

**American Benefits Council
P4P**

**Final Summary of Benefits &
Coverage Rules**

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Overview of Discussion

- » Required format for the Summary of Benefits and Coverage (“SBC”)
- » Required content
- » When the SBC must be provided
- » Who must provide the SBC
- » How, i.e., the manner in which, the SBC must be provided
- » Penalties for failure to deliver the SBC
- » Advance notice of material modifications to SBC

In General

- » PPACA added section 2715 to the PHSA
 - Directs HHS, DOL, and Treasury to develop SBC standards
 - Also calls for the development of standards for the definition of terms used in health insurance coverage
- » Regulations were to be published 1 year after PPACA enactment (i.e., 3/23/11); rule to be effective 2 years after enactment (i.e., 3/23/12)
 - Publication deadline passed with no guidance
 - Proposed regulations issued in August 2011
 - Final regulations issued in February 2012

In General

» Purpose

- Intended to provide consumers with consistent and comparable information regarding health plan benefits and coverage; facilitate shopping among options

» Applicability

- Applies to insured and self-funded ERISA and non-ERISA group health plans (including grandfathered plans)
- Also applies to individual health insurance coverage
- Does not apply to HIPAA-excepted benefits
 - *E.g.*, stand-alone dental/vision, certain FSAs

Applicability Date

- » Coming soon!
- » Two separate dates for employer compliance
 - Generally: Effective the first day of the first plan year that begins on or after 9/23/12
 - Includes individuals who are newly eligible and special enrollees
 - Special rule for open enrollment for 2013 plan year: Must provide SBC with respect to open enrollment that begins on or after 9/23/12
- » Issuers must provide SBCs to group health plan sponsors who are “shopping” beginning on 9/23/12

Required Format

- » Must be in a uniform format prescribed by the agencies
 - Specific form (like nutrition facts label); template provided
 - Completed in accordance with agency instructions
- » No more than 4 double-sided pages; at least 12-point font
- » Terminology must be understandable by average enrollee
- » Must be in culturally and linguistically appropriate manner
 - Generally, the same standards that apply for claims and appeals, i.e., in certain counties where at least 10% of residents in a given county are only literate in the same language:
 - Must provide interpretive services
 - Must provide written translations of the SBC upon request in certain non-English languages
 - Must disclose in English-version SBC the availability of language services in the relevant language

Required Format

» Changes in final regulations

- Flexibility for plan to the extent the plan's terms cannot reasonably be described in a manner consistent with the template instructions
 - *E.g.*, tiering for prescriptions and providers
 - “Best efforts” required to describe relevant plan terms
- Stand-alone requirement eliminated
 - SBC may be provided as part of summary plan description (SPD) if “prominently displayed”

Required Content

- » Description of coverage including cost sharing requirements
 - *E.g.*, deductibles, coinsurance, copayments
 - » Information regarding coverage exceptions, reductions or limitations
 - » Whether qualifies as minimum essential coverage (beginning in 2014)
 - » Coverage examples
 - » Renewability and continuation of coverage provisions
 - » Statement that SBC is only a summary and plan/policy should be consulted
 - » Contact information for questions or to obtain plan/policy copy
 - » If plan has multiple networks, contact information for obtaining a list of network providers
 - » If plan uses a prescription drug formulary, contact information for obtaining information on prescription drug coverage
 - » An internet address for obtaining the uniform glossary, a contact number to obtain a paper copy of the uniform glossary, and a disclosure that paper copies are available
- * Per the final regulations, premium information is not required to be included in the SBC

Required Content

» Uniform glossary

- Intended to facilitate understanding and comparison of terms of coverage and the extent of medical benefits
- Includes generic definitions that are not plan specific
- * The final uniform glossary contains enhanced “warning” language that individual plan terms may differ from the general definitions provided in the uniform glossary

Required Content

» Coverage examples

- Pertain to specific health conditions
- Intended to show how the plan would cover the services typically required to treat the conditions
- In first year –
 - Only two coverage examples are required
 - Normal baby delivery
 - Type 2 diabetes
- Agencies reserve right to require up to six examples in the future

Who Must Provide the SBC?

- » Issuer – To plan sponsor of group health plan
- » Group health plan – To enrolled/eligible participants and beneficiaries and special enrollees
 - Note: Different rules apply if the plan is self-funded or insured

Who? – From Issuers to Plans

» When?

