



State of New Jersey

DEPARTMENT OF BANKING AND INSURANCE
SMALL EMPLOYER HEALTH BENEFITS PROGRAM

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ADVISORY BULLETIN 12-SEH-03

October 1, 2012

To: SEH Program Member Carriers that Issue Coverage
SEH Program Interested Parties

From: Ellen DeRosa
Executive Director

Re: Summary of Benefits and Coverage

Among the requirements of the Patient Protection and Affordable Care Act is the requirement that Carriers provide consumers with a brief summary of what the health benefits plan covers. The summary that is required is called a "Summary of Benefits and Coverage" or "SBC."

Carriers selling group coverage identified the employer as essential in facilitating distribution to employees. The February 14, 2012 Final Rule (77 FR 8668) regarding the Summary of Benefits and Uniform Glossary provides support for such an approach.

Footnote 10 states:

10 With respect to insured group health plan coverage, PHS Act section 2715 generally places the obligation to provide an SBC on both a plan and issuer. As discussed below, under section III.A.2.d., "Special Rules to Prevent Unnecessary Duplication With Respect to Group Health Coverage", if either the issuer or the plan provides the SBC, both will have satisfied their obligations. As they do with other notices required of both plans and issuers under Part 7 of ERISA, Title XXVII of the PHS Act, and Chapter 100 of the Code, the **Departments expect plans and issuers to make contractual arrangements for sending SBCs.** Accordingly, the remainder of this preamble generally refers to requirements for plans or issuers. (*Emphasis added*)

The second paragraph of Response 5 in the "FAQs about Affordable Care Act Implementation (Part VIII)" dated March 19, 2012 also provides support for Carriers expecting employers to cooperate with the distribution of the SBC.

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The Departments have determined that, until further guidance is issued, **where a group health plan or group health insurance issuer has entered into a binding contractual arrangement under which another party has assumed responsibility** (1) to complete the SBC, (2) to provide required information to complete a portion of the SBC, or (3) **to deliver an SBC with respect to certain individuals in accordance with the final regulations**, the plan or issuer generally will not be subject to any enforcement action by the Departments for failing to provide a timely or complete SBC, provided the following conditions are satisfied:

- The plan or issuer monitors performance under the contract,
- If a plan or issuer has knowledge of a violation of the final regulations and the plan or issuer has the information to correct it, it is corrected as soon as practicable, and
- If a plan or issuer has knowledge of a violation of the final regulations and the plan or issuer does not have the information to correct it, the plan or issuer communicates with participants and beneficiaries regarding the lapse and begins taking significant steps as soon as practicable to avoid future violations. *(Emphasis added)*

The primary contractual arrangement Carriers have with the employer is the Group Policy/Group Contract. Carriers requested the opportunity to add text to the Group Policy/Group Contract to address the role the employer plays in the distribution of the SEC. To accommodate those requests the SEH Board crafted text that addresses the Responsibilities of the Policyholder.

Carriers may include the following text on the Compliance and Variability Rider.

Responsibilities of the [Policyholder]:

As used in this provision “SBC” means the Summary of Benefits and Coverage required by federal law.

- a. The [Policyholder] shall deliver to all Eligible Persons, including [Carrier] Covered Persons, the SBC for the group health benefits provided under this [Policy], as required by federal law or regulations, in a timely and appropriate manner. The [Policyholder] shall distribute SBCs under this provision: to all Eligible Persons with any written application materials for enrollment (including open enrollment); to special enrollees; [and] upon renewal of coverage [; and upon request].
- b. The [Policyholder] shall distribute applicable SBCs, upon request and at any other times, to Eligible Persons who are not currently enrolled with [Carrier].
- c. The [Policyholder] agrees to certify to [Carrier] upon [Carrier’s] request that the [Policyholder] has provided the SBC as required under the [Policy] and by law. The [Policyholder] agrees to submit information upon [Carrier’s] request showing that the [Policyholder] has provided the SBC, as required under the [Policy] and by law.

If you have any questions, please contact me at ellen.derosa@dobi.state.nj.us.