



The Patient Protection and Affordable Care Act: Final Regulations on Summary of Benefits and Coverage Requirement for Group Health Plans

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The Departments of the Treasury, Labor, and Health and Human Services have issued joint final regulations implementing the new disclosure requirement under the Patient Protection and Affordable Care Act (the "Affordable Care Act") for group health plans to provide participants a four-page uniform summary of benefits and coverage ("SBC"). The content and format of the new summary is strictly prescribed by the Affordable Care Act, the final regulations, and the agencies' supplemental guidance issued simultaneously with the final regulations. Given the complexity of the content and format requirements for SBCs, group health plan sponsors must take immediate steps to prepare SBCs that conform to the final regulations for timely distribution to plan participants.

This disclosure requirement is in addition to the existing summary plan description requirement applicable to group health plans under the Employee Retirement Income Security Act ("ERISA"). The new SBCs must be on hand to provide to participants during any open enrollment period beginning on or after September 23, 2012, and to provide to other new participants who enroll in a plan other than through open enrollment (e.g., mid-year hires) in the first plan year beginning on or after September 23, 2012.

Statutory Background

As originally included in the Affordable Care Act signed into effect by President Obama on March 23, 2010, the SBC that every group health plan is required to provide to plan participants must conform to several specific requirements, both as to content and format. For example, the SBC must be prepared in a uniform format of not more than four pages and in print that is not smaller than 12-point font. The SBC must be written in a "culturally and linguistically appropriate manner" and use terminology that is easily understandable by the average plan participant.

As to content, the SBC must provide a summary description of the coverage that is available under the plan using uniform definitions of standard terms. Such description must include explanations of cost sharing (including deductibles, coinsurance, and co-payments) and examples of "common benefits scenarios," such as pregnancy and serious or chronic medical conditions.

If coverage described in an SBC is materially changed, a revised SBC describing the new coverage must be provided to plan participants no later than 60 days before implementation of the change. This notice requirement is in addition to the existing requirement under ERISA to provide a summary of material modifications to update a summary plan description for material changes to the plan.

The statute provides for up to a \$1,000 civil penalty per participant for each willful failure to provide the SBC. A separate excise tax in the amount of \$100 per day per individual for a failure to provide the SBC may also apply.

Required Content

The final regulations and supplemental guidance give more substance to the statutory content requirements described above and provide examples and sample SBCs that are appropriate to use as models. Among the twelve required SBC content elements included in the final regulations, plan sponsors may in particular note the following items that must be included in the SBC:

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- A description of the coverage, including cost sharing, for each category of benefits identified in the supplemental guidance (including physician office visits, outpatient surgery, prescription drugs, and emergency care);
- The cost-sharing provisions of the coverage, including deductible, coinsurance, and co-payment obligations; and
- Coverage examples that comply with requirements specified in the supplemental guidance. Among other things, consistent with the statute, the coverage examples must illustrate benefits provided under the plan or coverage for common benefits scenarios. The sample SBC included in the supplemental guidance provides illustrations of benefits for normal childbirth and diabetes management.

Required Format and Means of Delivery

The supplemental guidance prescribes some very precise formatting requirements and provides a sample SBC that may be used as a model (see below for links to these materials). With respect to delivery, the guidance provides that the SBC does not have to be distributed to plan participants as a stand-alone document but may be included with other plan materials (for example, with the summary plan description for the plan).

The SBC may be provided in paper or electronic form. Electronic distribution (via e-mail or an Internet posting) is acceptable only if certain Department of Labor regulations on the electronic provision of certain plan documents are satisfied. Plan sponsors may find that means of delivery other than paper are not feasible for many workforce members. Finally, in addition to the times of distribution already described above, the final regulations clarify that a group health plan must provide the SBC to participants or beneficiaries upon request for an SBC or summary information about the health coverage as soon as practicable, but in no event later than seven business days following receipt of the request.

Glossary

Terminology used in the SBC must be identical to the glossary that is provided by the agencies in conjunction with the final regulations. The glossary must also be identical in format to the model and be made available to participants and promptly provided upon request (within seven business days of such request). The SBC must include information for plan participants about how to obtain the glossary, including a contact telephone number and website. The appropriate website of the Department of Labor or Health and Human Services may be used for this purpose.

Additional Resources and Required Compliance Date

Online resources for plan sponsors to comply with the new SBC requirements may be found at the websites of the Department of Labor and the Department of Health and Human Services [here](#) and [here](#). Again, plan sponsors must take immediate action to ensure that SBCs and copies of the uniform glossary are available for open enrollment periods on or after September 23, 2012, and for mid-year hires or others who first become eligible to participate in the first plan year beginning on or after September 23, 2012.

If you have any questions about the SBC rule under the final regulations, please contact one of the attorneys in the [Employee Benefits & Executive Compensation Group](#) at Bradley Arant Boulton Cummings LLP.



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