- Generally, must be provided to the plan (or sponsor) at the following times:
 - Upon application for coverage by the plan
 - As soon as practicable following request by the plan, but in no event later than seven (7) business days after request
 - By the first day of coverage if there are changes to the SBC required information

Who? – From Issuers to Plans

» How?

- May be delivered in paper form (for free) or electronically
- Plans may receive SBC electronically if the following three criteria are met:
 1. Electronic format must be “readily accessible” by the plan
 2. Must provide in writing to plan upon request
 3. If posted to internet, must notify such to plan by email or paper regarding availability for review

Who? – From Plan to Participants/Beneficiaries

» Generally

- Who has the burden? Depends on whether the plan is self-funded or insured
 - If self-funded, the obligation rests with the ERISA “plan administrator”, i.e., typically the employer plan sponsor
 - Although a plan administrator could presumably contract with a third-party provider, such as the ASO, to deliver the SBC, it appears the legal liability would remain with the plan administrator
 - If insured, the obligation rests with plan administrator as well as issuer to the extent the coverage is insured
 - Like COBRA in that appears to be joint liability; however, regulations make clear that delivery of the SBC in a timely fashion satisfies the disclosure obligation for both plan administrator and issuer
 - Raises interesting compliance issues for plan administrators and issuers alike

Who? – From Plan to Participants/Beneficiaries

» When?

- Regarding initial enrollment
 - Must be provided as part of any written application material that is distributed for initial enrollment
 - If the plan does not distribute such written application material, the SBC must be provided no later than the first day the participant or beneficiary is eligible to enroll
 - Must be provided with respect to each “benefit package” offered for which the participant or beneficiary is eligible
 - Must be provided to each eligible participant and eligible beneficiary
 - Only one SBC need be sent to participant if all reside at same address
 - If, however, a beneficiary’s last known address (such as an adult child) is different, then must send to beneficiary at their last known address
 - For HIPAA special enrollees, must be provided within 90 days of enrollment

Who? – From Plan to Participants/Beneficiaries

» When?

– Regarding reenrollment

- A new SBC must be provided to the enrollee upon reenrollment or reissue
 - If written application is required, must provide SBC no later than date of application distribution
 - If reenrollment/reissue is automatic, SBC must be provided no later than 30 days prior to first day of new policy/plan year
 - » Note: Additional special rule for insured plans

– Additional requirements

- If the SBC is changed after being provided but prior to an individual's initial enrollment or reenrollment, the Plan must provide an updated SBC by no later than the first day of coverage

Who? – From Plan to Participants/Beneficiaries

» How?

- May be provided in paper form (for free) or electronically per specific rules
- Electronic rules differ based on whether the intended SBC recipient is currently enrolled or just eligible for coverage
 - If intended recipient is eligible but NOT enrolled – Plan may provide the SBC electronically if the following three criteria are satisfied:
 1. The electronic format must be “readily accessible”
 2. Must provide in paper form upon request
 3. If posted to internet, must notify such by email or paper regarding availability for review
 - If intended recipient is enrolled – Plan may provide the SBC electronically in accordance with ERISA’s electronic delivery rules

Penalties for failure to provide SBC

- » Generally, the same penalties as would otherwise apply under PHSA, Code and ERISA for purposes of health reform will apply
 - *E.g.*, PHSA civil penalty of \$100 per day per affected individual and Code excise tax of \$100 per day per individual
- » Also a new penalty of up to \$1,000 per day for each affected individual
 - For willful violations of SBC rule
 - Statutory language suggests limited to failures regarding *content* not *form*

Advance Notice of Material Modifications

- » If intend to materially modify the plan and doing so would affect the content of the SBC, then need to provide advance notification of the intended modification unless the modification occurs in connection with a renewal or reissuance of coverage
 - ERISA’s definition of “material modification” applies for this purpose
- » Must provide notice by no later than 60 days prior to the date of the material modification unless the modification occurs in connection with a renewal or reissuance of coverage
 - Can be satisfied either by providing (i) a separate notice describing the material modification, or (ii) an updated SBC reflecting the modification
- » Compliance with this requirement also satisfies ERISA requirement that plans provide a summary of material modification (“SMM”) to participants and beneficiaries
 - Note: This only works in one direction here; compliance with SMM requirements does not mean compliance with new SBC requirement

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