Compliance Alert

New Summary of Benefits and Coverage (SBC) for 2017

August 31, 2016

Quick Facts:

- ACA requires group health plans (generally meaning major medical) to produce a Summary of Benefits and Coverage (SBC).
- The SBC presents key plan information in a standardized format to facilitate easy comparison with other plans.
- Plans must design, produce and distribute their SBCs using instructions and templates provided in federal rules.
- Federal regulators recently issued a revised template that is effective for plans starting on or after April 1, 2017.

Background

The Affordable Care Act (ACA) requires health plans and insurers to distribute a Summary of Benefits and Coverage (SBC) using a standardized format in accordance with federal rules. The rules include instructions for insurers and employers to fill in an appropriate template SBC with benefit-specific information for each plan. The SBC is designed to present “clear, consistent and comparable information” about plan coverage and exclusions in plain language. In April, 2016 federal agencies issued a final revised template, instructions and other related materials for the SBC.

Effective date

Employers and insurers generally must use the new SBC template for plans with plan years starting on or after April 1, 2017. Specifically:

- Plans with annual open enrollment periods must start using the new template on the first day of the first open enrollment period that begins on or after April 1, 2017, with respect to coverage for plan or policy years beginning on or after that date.
- Plans without an annual open enrollment period must start using the new template on the first day of the first plan or policy year that begins on or after April 1, 2017.

Plans may continue to use the current template and instructions for plan years beginning prior to April 1, 2017.
Key changes to the SBC template and instructions

The final template is five pages (two and one-half double-sided pages) long, which is shorter than the current six-page version. The final template and instructions also differ from the current versions in the following ways:

**Introduction**

The revised SBC contains a new introductory paragraph, which provides information about the purpose and structure of the SBC. The introduction also links to the uniform glossary. In the introduction and throughout the SBC, terms defined in the uniform glossary are hyperlinked directly to the definitions in electronic versions of the SBC.

**Important questions**

The “Important Questions” section has been revised to include a question about services covered before the deductible is met. Questions about annual limits and services not covered have been deleted, although the SBC still includes information on services that are not covered in a separate section. Questions regarding out-of-pocket limits and network providers have been rephrased, with the goal of helping consumers better understand plan terms.

**Disclosures**

The agencies have revised SBC disclosures regarding continuation coverage and grievance and appeal rights. The SBC also contains information on whether the plan provides minimum essential coverage (MEC) and minimum value (MV), which must be provided as a “yes” or “no” answer, along with specific language regarding potential individual tax consequences.

**Coverage examples**

The SBC includes coverage examples that demonstrate the cost-sharing amounts an individual might be responsible for in three common medical situations. In addition to the current coverage examples that address diabetes care and childbirth, the updated template has a new coverage example that addresses coverage for a foot fracture, to provide information about what a plan covers in an emergency scenario. The new SBC template no longer includes a page regarding assumptions and other information about the examples.

**SBC instructions**

The SBC instructions provide additional information regarding permissible font types and margin adjustments, and note that the SBC must not exceed four double-sided pages. They retain the special rule that, to the extent that a plan’s terms cannot reasonably be described in a manner consistent with the template and instructions, the plan or issuer must accurately describe the relevant plan terms while using its best efforts to do so in a manner that is as consistent with the instructions and template format as reasonably possible.
The instructions also provide additional flexibility under the special rule for combining information on different cost-sharing selections or add-ons to major medical coverage (such as health FSAs, HRAs, HSAs or wellness programs) in one SBC. The information must be understandable if it is combined.

Below are the most common employer questions regarding SBCs.

**General**

1. **Is an SBC required for every health plan?**

   Yes, the ACA mandates an SBC for each health plan or health benefit package (plan option). Grandfathered and non-grandfathered plans – whether insured or self-funded – must provide an SBC.

   The SBC requirement does not pertain to “HIPAA-excepted benefits,” such as stand-alone dental and vision plans, certain supplemental plans, or typical Flexible Spending Accounts (assuming little or no employer FSA contribution). The SBC does not apply to a Health Savings Account (HSA), although an SBC is required for the associated high deductible health plan (HDHP) which may include mention of the employer HSA contributions.

   Because a Health Reimbursement Account (HRA) is a group health plan, an SBC is required. However, the typical HRA is an “integrated” HRA that is merely a component of another plan. In that case, separate SBCs are not required, and the medical plan SBC may include mention of the HRA component.

