



COMPENSATION AND BENEFITS ALERT

## Summaries of Benefits and Coverage: What Employers Need to Know

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### The Alert:

The Departments of Labor, Treasury and Health and Human Services (the "Agencies") recently released final regulations and related guidance to employers in connection with the "Summary of Benefits and Coverage" ("SBC") required to be provided to health plan participants under the Patient Protection and Affordable Care Act of 2010 ("PPACA").

Starting on September 23, 2012 (generally the first day of the first open enrollment period that begins on or after September 23, 2012), employers and insurers are required to provide succinct summaries of their health plan benefits (no more than four double-sided pages in 12-point or larger font) in a standardized form that must include a glossary of insurance and medical terms – featuring generic definitions, not the plan-specific ones that would appear in a summary plan description (SPD) – as well as illustrations of how the particular plan would generally provide benefits for people in standard medical situations. The SBC requirements apply to group health plans (but not HIPAA-excepted benefits such as certain dental, vision, and health FSA arrangements), regardless of grandfathered status.

The final regulations can be found [here](#) and guidance document with included template SBC and corresponding instructions [here](#).

### Responsibility for the SBC

The final regulations apply to both (i) SBCs that health insurers are required to provide to plan sponsors (in order for plan sponsors to develop a better understanding of their benefit programs), and (ii) SBCs that are required to be provided to individual plan participants.

MARCH 8, 2012

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This client alert will focus on the SBCs that are required to be provided to individual plan participants. With respect to these SBCs, either an insurer or an employer may satisfy the requirements of the regulations. Therefore, with respect to fully-insured employee health benefit plans, it is expected that insurers will assume the responsibility for providing SBCs. However, with respect to self-insured employee health benefit plans, it is expected that employers will assume the responsibility for providing the SBC. When this client alert refers to "employers" or "plan sponsors," it is therefore generally referring to employers who sponsor self-insured employee health benefit plans.

## Action Items

The requirement to provide an SBC may impose a substantial burden on plan sponsors, because the requirements of the final regulations impose obligations related to timing, form and content of SBCs that are in several ways substantially different from the disclosure obligations already imposed on plan sponsors (such as the requirement to provide an SPD). As is set forth below, SBCs are required to be provided in a particular template form, with particular content obligations and on a particular schedule that are not consistent with SPD form, content and timing requirements. As a result, plan sponsors must act now to develop a compliance system targeted especially at SBC requirements in order to be ready for the September 23, 2012 deadline.

## Timing of the SBC Distribution and other Issues

The SBC must be provided as follows:

- With any written enrollment application materials that the plan/plan sponsor provides (if the plan does not provide written enrollment application materials, then no later than the first date that the participant is eligible to enroll himself or any beneficiary in the plan).
- If there is any change to the information required to be in the SBC between the application for coverage and the first day of coverage, the plan must update and provide a current SBC to a participant or beneficiary no later than the first day of coverage.
- Special enrollees (individuals entitled under HIPAA to special enrollment rights) must be provided the SBC no later than 90 calendar days from enrollment.
- To a participant or beneficiary upon request, within seven business days following the request.
- To a participant or beneficiary, upon renewal of coverage for the benefit options in which the participant or beneficiary is enrolled. If renewal is not automatic, the SBC must be provided on the date that written application materials are distributed by the plan sponsor to the participant or beneficiary. If renewal is automatic, the SBC must be provided no later than 30 calendar days prior to the first day of the new plan/policy year. Participants and beneficiaries can also request an SBC during renewal for an option in which they are not enrolled, and such SBC must be provided during the 30-day period.
- A single SBC can be provided to participants and beneficiaries residing at the same last known address. If a beneficiary's last known address is different from a participant's, a separate SBC must be sent to the beneficiary at the beneficiary's last known address.

## Material Modifications

If a plan sponsor makes a mid-year material modification to coverage that affects the contents of an SBC, the plan sponsor must provide advance notice of 60 calendar days of the modification to plan participants and beneficiaries. A "material modification" is the same as is defined in ERISA Section 102, which provides that a material modification is "any change to the coverage offered that independently or in conjunction with other contemporaneous changes would be considered by the average plan participant to be an important change, including changes that enhance or reduce benefits, increase premiums or cost-sharing or impose new referral requirements."

This advance notification requirement represents a significant departure from current ERISA rules that require provision of a summary of material modifications or SMM within 60 calendar days after adoption of a material reduction in covered services or benefits, or within 210 calendar days after adoption of a material modification that does not constitute a reduction. The final regulations provide however, that if an advance notice of material modification is provided consistent with the 60-day advance notice rule applicable to SBCs, the plan sponsor will not need to provide a separate SMM.

## Penalties for Noncompliance

An employer that willfully fails to provide a proper SBC is subject to a fine of not more than \$1,000 per failure. Each participant or beneficiary who does not receive a timely and proper SBC counts as a separate failure. The Internal Revenue Code also provides for excise taxes of up to \$100 per day per individual failure and reporting requirements in connection with failures to provide SBCs.

### **Content Requirements**

The regulations and templates set forth certain specific content requirements, including the following:

- Uniform glossary of standard coverage-related and medical terms to enable participants to compare the terms of coverage as well as exceptions. The final regulations include a list of 45 terms (such as "deductible" and "co-payment") and provide for additional terms to be added by the Secretary of Health and Human Services. The uniform glossary may be provided by a link to an internet address; however, the plan sponsor must also provide a statement providing that paper copies of the uniform glossary are available, and a contact number for obtaining a paper copy of the uniform glossary.
- A description of the coverage, including cost-sharing, for each category of benefits identified by the Agencies.
- The exceptions, reductions and limitations of the coverage.
- The cost-sharing provisions of the coverage, including deductibles, co-payments and coinsurance.
- The cost of coverage for self-insured plans (insured plans must provide premium information).
- The renewability and continuation of coverage provisions.
- Examples of coverage selected by the Secretary of Health and Human Services to illustrate how the plan would generally provide benefits in certain standard medical situations such as the birth of a child and diabetes management.
- A statement that the SBC is a summary only and that the plan document, policy or certificate of insurance should be consulted to determine the governing provisions.
- A contact number to call with questions and internet addresses that provide any applicable prescription drug formulary or provider network for the plan.
- Contact information for questions or for obtaining a copy of the plan document or the insurance policy, contract or certificate of insurance.

### **Appearance and Form of an SBC**

- The SBC must be provided in the template form provided with the guidance document linked [here](#). A plan must use its best efforts to provide the relevant plan terms consistent with the template to the extent that the plan's terms cannot reasonably be described in exactly the form that the template requires.
- An employer can provide SBCs by paper or electronically, provided that the electronic distribution satisfies the ERISA safe-harbor rules for electronic disclosure.
- The SBC may be provided as a stand-alone document or with an SPD. If it is provided with an SPD, the SBC information must be intact and displayed prominently at the beginning of the materials, and provided in a timely manner.
- The SBC must be provided in a culturally and linguistically appropriate manner. This generally means that plan sponsors must disclose the availability of language services and provide written translation of an SBC in certain other languages upon request in certain counties identified by the U.S. Census Bureau.