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HEALTHCARE REFORM UPDATE 2015-24



Temporary Safe Harbor for Online Posting of SBCs

A Summary of Benefits and Coverage (SBC) is four-page (double-sided) communication required by the federal government under the Patient Protection and Affordable Care Act (ACA). It must contain specific information, in a specific order and with a minimum size type, about a group health benefit's coverage and limitations. An SBC is required whenever application or open enrollment materials are provided to new hires or current employees. If no application or open enrollment materials are given, an SBC must be provided when the person can first enroll.

Safe Harbor

SBCs must include an Internet address where the individual coverage policy or certificate of coverage can be reviewed and obtained.

The Department of Health and Human Services (HHS) has [announced](#) that, due to difficulties for some issuers that have several hundreds of documents that must be posted to comply with the requirement for both individual and group coverage, it will not take enforcement action against issuers that make available individual coverage policy or group certificate of coverage documents no later than November 1, 2015. HHS expects all group and individual health insurance issuers to provide an Internet address for the group certificate of coverage or individual policy documents by the date on which the SBC is otherwise required.

This does not require early posting of SBCs relating to individual policies for coverage beginning on or after January 1, 2016.

An issuer may post a sample group certificate of coverage for each applicable product for plan sponsors that are shopping for coverage, but once the certificate of coverage is executed, it must be available.

Closed Books of Business

The SBC requirement applies to all employers -- private, government, and not-for-profit, fully insured and self-funded, grandfathered and non-grandfathered. There is no minimum employer size to have this obligation. However, the effective date has been delayed for closed books of insured business. An SBC does not need to be provided unless the Department of Labor issues additional instructions if:

- The insured product is no longer being actively marketed,
- The health insurer stopped actively marketing the product prior to September 23, 2012, and
- The health insurer has never provided an SBC with respect to the insured product.

In addition, expatriate plans do not have to provide SBCs until the 2016 plan year. (An expatriate plan is one designed to cover employees who are living overseas.)

HHS has [clarified](#) that closed books of business that do not meet the requirements listed must continue to comply with the SBC requirements, including providing the SBC to plan sponsors and individuals. HHS will not take enforcement action against an issuer of a closed book of business that does not satisfy the safe harbor criteria that limits access to the policy or group certificate of coverage to plan sponsors who have already purchased and individuals who are currently enrolled in the coverage.

SBC Requirements, Generally

For fully insured plans, the insurer is responsible for providing the SBC to the plan administrator (usually this is the employer). The plan administrator and the insurer are both responsible for providing the SBC to participants, although only one of them actually has to do this.

For self-funded plans, the plan administrator is responsible for providing the SBC to participants. Assistance may be available from the plan administrator's TPA, advisor, etc., but the plan administrator is ultimately responsible. (The plan administrator is generally the employer, not the claims administrator.)

SBCs must be provided:

- At open enrollment
 - The SBC must be included with the open enrollment materials.
 - Only the SBC for the option the employee is currently enrolled in must be provided. (If you would rather provide all SBCs instead, you may do so.)
 - If the employee asks for the SBC for other options, those SBCs must be provided within seven business days.
 - SBCs must be provided to current employees, retirees (unless they are enrolled in a retiree-only plan), and COBRA beneficiaries.

- At renewal if there is no open enrollment
 - If the prior year's election simply carries over, the SBC for the employee's current coverage must be provided at least 30 days before the new plan or policy year. (If the plan or policy has not been reissued or renewed by then, the SBC is due as soon as possible after renewal/reissue, and in no event later than seven business days after either the new policy is issued or a written confirmation of intent to renew is received.)
 - If the employee asks for the SBC for other options, those SBCs must be provided within seven business days.
 - SBCs must be provided to current employees, retirees (unless they are enrolled in a retiree-only plan), and COBRA beneficiaries.

- At initial enrollment
 - The SBC for all options the employee may choose must be provided with the enrollment materials.
 - If no enrollment materials are provided, the SBC for all options must be provided by the first day the new employee may enroll.

- At special enrollment
 - The SBC for the option the individual is enrolled in must be provided within 90 calendar days after enrollment as a special enrollee.
 - The SBC must be provided within seven business days after a request for the SBC.

- With a material mid-year change
 - 60 days before the effective date of the change.

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Our access to PPACA Advisor resources can help you clear up PPACA questions and better craft your company's benefit strategy for the future.

This information is general and is provided for educational purposes only. It reflects UBA's understanding of the available guidance as of the date shown and is subject to change. It is not intended to provide legal advice. You should not act on this information without consulting legal counsel or other knowledgeable advisors.

