

Final Rule Issued on Summary of Benefits and Coverage Required by the Affordable Care Act

The Department of Labor (DOL), the Treasury Department and the Department of Health and Human Services (HHS) (the “Departments”) have released a Final Rule implementing the Summary of Benefits and Coverage (SBC) and Uniform Glossary that is required under the Affordable Care Act.¹ The purpose of the SBC is to provide individuals with an accurate summary of their benefits that may be used to compare coverage options when shopping for or enrolling in group or individual health coverage.² The Departments also issued a revised template SBC, with accompanying instructions, samples, and guide for coverage example calculations, along with an updated Uniform Glossary (described on the next page).³

The SBC requirements are effective for insured and self-insured group health plans with open enrollment beginning on the first day of the first open enrollment period that begins on or after September 23, 2012. Group health plans without open enrollment periods must comply with the SBC requirements beginning on the first day of the first plan year that begins on or after September 23, 2012 (January 1, 2013 for calendar-year plans). Significant financial penalties may be assessed for failure to provide the SBC: a \$100 penalty for each failure and an additional \$1,000 for each willful failure.

¹ The Affordable Care Act is the shorthand name for the Patient Protection and Affordable Care Act (PPACA), Public Law No. 111-48, as modified by the subsequently enacted Health Care and Education Reconciliation Act (HCERA), Public Law No. 111-152.

² This *Bulletin* focuses on the SBC requirements for group health plans. It does not cover the requirements for the individual insurance marketplace.

³ The Final Rule was published in the February 14, 2012 issue of the *Federal Register*: <http://www.gpo.gov/fdsys/pkg/FR-2012-02-14/pdf/2012-3228.pdf>. The guidance related to the template SBC, and accompanying instructions, coverage examples and Uniform Glossary was also published in that issue of the *Federal Register*: <http://www.gpo.gov/fdsys/pkg/FR-2012-02-14/pdf/2012-3230.pdf>. The documents are available on the Centers for Medicare & Medicaid Services website (<http://cciio.cms.gov/resources/other/index.html#sbcug>) and the DOL website (<http://www.dol.gov/ebsa/healthreform/>).

NUTS AND BOLTS OF SBC DISTRIBUTION

Group health plans and health insurance issuers must provide SBCs to participants and beneficiaries at no charge.⁴ For fully insured plans, only the issuer or the group health plan (not both entities) has to provide the SBC to the participants and beneficiaries. In addition, health insurance issuers must provide SBCs to group health plans that apply for or purchase coverage from the issuer. Plans that offer multiple benefit options must prepare a separate SBC for each option.

When Must the SBC Be Provided?

Generally, the SBC must be provided to participants and beneficiaries at the following times:

- With initial enrollment or application materials or, if there are no enrollment or application materials, no later than the first date the participant is eligible to enroll,
- Annually, with enrollment materials or, if there are no such materials or no open enrollment process, 30 days before the start of the plan year,
- To HIPAA special enrollees within 90 days of enrollment, and
- Upon request (as soon as practicable but no later than seven business days following the plan's receipt of the request).

The Departments will likely issue further guidance as questions concerning distribution rules and timing arise.

Group health plans may provide the SBC as a stand-alone document, or in combination with other summary materials, such as a summary plan description (SPD). If it is included with other materials, the SBC must be intact and prominently displayed at the front of the materials, such as right after the table of contents in a SPD.

⁴ Excepted benefits, including limited-scope dental and vision benefits and most health Flexible Spending Arrangements (FSAs) are not required to meet the SBC requirements. A stand-alone Health Reimbursement Arrangement (HRA) must generally satisfy the SBC requirements.

SBCs may be provided in electronic format as long as existing DOL rules for electronic disclosure are met.⁵ SBCs also must be provided in a culturally and linguistically appropriate manner.⁶

SBC FORM, APPEARANCE AND CONTENT

General Requirements

The template SBC and instructions detail the type of information that must be included in the SBC and the specific wording that must be used. Moreover, the SBC must be in the uniform format set out in the template, it must be no more than four pages double-sided, and the print may be no smaller than 12-point font. It may be provided in the template color scheme or grayscale.

The specific content that must be included is described in Segal's August 31, 2011 *Capital Checkup*,⁷ with very few changes. For example, premium information is no longer required. The SBC must now include a phone number to request a paper copy of the Uniform Glossary and a statement that paper copies are available.

In instances in which a group health plan's terms cannot reasonably be described using the required format or language, the plan must accurately describe the relevant plan terms while using its best efforts to do so in a manner that is consistent with the template. This may be necessary, for example, where the plan provides for a different structure for provider networks or prescription drug benefits than the structures contemplated by the template documents.

Coverage Examples

The Affordable Care Act requires the SBC to contain coverage examples to illustrate payments under the group health plan for a particular benefits scenario, including an estimate of the amounts that the individual would be responsible for if the claims were processed in accordance with the plan's terms. For now, the SBC must describe two coverage examples, "having a baby (normal delivery)" and "managing type 2 diabetes (routine maintenance of a well-controlled condition)."

⁵ Those rules are discussed in The Segal Company's June 2002 *Bulletin*: <http://www.segalco.com/publications/bulletins/june02electronic.pdf>

⁶ For information about how to provide the SBC in a culturally and linguistically appropriate manner, see the Departments' answer to a frequently asked question (Q#13) at <http://www.dol.gov/ebsa/faqs/faq-aca8.html>

⁷ That publication is available on the following page of Segal's website: <http://www.segalco.com/publications-and-resources/multiemployer-publications/capital-checkup/archives/?id=1725>

It is likely that completing the coverage examples portion of the SBC will be a labor-intensive process that will require coordination with plan's claims processors and professional advisors in order to ensure accuracy.

UNIFORM GLOSSARY

In addition to providing the SBC, group health plans must make available to participants and beneficiaries a Uniform Glossary in the form and substance (with no modifications) published by HHS.⁸ This Uniform Glossary defines terms, such as "balance billing," "co-insurance," "medically necessary," "network," and "out-of-pocket limit."

IMPLICATIONS FOR PLAN SPONSORS

Due to the short time frame between now and the effective date, plan sponsors need to begin as soon as possible to:

- Determine how many SBCs must be produced.
- Confirm that the current plan documents/SPDs accurately describe the information that has to be reflected in the SBC. To the extent that plan documents/SPDs do not accurately describe such information, they should be updated at this time.



As with all issues involving the interpretation or application of laws and regulations, sponsors of group health plans should rely on their legal counsel for authoritative advice on the interpretation and application of the Affordable Care Act and related regulations. The Segal Company can be retained to work with plan sponsors and their attorneys on compliance issues and participant communications and can be retained to draft the SBC.

⁸ See the following page on the DOL website: <http://www.dol.gov/ebsa/pdf/SBCUniformGlossary.pdf>



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