2. **Does the SBC replace other plan materials, such as the summary plan description (SPD) or the insurer’s booklet or certificate?**

   No. The SBC is an additional requirement and does not replace any other materials. The SBC may be a stand-alone document, or it can be included with the summary plan description (SPD) for convenience. If the SBC is included with the SPD:
   - the SBC content must be intact and prominently displayed (such as immediately after the table of contents), and
   - the document must be provided to meet the SBC timing requirements.

3. **What is included in the SBC?**

   The SBC presents a summary of coverage information, exclusions and cost examples. To see a sample completed SBC, click [here](#).

   The SBC begins with the “Summary of Coverage: What this Plan Covers & What You Pay For Covered Services”. The first section is divided into three columns “Important Questions,” “Answers” and “Why This Matters.” For each template “question,” the plan must fill in the answer and explain why it matters.

   Questions in the new template include:
   - What is the overall deductible?
· Are there services covered before you meet your deductible? Are there other deductibles for specific services?
· What is the out-of-pocket limit for this plan?
· What is not included in the out-of-pocket limit?
· Will you pay less if you use a network provider?
· Do you need a referral to see a specialist?

The next SBC section shows the employee’s cost for common medical events, such as office visits, tests, prescriptions and emergency room services. Brief information about COBRA rights and grievance and appeal rights also appears. In addition this section includes questions regarding whether the plan provides minimum essential coverage (MEC) and minimum value (MV) as well as contact information for language services.

The SBC ends with “Coverage Examples” intended to illustrate the portion of health care expenses that the plan will cover for three hypothetical benefit scenarios: Having a Baby, Managing Type 2 Diabetes and Simple Fracture.

The SBC also includes contact information, such as phone numbers or web addresses, for the participant to obtain the policy or certificate, lists of network providers, and prescription drug formularies.

4. Can we change the format of the SBC?

The SBC’s format is standardized to help consumers understand the plan’s key features and to compare plan options. Plans generally cannot change the format, including symbols, bolding and shading, although minor alterations are permitted. The SBC may be produced either in color or grayscale. The maximum length is four double-sided pages and the type font cannot be less than 12 point.

Plans can include the header and footer on each page of the SBC or, to save space, the plan can remove some headers or footers. At a minimum the header must appear on the first page, and the footer must appear on the first and last pages. Plans also may make minor adjustments in the size of rows and columns (but cannot delete any rows or columns) and can adjust page breaks.

5. What is the Uniform Glossary?

In addition to the SBC, plans must make available the Uniform Glossary of insurance and medical terms. The Glossary is prepared by the U.S. Department of Health and Human Services (HHS) and includes definitions for about 40 terms. The terms and definitions are generic, not plan specific, and cannot be changed by insurers or employers. The Glossary is available online on the DOL and HHS websites. The law does not require plans to distribute copies of the Glossary unless a plan participant requests a paper copy.
Distribution

6. **Who produces the SBC?**

For a group insurance health plan, the “insurer” (insurance carrier or HMO) is responsible for producing the SBC. For a self-funded health plan, the plan sponsor (employer) is responsible for producing the SBC, although, in most cases, the employer contracts with its TPA or claims administrator for this service. A portion of the SBC requires completing “coverage examples” (e.g., the plan’s maternity benefits expressed as a dollar amount), so the claims administrator is the best source of the needed information.

Although a carrier or vendor may produce the SBC, the employer is responsible for distributing the material. If, however, the insurer provides the SBC to the plan participant, the employer does not need to provide another copy to that participant (unless requested).

7. **Do SBCs have to be distributed separately to family members?**

If the enrolled participant and dependents have the same mailing address, a plan can meet its distribution requirement by providing a single SBC to that address. Similar to the rules for COBRA notices, separate mailings are required if the plan knows a dependent resides at a different address than the employee.

8. **Are SBCs required for each enrollment option (e.g., coverage level, cost-sharing option)?**

The law does not require separate SBCs for each coverage tier (e.g., employee only, employee with child(ren), etc.). A single SBC may address multiple coverage tiers provided that the information is understandable. The SBC “coverage examples” must be completed for the employee-only tier; other coverage tiers can be omitted from the examples as long as the SBC notes the relevant assumptions.

