

Requirement Reminder for Summary of Benefits & Coverage (SBC)

January 2, 2024

Quick Facts

- The Affordable Care Act (ACA) expanded group health plan disclosure requirements to add a Summary of Benefits and Coverage (SBC) disclosure.
- The SBC has very specific content and format requirements, and various updated guidance has been provided since the requirement began.
- Plan sponsors must follow set timing rules for disclosure depending on plan participant enrollment and mid-year changes.

Background

The 2010 ACA expanded group health plan disclosure requirements by adding an SBC for group health plans to distribute to participants and beneficiaries. The SBC and an accompanying uniform glossary are meant to “help plans and individuals better understand their health coverage.”

Who Must Comply

Generally, all group health plans (grandfathered plans) are required to maintain and distribute an SBC. Only certain excepted benefits such as stand-alone dental or vision, and health flexible spending accounts (FSAs) and retiree-only plans are exempt. The SBC must be provided for both fully insured and self-funded group health plans, including health reimbursement arrangements (HRAs).

The insurance carrier (issuer) will generally provide the SBC on behalf of fully insured plans, but the plan administrator should confirm with the issuer because the plan administrator is jointly responsible for compliance. For self-funded plans, the plan administrator (typically the employer) must provide the SBC.

For plans with benefits provided by more than one insurer (e.g., separate medical and prescription drug coverage), or for a medical plan integrated with an HRA, the plan administrator is responsible for providing a complete SBC. This can be achieved by compiling a single SBC with information for each benefit, or by the provision of multiple partial SBCs that together create a compliant SBC. For the latter option, additional information will need to be included, such as a cover letter or notation, indicating that the plan provides coverage through multiple arrangements and that participants can contact the plan administrator for help in understanding how all the products work together.

Contents & Appearance

There is very specific information that must be included in a compliant SBC. Any content requirements of the SBC cannot be fulfilled by mere reference to the plan’s SPD. Though a reference

to and information on where a copy of the summary plan description (SPD) is located would be a good addition, the SBC itself must contain the outlined below.

The SBC must be printed in a font that is no smaller than 12-point and cannot exceed four double-sided pages in length.

It must be written in a “culturally and linguistically appropriate manner,” meaning that depending on the English literacy in an individual’s county the SBC may have to also be provided in one of four languages upon request (Spanish, Chinese, Tagalog, and Navajo). To comply with the language requirement, SBCs sent to addresses in an applicable county must include a one-sentence statement clearly indicating how to access the language services provided by the plan (or insurer). This statement should be included on the page of the SBC with the “Your Rights to Continue Coverage” and “Your Grievance and Appeals Rights” sections. The most current county data made available by the agencies can be found [here](#).

The content and appearance requirements can be satisfied by using the [template](#) provided by the Department of Labor (updated in November 2019 for plan years beginning on or after January 1, 2021).

The following items must be addressed in the SBC:

- Uniform glossary listing definitions of standard insurance and medical terms. The Department of Labor (DOL) provides information addressing why these definitions matter that must accompany the uniform glossary and cannot be altered
- Description of coverage for each category of benefits
- Exceptions, reductions, and limitations on coverage
- Cost-sharing provisions, including deductible, coinsurance, and copayment obligations
- Renewability and continuation of coverage under the Consolidated Omnibus Budget Reconciliation Act (COBRA)
- Coverage facts label, or coverage examples, which illustrate common benefits scenarios and related cost-sharing
- Statement of whether the plan provides minimum essential coverage and meets the minimum value standard as defined in and required by the ACA
- Statement that the SBC is only a summary and that the full plan policy or certificate should be consulted
- Phone number that can be used for additional questions and requesting a copy of the plan document, insurance policy, and group certificate of coverage, and the internet address where these materials are made available

SBC Content Requirements

In addition, there are a few items included in the DOL template that are not required by statute, but would be best practice to include:

- Internet address for obtaining a list of in-network providers
- Internet address for more information on prescription drug coverage under the plan (if applicable)
- Internet address for a copy of the uniform glossary and contact information to request a paper copy

Note that the SBC is not required to include information on eligibility for coverage or information on premiums or cost of coverage.

Distribution & Timing

The SBC must be provided to participants and beneficiaries (including COBRA-qualified beneficiaries) at open enrollment or renewal, upon initial enrollment and special enrollment, and upon request (within seven business days of such request). Previous regulations state that if the SBC is provided to the employee, the distribution requirement is met for all dependents living at the same address.

If there are multiple plan options with separate SBCs (rather than a combined SBC):

- For those who are newly eligible, individuals should be provided with the SBC for each benefit package they are eligible for (not just the one they enroll in). The SBCs are supposed to be made available as part of the enrollment process to allow plan participants to compare and choose the appropriate plan.
- During open enrollment or renewal, for those already enrolled, the employer could provide the SBC only for the option in which the employee is enrolled so long as the others are available upon request. But for those employees not enrolled, all SBCs should be distributed.

The SBC may be hand delivered, mailed, or provided electronically under certain circumstances. Regarding electronic distribution, there is a safe harbor applicable only to the distribution of SBCs – if the enrollment process is handled online, the SBC could be provided electronically as part of the enrollment process as long as the enrollee has the option to receive a paper copy upon request. For participants that do not enroll online (e.g., enrollment by phone or by paper forms), Employee Retirement Income Security Act (ERISA) regulations on electronic distribution apply, in which case the SBC may be provided electronically only if employees have regular workplace access to the employer's electronic system or if employees provide consent for electronic delivery.

Notice of Material Modification

A notice of material modification is required when material modifications are made mid-plan year (outside annual renewal) that impact the content of the SBC. For changes made in connection with a renewal, a new and updated SBC would need to be provided anyway, so a notice of material modification is not required.

A “material modification,” as defined in ERISA, includes any modification to the coverage provided under a plan that would be considered by an average plan participant to be an important change in covered benefits or other terms of coverage under the plan. This includes both enhancements and reductions in covered benefits. Examples of material modifications include reduced cost-sharing (e.g., deductibles, copays or coinsurance), a change in carrier, new referral requirements, or coverage of previously excluded benefits. As mentioned above under content requirements, eligibility rules and employee premium contributions are generally not included in the SBC, so changes to eligibility or premium contributions will not typically require a notice of modification.

The requirement of a notice of material modification can be satisfied by the distribution of either a stand-alone notice with the changes listed, or an updated complete SBC. The notice needs to be distributed to the same required recipients of the SBC and must be provided no later than 60 days prior to (in advance of) the date on which the modification becomes effective.

Consequences of Noncompliance

Failure to timely provide an SBC may be penalized by up to \$1,000 per failure (as adjusted annually for inflation; for penalties after January 15, 2023, the penalty is \$1,362 per failure). Additionally, plan sponsors of a plan that fails to timely distribute SBCs may also be subject to an excise tax of \$100 per failure per day.

EPIC Employee Benefits Compliance Services

For further information on this or any other topic, please contact your EPIC benefits consulting team.

EPIC offers this material for general information only. EPIC does not intend this material to be, nor may any person receiving this information construe or rely on this material as tax or legal advice. The matters addressed in this document and any related discussions or correspondence should be reviewed and discussed with legal counsel prior to acting or relying on these materials.