



Tuesday, June 16, 2015

## Agencies Issue Final SBC Rules

On June 16 the Internal Revenue Service, the U.S. Department of Labor, and Health and Human Services (the "Agencies") released [final regulations](#) ("Regulations") for the Affordable Care Act's ("ACA's") Summary of Benefits and Coverage ("SBC") requirements. HHS also released a "[Fact Sheet](#)" to accompany the release of the Regulations. The Regulations largely follow and consolidate prior SBC guidance and break very little new ground.

### Background

The ACA requires health insurance issuers and plan sponsors to provide participants and beneficiaries with an SBC that accurately describes the benefits available. Since the passage of the ACA, the Agencies have released guidance outlining the rules for SBC content and delivery and related matters, including [final regulations](#), [templates](#), and FAQs [VII, VIII, IX, X, XIV and XIX](#). In December 2014 the Agencies released new proposed regulations and a new proposed SBC template, instructions, and uniform glossary, which were followed by FAQ [XXIV](#) in March 2015.

These Regulations finalize the proposed regulations and consolidate some of the prior sub-regulatory guidance released in the form of FAQs. Importantly, the Regulations **do not** include new sample language for the SBCs. In the Regulations the Agencies reiterate the statement from FAQ XXIV that they anticipate the new SBC templates and associated documents will be finalized by January 2016 and will apply to plan years beginning on or after January 1, 2017 (including open enrollment periods that occur in the Fall of 2016 for coverage beginning in 2017).

### The Final Regulations

As noted above, not much new ground is broken in these Regulations, which are applicable to plan years beginning on or after September 1, 2015. Key provisions include:

- **Online Access to Individual Underlying Policy or Group Certificate.** The Regulations clarify that all insurance issuers must include an Internet web address where a copy of the policy or group certificate of coverage can be reviewed and obtained before someone enrolls in coverage. For fully insured employer-sponsored plans, because the actual "certificate of coverage" is not 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. This section does not apply to self-insured health plans.

- **Safe Harbor for Sponsors That Use Vendors To Deliver SBCs.** The Agencies confirmed that a prior proposed safe harbor for plan sponsors that contract with others to deliver the SBCs will still be available if:
  - The plan sponsor monitors performance by the vendor under the contract;
  - If the plan sponsor has knowledge that the SBC is not being provided in a manner that satisfies the requirements and the plan sponsor has all information necessary to correct the noncompliance, the plan sponsor corrects the noncompliance as soon as practicable; and
  - If the plan sponsor has knowledge the SBC is not being provided in a satisfactory manner and the plan sponsor does not have all information necessary to correct noncompliance, the plan sponsor communicates with the affected participants and beneficiaries regarding the noncompliance and begins taking steps as soon as practicable to avoid future violations.
- **Timing and Delivery of SBCs Remains the Same.** The Agencies continue to attempt to take a common sense approach to the timing and the delivery of SBCs, including:
  - Not requiring a new SBC be provided to participants who were provided an SBC prior to the start of a plan year but before the insurance contract is finalized (as long as there have been no changes to the required information);
  - Allowing participants whose coverage is automatically renewed to be provided with an SBC for that coverage option by the start of the plan year (although they may request and must receive SBCs for other coverage options within seven days of the request); and
  - Permitting electronic posting of SBCs for those enrolling online.

## What Employers Should Do

Employers and other plan sponsors should review the complete SBC guidance and existing practices with their ERISA counsel, broker, and vendors to ensure compliance by the effective date. The penalty for noncompliance with the SBC rules is \$1,000 per person per day—so compliance is extremely important.

Your Trion Strategic Account Managers are here to answer any questions you might have as you prepare to comply with upcoming ACA requirements. If you are not currently a Trion client and would like assistance navigating the changes required by health care reform, please contact us today by emailing [trionsales@trion-mma.com](mailto:trionsales@trion-mma.com).

## ACA REGULATIONS & GUIDANCE ISSUED IN THE LAST THREE MONTHS

- Jun. 2015: Agencies Issue Final **SBC Regulations** and **Fact Sheet**
- May 2015: ACA FAQs XXVII – **Cost Sharing Limits and Provider Nondiscrimination**
- May 2015: IRS Issues Q&As on **Section 6056 Rules** and **Completing Forms 1094-C and 1095-C**
- May 2015: ACA FAQs Part XXVI – **Preventive Care**

Apr. 2015: ACA FAQs Part XXV – Wellness Programs

Apr. 2015: EEOC Issues Proposed Regulations on Wellness Programs and the ADA

Content provided in collaboration with our compliance partner, Marathas, Barrow and Weatherhead LLP.

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