

Understanding Plan Documents

There are four pieces that comprise plan documents: the Plan Document, the Summary Plan Description (SPD), the Adoption Agreement, and the Summary Of Material Modification (SMM).

The Plan Document is what is needed when the plan is created. The SPD is how the plan's contents are communicated to the participants. The Adoption Agreement is how the plan is formally amended. Finally, the SMM is how those amendments are communicated to the participants. The following spells out the requirements for each.

The Plan Document

If an ERISA welfare benefit plan exists, a written plan is required so that employees may examine it and determine their rights and obligations under the plan. This document also provides the plan administrator guidelines by which to make decisions.

The following provisions must be included in the plan document:

1. Named fiduciary
2. Procedure for allocation of responsibilities
3. Funding policy
4. How payments are made
5. Claims procedures
6. Amendment procedure
7. Distribution of assets upon plan termination
8. Required provisions for group health plans:
 - a. COBRA and USERRA rules
 - b. HIPAA portability provisions
 - c. HIPAA's privacy and security provisions
 - d. Minimum hospital stays after childbirth
 - e. QMCSO rules

There are obviously many other important provisions that should be included in the plan document or incorporated by reference to another document; however, the above provisions are the only required ones.

The Summary Plan Description

The SPD is the primary vehicle for informing participants and beneficiaries about their rights and benefits under the employee benefit plans in which they participate. Some things must be in the SPD that don't have to be in the Plan Document. A plan could use the same document for its Plan Document and its SPD, but the document would have to have all the required provisions for both. When a new benefit plan is created, an SPD must be given to the participants within 120 days of the plan's creation. An updated SPD must be furnished every five years if "material changes" have been made to the plan document during that time.

Because the SPD is the main mode for communicating the contents of the plan to participants, the SPD must be understandable to the average participant, cannot be misleading, and must make apparent any plan limits, exceptions, and restrictions.

What information must SPDs include?

1. Plan-identifying information (e.g. name of plan, plan sponsor's EIN, type of plan, etc.)
2. Description of plan eligibility provisions
3. Description of plan benefits
4. Description of circumstances causing loss or denial of plan benefits
5. Description of plan amendment and termination provisions
6. Plan subrogation or reimbursement provisions
7. Information regarding plan contributions and funding
8. Information regarding claims procedures
9. Statement of ERISA rights
10. Offers of assistance in a non-English language (if a certain % of your employees are only literate in the same non-English language)
11. Explanation of plan's policy regarding recovery of overpaid benefits (if the plan has this practice)
12. Explanation of plan's allocation policy for insurer refunds and similar payments

These are the requirements for all welfare benefit plans. There are additional requirements for group health plan SPDs. In the event the plan document and the SPD conflict, the SPD will generally control.

The Adoption Agreement

There are few guidelines for amending the Plan Document. The amendment must simply be in writing and abide by the procedure to amend laid out in the Plan Document. The procedure that is often contemplated is formal adoption by a board of directors. When the employer goes through the amendment process, the participants must be notified of the same.

The Summary of Material Modification

What the SPD is to the Plan Document, so the SMM is to the Adoption Agreement. It communicates to the participant what amendments have been made to the Plan Document. Furthermore, an SMM must be sent any time there is a modification to a required provision in the SPD. SMMs must be sent within 210 days of a material change or within 60 days if the change involves a material reduction in health plan services or benefits.

In conclusion, all four of these could be thought of as the "plan document" because they all provide information to the contents of the plan. Although each piece does not have to mirror the other, they should not be inconsistent or discrepant.