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employee benefits lawflash

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# Summaries of Benefits and Coverage Due This Fall

*Final regulations provide detail on the format, content, and delivery standards group health plan sponsors and insurers must follow when issuing this information.*

As they prepare for open enrollment this fall, group health plan sponsors and insurers have a lot of work to do to make sure they are in compliance with the final Summary of Benefits and Coverage (SBC) rules. The much-anticipated final regulations, which were recently issued by the Departments of Treasury, Labor, and Health and Human Services, are effective for open enrollment periods beginning on or after September 23, 2012.

This LawFlash highlights some of the key changes in the final regulations. Read our discussion of the proposed regulations in our August 26, 2011 LawFlash, "New Summary of Benefits and Coverage Required for Health Plans in 2012," available online at http://www.morganlewis.com/pubs/EB_LF_SummaryOfBenefitsAndCoverage2012_26aug11.pdf.

## What Must Be in the SBC?

The SBC is intended to provide clear and consistent information that will enable employers and participants to compare and understand the costs and benefits of different health coverage options. The SBC may be no longer than four double-sided pages in 12-point font. The SBC must summarize key features of the coverage options, such as covered benefits, coverage limitations and exceptions, cost-sharing provisions, and renewability and continuation of coverage provisions, and must provide coverage examples that illustrate what the plan will cover for common benefits scenarios. The SBC also must include contact information for questions and a website address where the uniform glossary of terms may be found.

The final regulations eliminate the requirement to provide premium and cost of coverage information in the SBC. While this change will make compliance somewhat easier for plans that require different employee contributions for different tiers of coverage, separate SBCs may still be required for each coverage tier if deductibles or other design features vary by coverage tier. The final regulations also reduce the number of required coverage examples from three to two. The required examples illustrate how a plan will process claims related to having a baby and routine maintenance of type 2 diabetes. Additional coverage examples may be added in the future.

The SBC generally must follow the template and instructions provided in the regulations; however, the final regulations provide that if a plan's features cannot reasonably be described within this framework (e.g., because the cost of coverage is affected by participation in a wellness program or health reimbursement account), the plan administrator or insurer must use its best efforts to provide a summary consistent with the SBC requirements. A compliance guide, the SBC template documents and instructions, and narratives for the two coverage examples are located online at http://cciio.cms.gov/resources/other/index.html#sbcug.

## Who Must Receive the SBC and When?

Insurers must provide consumers (including employer plan sponsors) with the SBC for a health coverage option as soon as possible, but not later than seven business days following an application or request for information about the coverage. Note that the final regulations replace the seven *calendar* day period under the proposed regulations with a seven *business* day period.

 

Plan administrators for group health plans, and insurers in the case of insured group health plans, must provide the SBC to participants and beneficiaries:

- With any written enrollment materials distributed by the plan or insurer or, if no written enrollment materials are distributed, no later than the first day the individual is eligible to enroll.
- During open enrollment each year; however, only the SBC for the coverage option in which a participant is already enrolled must be provided automatically. SBCs for other coverage options must be provided upon request. If reenrollment is automatic, the SBC must be provided 30 days prior to the first day of the plan year.
- To HIPAA special enrollees, within 90 days after enrollment.
- Upon request, as soon as possible, but not later than seven business days following the request.

In addition, a revised SBC will be required at least 60 days in advance of the effective date of any midyear change to a plan (whether positive or negative) that affects the information provided in the most recent SBC. Note that provision of the revised SBC will satisfy the separate notice of material reduction in health benefits that is required within 60 days after the date such a change is adopted.

The final regulations provide that where the obligation to provide the SBC for an insured plan falls on the plan administrator and the insurer, the requirement will be satisfied if one or the other furnishes the SBC; however, both parties remain liable for compliance. Likewise, if the plan administrator for a self-insured plan contracts with a third-party administrator to provide the SBC, the plan administrator remains legally responsible for ensuring the SBC is in fact provided as required.

The final regulations also clarify that furnishing an SBC to the participant and his or her beneficiaries at the participant's last known address will satisfy the SBC obligation for all family members. However, a separate SBC must be delivered to a beneficiary who is known to reside at a different address.

## How May the SBC Be Delivered?

While the proposed regulations required the SBC to be provided as a stand-alone document, the final regulations allow the SBC to be provided in combination with other plan materials (such as the summary plan description) as long as the SBC is intact, prominently displayed at the beginning of the materials, and provided in accordance with the timing requirements applicable to the SBC.

The SBC may be provided in paper or electronic form. The final regulations include some helpful changes and clarifications regarding electronic delivery. For individuals already covered under a plan, the SBC may be provided electronically as long as the Department of Labor's electronic delivery requirements are satisfied. For individuals who are eligible for coverage but not yet enrolled, the SBC may be provided electronically as long as it is readily accessible. If the electronic form used in this case is an Internet posting, individuals must be advised in writing or by email of the Internet address where the SBC may be found and of their right to request a paper copy. In all cases, a paper copy of the SBC must be available upon request and free of charge within seven business days.

## What Are the Penalties for Noncompliance?

A willful failure to provide the SBC as required may result in a fine of up to $1,000 per failure under rules that will be incorporated into section 715(f) of the Employee Retirement Income Security Act. Also, an excise tax of $100 per day per failure to deliver the SBC may apply under section 4980D of the Internal Revenue Code. Violations must be reported and excise taxes paid annually using IRS Form 8928 (the same form used to report COBRA violations and other failures). Additional penalties and interest may apply if the excise tax return is not timely filed.

 

## What Should Plan Sponsors Do to Prepare?

Plan sponsors should quickly determine who will create the required SBC(s) for their plans and when and how they will be delivered. Plans that have carved out certain benefits, such as prescription drug coverage, may face additional challenges in drafting an SBC that incorporates information from different vendors. Drafters will need to quickly become familiar with the format and requirements of the template documents and begin gathering the information needed to complete the SBC for each coverage option and /or coverage tier, as applicable. The process is sure to be time consuming, so beginning well in advance of open enrollment season is advisable.

## Contacts

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