plan can also claim ERISA preemption, because the Act is part of Illinois employment law and is not an insurance, banking, or securities law.

Claiming ERISA preemption will require one or more employers to survive a legal challenge in court (i.e., take one for the team). This may not be worth the effort or expense, and we are not aware of any challenges – successful or otherwise – to date.

Enforcement

The Act provides for the following civil penalty schedule, enforced by the IDOL:

Employer Size	1st Offense	2nd Offense	3rd Offense
<4 employees	up to $500	up to $1,000	up to $3,000
4 or more employees	up to $1,000	up to $3,000	up to $5,000

The Act appears to base employer size upon an employer's total workforce[9] and not just its Illinois employees. The IDOL confirmed that all related disclosure violations for a single year count as a single offense. For example, failing to provide 34 covered employees with an annual disclosure for 2023 is a single offense.

The IDOL will consider mitigating penalties for good-faith compliance efforts and the overall seriousness of the situation.

[8] See the IDOL's argument against ERISA preemption in Q/A 6 of their FAQs.

[9] There may be an argument to limit this to the total number of covered employees.

Additional Resources

Illinois Dept. of Labor CCDA Web Page

Illinois Consumer Coverage Disclosure Act

Illinois Dept. of Labor CCDA FAQs

Model CCDA Disclosure Tool and Form

Current Illinois Benchmark Plan on IDOL Site (Illinois ACA Benchmark Plan and Illinois Dental Benchmark Plan)

Current Illinois Benchmark Plan on CMS Site[10]

[10] The IDOL website merely indicates the benchmark plan is valid for 2024, while the CMS website indicates the benchmark plan remains valid through 2025.

About the author

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