A plan that allows participants to select cost-sharing levels (e.g., deductibles, copays, coinsurance) does not need separate SBCs for each possible cost-sharing combination. A single SBC will suffice if the combined information is understandable. Also, the “coverage examples” can be based on a sample combination of cost-sharing levels as long as the SBC notes the relevant assumptions.

9. **May we distribute the SBC electronically instead of hard copy?**

Insurers and employers may provide SBCs in either paper or electronic form. (A participant always may request a paper copy at no cost.) The final SBC rules provide the following guidelines regarding electronic distribution of SBCs:

- For enrolled participants, plans may provide SBCs electronically:
  - according to the U.S. Department of Labor’s (DOL) safe harbor rules currently in place for SPDs and other notices;
  - in connection with online enrollment; or
  - In response to an online request for the SBC.
• For eligible participants who are not enrolled, plans may provide SBCs electronically if:
  – the format is “readily accessible; and
  – if the SBC is available online, plans notify individuals in paper form (e.g., postcard) or email explaining SBC availability, the internet address, and the availability of the SBC in paper form upon request.

The rules offer sample language (in box below) to notify participants about online SBCs, although plans have flexibility in tailoring the text.

**Availability of Summary Health Information**

As an employee, the health benefits available to you represent a significant component of your compensation package. They also provide important protection for you and your family in the case of illness or injury.

Your plan offers a series of health coverage options. Choosing a health coverage option is an important decision. To help you make an informed choice, your plan makes available a Summary of Benefits and Coverage (SBC), which summarizes important information about any health coverage option in a standard format, to help you compare across options.

The SBC is available on the web at: www.website.com/SBC. A paper copy is also available, free of charge, by calling 1-XXX-XXX-XXXX (a toll-free number).

**Note:** Plans sponsored by non-federal governmental employers (e.g., cities, counties, public school districts) may opt to follow alternate distribution rules. Those rules generally are more burdensome so very few public employers consider them.

**10. Are there any foreign language requirements?**

Plans are not required to produce the SBC in many different foreign languages. However, in counties where 10 percent of population is literate only in Spanish, Chinese, Tagalog or Navajo (based on U.S. census data), plans are required to notify participants that language assistance services are available. To meet this notice requirement, use the sample “language statement” from the model claim denial (copy available at: http://www.dol.gov/ebsa/IABDMediaNotice2.doc). Plans can voluntarily expand the text for other languages or offer assistance in other areas not meeting the 10% threshold.

**Timing**

**11. When do group health plans have to distribute the SBC?**

Plans must provide the SBC as follows:

• For open enrollments, by the first day of open enrollment.
• For new hires and mid-year enrollments, by the first day of the plan year.
• For special enrollments, within 90 days.
• For participants requesting the SBC, within seven (7) business days.
Plans must provide SBCs for all open enrollment periods, including “changes only” enrollment periods. For plans without open enrollment (i.e., plan elections renew automatically), the employer or insurer must provide an SBC to participants at least 30 days prior to the first day of the new plan year. If the insurer and employer have not finalized the plan or renewal terms, they may delay the SBC, but must provide it within seven (7) business days of finalizing the plan terms.

Plans must provide SBCs to COBRA qualified beneficiaries on the same basis as active participants (i.e., open enrollment periods, etc.); however, plans need not redistribute an SBC for each COBRA qualifying event.

12. **Are there more requirements if a plan sponsor changes or modifies its benefits?**

Yes. Plans and insurers must give at least 60 days’ advance notice of any material modification that affects the SBC (other than changes made at renewal). A “material modification” includes:

- Coverage enhancement, such as covering previously excluded benefits or reducing cost-sharing,
- Material reduction in covered services or benefits, or
- More stringent requirements for receiving benefits, such as a new referral requirement.

Note that the SBC rules do not require advance notice for premium changes or other changes made in connection with renewal. In most cases, the 60-day notice is required only for mid-year benefit changes. Plans may provide the 60-day notice in a separate summary of material modification or through an updated SBC.

13. **What are the penalties for failing to provide the SBC?**

Insurers and employers may be fined for failing to provide the SBC. The fine, which recently increased, can be up to $1,087 per plan participant for failure to provide the SBC.

Next steps

Employers should become familiar with the new template and related materials. Self-funded plan sponsors should ensure that they are using the new template as of the appropriate effective date. Employers with insured plans should make sure the carrier provides the correct version of the template once it is required. Finally, it is important to ensure to provide SBCs timely and according to applicable distribution rules.

*EPIC Employee Benefits Compliance Services*

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