

Law & Policy Group

GRIST



Illinois mandates health plan disclosure with EHB comparison

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In this article

[Covered employers and employees](#) | [Disclosure obligation](#) | [Completing the form](#) | [Employer considerations](#) | [ERISA preemption issues](#) | [Related resources](#)

Employers must make additional health plan disclosures to Illinois employees under a 2021 state law ([Pub. Act 102-0630](#), SB 1905). An employer that offers group health coverage must provide a comparison of the plan's covered benefits against the essential health benefits (EHBs) that state-regulated individual health insurance policies must provide. The law took effect when signed Aug. 27. However, it doesn't include any specific compliance dates. Regulators have posted a sample [comparison chart](#) and [FAQs](#). Employers don't have to offer the EHBs listed, but must identify which EHBs the employer-sponsored plan includes. Updates to this GRIST give additional information on completing the form.

Covered employers and employees

The [Consumer Coverage Disclosure Act](#) (CCDA) applies to all employers that offer group health coverage to Illinois employees, including those employed by the state government, any unit of local government and any school district. The law applies to insured and self-funded plans, regardless of plan situs, employer headquarters, plan size or grandfathered status.

The CCDA broadly defines employees as "any individual permitted to work by the employer," which may raise questions as to what extent this law applies to retiree-only group health plans. The law is self-described as "concerning employment" and is enforced by the Illinois Department of Labor (ILDOL), not the Illinois Department of Insurance. The current scope of ILDOL authority does not appear to include retirees. However, employers may want to review with legal counsel whether retiree health plans are beyond this law's reach.

Disclosure obligation

Employers must compare the health benefits covered by each group health plan offered to Illinois employees against the EHBs detailed in the [chart](#) provided by state regulators, indicate which benefits the plan does or doesn't cover, and provide the information to covered employees.

- **Disclosure method.** Employers may provide the written disclosure by email or post it on a website that employees regularly access. The law mentions only electronic disclosure options but doesn't specify any electronic distribution requirements. Employers must maintain disclosure records for at least one year.
- **Timing.** The law requires employers to provide this information to Illinois employees at hire, annually and on request. While the law itself took effect Aug. 27, details on when employers must first provide this disclosure are missing.
- **Penalties.** Noncompliance penalties can range from \$500 to \$5,000, depending on employer size and the number of offenses. However, employers first receive 30 days' notice to correct any noncompliance.

Completing the form

The disclosure must indicate which EHBs are or aren't covered by each employer-sponsored health plan. Employers don't have to use the specific Excel spreadsheet provided by state regulators. However, that spreadsheet includes a useful [chart](#) with page numbers identifying where the referenced benefit appears in the Department of Insurance's [Access to Care and Treatment Benchmark Plan](#) and the [Pediatric Dental Plan](#).

The completed disclosure must include clear information about the EHBs covered or not covered by the employer-provided group health plan. In many instances, an employer's plan may not cover items to the full extent provided by the benchmark plan. Employers with such plans should answer "yes, partially" or "partially" and explain the discrepancy. For example, employers that offer stand-alone dental plans may want to indicate that pediatric dental coverage is available only under the stand-alone plan. Alternatively, employers completing the comparison by checking only the boxes that match the benchmark plan's EHBs can answer "no" or leave the option blank.

Employer considerations

Group health plan sponsors covering Illinois employees will need to develop a process for completing the annual comparison checklist. Multiple plan variations will require multiple comparison charts.

Employers should contact their health plan insurers and third-party administrators (TPAs) to determine what level of assistance they can offer in evaluating the EHBs included or not included in the employer's plan and completing the template, with annual updates as needed. Employers should also consider the most appropriate distribution method, such as inclusion with new hire and annual enrollment materials. In addition, employers should track any new guidance that would clarify timing.

ERISA preemption issues

The state contends in its [FAQs](#) that employers providing self-funded ERISA plans are subject to the provisions of the CCDA. The state reasons that the law merely requires a benefits notice for covered Illinois employers, regardless of the plan's self-funded or insured status, and does not mandate insurance provisions or otherwise have any direct impact on employer-provided group health plan.

The US Supreme Court in [*Gobeille v. Liberty Mutual Ins. Co.*](#) (577 U.S. 312 (2016)) noted that "ERISA's extensive reporting, disclosure, and recordkeeping requirements are central to, and an essential part of" a uniform plan administration system. The court held that preemption "is necessary in order to prevent multiple jurisdictions from imposing differing, or even parallel, regulations, creating wasteful administrative costs and threatening to subject plans to wide-ranging liability." ERISA regulations (29 CFR § 2520.102-3) require plan sponsors to provide participants with a summary plan description outlining benefits, eligibility and other plan details. Plan sponsors also must provide summaries of benefits and coverage and other disclosures under federal law. Some may view the Illinois law as imposing the sort of duplicative disclosure cited by the high court.

While the *Gobeille* decision may seem to apply here, only the courts can determine whether the Illinois law is preempted. Employers with ERISA plans that don't want to comply with the state law should discuss the issue with legal counsel.

Related resources

Non-Mercer resources

- [FAQs](#) (Illinois Department of Labor, Nov. 16, 2021)
- [Model EHB chart](#) (Illinois Department of Labor, Nov. 12, 2021)
- [Consumer Coverage Disclosure Act](#) (820 IL Rev. Stat. 46, Aug. 27, 2021)
- [*Gobeille v. Liberty Mutual Ins. Co.*, 577 U.S. 312 \(2016\)](#)
- [Reporting/disclosure guide for employee benefit plans](#) (US Department of Labor, September 2017)

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- [States increase group health plan reporting obligations](#) (Nov. 20, 2020)

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