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## Sixty-Day Advance Notice of Plan Changes

The Patient Protection and Affordable Care Act (PPACA) requires health plans and health insurance issuers to provide a summary of benefits and coverage (SBC) to applicants and enrollees. The SBC is intended to be a concise explanation of important health plan information. Its purpose is to help consumers better understand their coverage options. The SBC requirement applies to both non-grandfathered and grandfathered plans.

In addition, PPACA requires plans and issuers to keep the SBC up-to-date by giving **at least 60 days' advance notice** of certain changes to their plans. Changes that must be disclosed are **material modifications** in plan terms or coverage that would affect the content of the SBC and are not reflected in the most recent SBC. Because the 60-day notice rule is part of the SBC requirement, it becomes effective when plans and issuers must start providing the SBC.

On Feb. 9, 2012, the Departments of Health and Human Services, Labor and Treasury (Departments) released final regulations on the SBC and the 60-day advance notice requirement. The final regulations include a compliance deadline for plan and issuers to start providing the SBC and complying with the 60-day advance notice requirement.

This Seubert & Associates Legislative Brief explains the 60-day advance notice requirement for material modifications.

### WHAT ARE THE CURRENT RULES?

The 60-day advance notice rule is a significant change to the current timeframes under ERISA for disclosing material modifications. Current disclosure law requires health plans to provide a summary of material modifications (SMM) within **210 days after** the end of the plan year in which the change was adopted, or within **60 days after** a material reduction in a health plan's covered services or benefits is adopted.

### WHEN MUST THE 60-DAY ADVANCE NOTICE BE PROVIDED?

PPACA requires plans and issuers to provide at least 60 days' advance notice of any material modification in plan terms or coverage. The Departments' final regulations offer additional guidance on when plans and issuers must provide the 60-day advance notice to enrollees.

The final regulations clarify that plans and issuers are required to issue the 60-day advance notice when:

- A material modification is made that would affect the content of the SBC;
- The change is not already included in the most recently provided SBC; and
- The change is a **mid-plan year** change (that is, it does not occur in connection with a renewal of coverage).

Under the final regulations, plans and issuers must provide the SBC each year at the time of renewal. Changes that occur in connection with a new plan year should be described in an updated SBC provided at renewal.

When a plan timely provides the 60-day advance notice in connection with a material modification, the final regulations provide that the plan will also satisfy ERISA's requirement to provide an SMM.

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## WHAT CHANGES ARE CONSIDERED "MATERIAL MODIFICATIONS?"

The final regulations describe "material modification" as any change to a plan's coverage that independently, or in connection with other changes taking place at the same time, would be considered by the average plan participant to be an important change in covered benefits or other terms of coverage.

A material modification may include:

- An enhancement in covered benefits or services or other more generous plan or policy terms (for example, reduced cost-sharing or coverage of previously excluded benefits); or
- A material reduction in covered services or benefits or more strict requirements for receiving benefits (for example, a new referral requirement or increased premiums or cost-sharing).

Changes that are required to be made to the SBC because of new regulatory requirements for the SBC are not plan or policy changes that require a 60-day advance notice, unless the new regulatory requirements specify that a mid-year notice of modification is necessary.

## WHAT FORMAT SHOULD BE USED FOR THE 60-DAY ADVANCE NOTICE?

If a plan or issuer makes a mid-plan year change that is a material modification affecting the content of the SBC, the final regulations indicate that the plan or issuer may provide the 60-day advance notice by issuing a **separate notice** describing the change or by providing an **updated SBC** reflecting the modification.

## WHEN IS THE 60-DAY ADVANCE NOTICE REQUIREMENT EFFECTIVE?

In a prior FAQ, the Departments clarified that plans and issuers are not required to comply with the 60-day advance notice requirement for material modifications until they are required to provide the SBC.

Plans and issuers must start providing the SBC as follows:

- Issuers must start providing the SBC to health plans effective **Sept. 23, 2012**.
- For participants and beneficiaries who enroll or re-enroll during an open enrollment period, plans and issuers must start providing the SBC beginning with the first day of the first open enrollment period that starts on or after **Sept. 23, 2012**.
- For participants and beneficiaries who enroll other than through an open enrollment period (such as newly eligible individuals and special enrollees), plans and issuers must start providing the SBC beginning with the first day of the first plan year that starts on or after **Sept. 23, 2012**.

Before the SBC requirement becomes effective, plans should comply with timing requirements currently in effect under ERISA for providing SMMs.

## MORE INFORMATION

More information on the SBC requirement, including the requirement for providing 60-days' advance notice of material modifications, is available at: <http://ccio.cms.gov/programs/consumer/summaryandglossary/index.html>.

The final SBC regulations are available at: [http://www.regulations.gov/#!documentDetail;D=HHS\\_FRDOC\\_0001-0442](http://www.regulations.gov/#!documentDetail;D=HHS_FRDOC_0001-0442).

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