

FINAL SBC RULES RELEASED

On February 14, 2012 HHS, IRS and DOL released final rules implementing the Affordable Care Act's requirement that group health plans and health insurance issuers provide participants with a summary of benefits and coverage ("SBC") using uniform terms and definitions. The rules also discuss the requirement that participants be notified 60 days in advance of material modifications to the SBC. Under the Affordable Care Act the SBC requirement was to be effective March 23, 2012; however, because of the delay in issuing these rules the effective date has been postponed by the agencies until the first day of the health plan's open enrollment period on or after September 23, 2012 for individuals who enroll through the plan's open enrollment process and the first day of the plan year on or after September 23, 2012 for new hires and special enrollees. Below is a summary of the final rules and issues of interest to employers sponsoring a group health plan.

1. What is an SBC?

The SBC is a summary of the benefits offered under the group health plan provided in a relatively succinct manner (it can be no longer than 4 pages double-sided). It provides information regarding deductibles, co-payments, out of pocket maximums, limitations and exclusions, renewability and continuation options, and coverage examples. View the form templates created by the agencies. The SBC must be in this format. Note, the SBC does not need to contain premium or cost of coverage information.

The rules also provide a separate "uniform glossary" document which defines common health insurance terms which must be provided to individuals upon request.

2. Who must provide an SBC?

The SBC must be provided by employers who sponsor group health plans and health insurance issuers. There is no exception for state or local government plans, church plans, small employers, or grandfathered plans.

3. What type of health coverage is subject to the SBC requirements?

The rules apply to individual and group "health" coverage but exempt those benefits considered "excepted benefits" under HIPAA's portability rules. Examples of "excepted benefits" include stand alone dental/vision plans, health flexible spending arrangements, and long term care insurance. Note, health reimbursement arrangements are subject to the SBC requirements.

4. When must an SBC be provided by employees and their beneficiaries?

Employers who sponsor a group health plan must provide employees and beneficiaries eligible for coverage with an SBC in the following circumstances:

- as part of written application materials distributed for initial enrollment;
- upon a change in the SBC;
- to special enrollees within 90 days of enrollment;
- upon renewal of coverage;
- upon request. At renewal, the SBC must be provided with any application materials required by the employer.

If no application materials are required at renewal, the employer must provide the SBC within thirty (30) days prior to the first day of the plan year unless the plan is insured and the policy has not yet been renewed in which case the employer has seven business days after issuance of the new policy or receipt of written confirmation of the intent to renew (whichever is earlier) to distribute the SBC.

Employers must also distribute the uniform glossary to individuals within seven business days of receipt of a request for the document.

5. What if I offer more than one benefit package?

Employers must distribute an SBC for each benefit package they offer. For example, an employer offering an HMO, PPO and high-deductible health plan will need to distribute an SBC for each of these three benefit packages. The only exception is if the employee is renewing coverage in which case only the SBC that applies to the renewed coverage must be provided to the employee.

6. My plan is fully-insured, will the insurance carrier draft the SBC for me?

Yes, an employer with a fully-insured plan will need to get the SBC from its insurance carrier. Health insurance issuers who offer group policies must provide employers with an SBC for each benefit package the employer offers in the following circumstances:

- within seven business days of receipt of the employer's application for coverage;
- upon request of the employer;
- upon renewal; and
- upon changing the SBC.

At renewal if a written application is required the SBC must be provided with the application. If the renewal is automatic the SBC must be provided no later than 30 days prior to the first day of the plan year or seven business days after issuance of the new policy or receipt of written confirmation of the intent to renew (whichever is earlier).

7. My plan is fully-insured, will the insurance carrier distribute the SBC to my employees and their beneficiaries?

Insurance carriers who offer group policies are required to distribute the SBC to individuals eligible for or covered under group policies in the same manner an employer must distribute the SBC to its employees and their beneficiaries. However, because this would result in duplication the rules allow one party to distribute the SBCs on behalf of both parties. For example, an employer does not need to distribute the SBC to participants upon a change in the SBC if the insurance carrier has distributed it.

Employers with fully-insured plans must coordinate SBC distribution with their carrier and determine in what circumstances the carrier will provide the SBC to its employees and their beneficiaries. A failure by both parties to distribute the SBC can result in both parties being penalized.

8. Are there different rules if my plan is self-funded?

Employers sponsoring self-funded plans are subject to the same SBC rules; however, they will not have a carrier to provide the SBC. According to the final rules, the SBC must be provided by either the plan sponsor or the plan administrator. In many cases the employer will be both the plan sponsor and designated plan administrator. While an employer can contract with a third party administrator to provide the SBC and distribute it, the employer is ultimately responsible for the SBC's content and distribution.

9. I have a fully-insured plan but I subsidize a portion of the deductible for my employees, does the partial self-funding need to be included in the SBC?

Yes, this type of arrangement is considered a health reimbursement arrangement ("HRA"). The Preamble to the final rules makes clear that health reimbursement arrangements must comply with the SBC rules. Therefore, an employer who purchases a \$2000.00 deductible policy but subsidizes half of it so employees realize only a \$1000.00 deductible will need to either supplement the SBC provided by the carrier to include the HRA or will need to draft and distribute an SBC for the HRA.

10. How should the SBC be distributed?

The SBC may be provided in paper form in person or via mail to the employee's last known address. An SBC may be sent via electronic mail to participants and beneficiaries who are already enrolled in the plan provided the Department of Labor's regulations relating to electronic distribution of plan materials are followed. For individuals not enrolled but eligible for coverage, the SBC may be provided electronically if the format is readily accessible and a paper copy is provided free of charge upon request.

One SBC may be provided per family as long as beneficiaries are not known to reside at a different address. If a different address has been provided for beneficiaries, an SBC must be separately distributed to them.

11. Can the SBC be combined with other plan materials?

For group policies, an employer can combine the SBC with other "summary" materials, such as the summary plan description, provided that the SBC is prominently displayed and the timing requirements of the SBC are satisfied. Because the SPD has different timing requirements an employer should not rely on including the SBC in the SPD to satisfy all of its distribution requirements.

12. Can the plan make changes to the SBC that have a retroactive effect?

No, the rules require group health plans provide participants with 60 days prior notice of any material modification to the health coverage that affects the content of the SBC. Thus, an employer will no longer be able to change coverage terms retroactively to the extent those terms are material and included within the SBC. There is one exception to this notice requirement and that is for changes made at renewal. Therefore, an employer may make changes prior to its upcoming plan year without providing 60 days prior notice provided those changes are effective at renewal.

13. When must I begin complying with the rules?

The SBC requirements are effective for new hires or special enrollees on the first day of the plan year on or after September 23, 2012. For individuals who enroll through open enrollment the rules are effective with the first day of the open enrollment period on or after September 23, 2012.

14. What is the penalty for non-compliance? Employers or issuers who willfully fail to comply with the SBC requirements are subject to a \$1,000.00 penalty for each violation. A failure with respect to each participant or beneficiary constitutes a separate offense.

15. Where can I obtain more information regarding the SBC requirements? A copy of the final regulations, templates, and guidance materials can be accessed at the Department of Labor's website.

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