



July 17, 2015

Final Rule Issued on SBCs

The Treasury, Departments of Labor, and Health and Human Services (the Departments) released [final regulations](#) regarding the Summary of Benefits and Coverage (SBC) and the uniform glossary. The SBC requirements apply to group health plans and health insurance coverage in the group and individual markets under the Affordable Care Act. SBCs are intended to provide a uniform and consistent summary to help plans and individuals better understand their health coverage and coverage options. [CMS](#) has issued a [fact sheet](#) regarding the final rule, which is effective for group health plans and insurers with the first plan year beginning on or after September 1, 2015.

The final rule makes few changes to the proposed rule issued December 2014 (which came after the final regulations published February 2012) amending the previously issued final regulations. (See our [Update](#) for more information on the SBC requirements and the December 2014 proposed rule.)

Some key provisions in the final rules are summarized below:

- **New SBC Template Expected Early 2016.** The final rule provides that a new SBC template and supporting documents are expected to be available by January 2016. The new SBC template will apply to health coverages that begin on or after January 2017. A large number of commenters have expressed difficulty meeting the SBC's font and space requirements, citing that the four page front and back limitation does not provide adequate space to accurately and fully describe the plan's terms. Other commenters have asked that language requirements be expanded, and that the SBCs be made available in other languages if population amounts exceed a certain percentage. While the Departments are expected to address the issue of spacing with the release of the new template, the Departments have decided not to expand language access, and the previous requirements of providing a SBC if 10% or more of a county speaks a language other than English, is still in place.
- **Safe Harbor Extended.** The Departments, in the final rule, have also extended the safe harbor related to disclosing a plan's minimum essential coverage (MEC) and minimum value (MV) statements. Consistent with previously issued guidance in the [DOL's FAQs XVI, Q&A 2](#), enforcement action will not be taken against plans that issue SBC without the MEC and MV language so long as this disclosure is made in the SBC's cover letter or a similar disclosure.
- **SBCs to Special Enrollees.** Special enrollees, enrolling under a group health plan midyear

pursuant to a HIPAA special enrollment right, must receive an SBC under the same terms that apply for receiving a summary plan description (SPD) for the plan, which is within 90 days of enrolling in the plan. This is a change from the proposed regulations which required SBCs be issued to special enrollees within seven days of enrollment. Special enrollees can still request an SBC earlier for any plan under which they are eligible to enroll, and if requested the SBC must be provided no later than seven days after the request.

- **Providing an SBC at the Time of Application (Insurance Issuer to the Plan).** Under the final rule, a group health insurance insurer must provide an SBC to the plan or sponsor when the plan/sponsor applies for health coverage. If the insurer has provided an SBC upon request before an application for coverage was received, the insurer need not provide another one unless there has been a change in information required to be covered in the SBC, in which case a new SBC must be provided upon application (or within seven days of the application). If there is any change in the information provided in an SBC between the time of application and when coverage actually begins (including when the terms of coverage were under negotiation when an initial SBC was sent), an updated current SBC must be provided no later than the first day of coverage.
- **Assigning Contractual Responsibility (Anti Duplication Provisions).** The final regulations add two additional anti-duplication provisions.
 - *Under the first provision*, an entity required to provide a SBC may enter into a contract with another party (a third-party vendor) to provide the SBC and will satisfy their SBC requirement if the entity (1) monitors the vendor's performance; (2) corrects any noncompliance determined to have occurred as soon as practicable; and (3) in the event that such noncompliance cannot be corrected, communicates with participants and beneficiaries about the noncompliance and takes the necessary steps as soon as practicable to correct the noncompliance.
 - *Under the second provision*, a group health plan using two or more insurers under the plan (or insures part of the plan and self-insures another part), is responsible for providing completed SBCs with respect to the plans, or may contract with one of the insurers to do so. An insurer is not required (outside of a contractual obligation) to provide an SBC for a benefit it does not insure. Where a plan uses multiple insurers or offers benefits that are both insured and self-insured, the plan administrator may synthesize the information into a single SBC or provide multiple partial SBCs. If the later approach is used, the administrator must alert participants and beneficiaries as to this fact.
- **Disclosures by Qualified Health Plan (QHP) of Plan's Abortion Services.** The final regulations implement the requirement imposed on state exchange QHP issuers to disclose on the SBC whether non-excepted and excepted abortion services (those for which public funding is permitted) are covered or excluded, consistent with the guidance of the HHS Secretary. While this requirement was in place prior to the final rule, the latest SBC template did not provide an entry for this disclosure. Until the updated SBC template is available, abortion coverage disclosures may be provided by the plan in any reasonable wording (or placement). The plan may even issue a separate letter to make this disclosure.
- **Online Access to Insurance Policy or Group Certificate of Coverage.** The final regulations clarify that health insurance issuers must include an internet web address where a copy of the actual individual policy or group certificate of coverage can be reviewed and obtained "before" someone signs up for coverage. For fully insured employer-sponsored plans, because the actual "certificate of coverage" may not be available until after the plan sponsor has negotiated the terms of coverage with the insurer, the insurer may post a

sample group certificate of coverage for each applicable product. After the actual certificate of coverage is executed, it must then be posted and made available to the plan sponsor, participants and beneficiaries on the internet. Note that this requirement applies to insurers only and places no obligation on self-insured plan sponsor to make plan documents available on-line in connection with the SBC distribution requirement.

The final rule also formalizes other earlier issued guidance. For example, the final regulations incorporate previously issued FAQ guidance to exclude Medicare Advantage plans from the SBC requirement; permit a group health plan with multiple benefit packages to provide either a single or multiple SBCs; and allow the SBC to be provided electronically in connection with online enrollment or in response to an online request (but it must be provided in paper form if so requested). The final regulations also adopt the proposed approaches for IRS and DOL enforcement of the statutory fine for willful failure to provide the SBC (\$1,000 per failure).

Should you have questions regarding this or any other area of health reform, contact your Conner Strong & Buckelew account representative toll free at 1-877-861-3220. For a complete list of Legislative Updates issued by Conner Strong & Buckelew, visit our online [Resource Center](#).



connerstrong.com



877-861-3220



news@connerstrong.com



Change My Preferences

CONNER
STRONG &
BUCKELEW

INSURANCE | RISK MANAGEMENT | EMPLOYEE BENEFITS

in

[Click here to change your email preferences or unsubscribe from all communication.](#)