



Client Bulletin

Keller»Benefit
Services

Health Care Reform Update

New health care reform regulations have recently been released that address employee notification provisions that take effect in 2012 and several of the major reforms that begin in 2014. A summary of this guidance is provided below. As always, contact your Keller consultant with any questions.

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SUMMARY OF BENEFITS AND COVERAGE

Beginning March 23, 2012, all group and individual health plans must provide a uniform Summary of Benefits and Coverage (SBC) to eligible individuals to allow them to easily compare different health plans. The SBC will include:

- ◆ Benefit cost-sharing including deductible, coinsurance, copays, out-of-pocket limits
- ◆ Exclusions and limitations of coverage
- ◆ Premiums/cost of coverage
- ◆ Coverage examples that illustrate out-of-pocket expenses for common scenarios
- ◆ Plan information including how to find network providers & prescription formulary
- ◆ [Uniform glossary](#) of insurance and medical terms

Regulators have released a [SBC template](#) with instructions for completion and a [sample completed SBC](#). Please note that this sample completed SBC is for an individual health plan. Group health plan SBCs will have minor differences but no sample group health plan SBC was provided.

ACTION ITEMS

- Distribute Notice of Creditable / Non-Creditable Coverage by October 15th
(Update in [previous bulletin](#))
- Distribute Summary Annual Reports (SAR) by Sept 30th for filed calendar year Form 5500s
- RSVP for Keller's upcoming Health Care Reform Webinar (see page 6 for details)

Insurance carriers will be responsible for preparing the SBC for fully-insured plans. Self-insured plans should begin discussions with their Keller consultant and TPA/ASO carrier for SBC preparation. Employers will be responsible for distributing the SBC to eligible employees (and separately to enrolled dependents who reside at a different address). Employers will need to distribute SBCs to the following groups at the specified times:

1. To newly eligible employees, with enrollment materials
2. To special enrollees, within 7 days of request for enrollment
3. At renewal, 30 days prior to first day of new plan year
4. Upon request, within 7 days

Employers must begin complying with the SBC requirement beginning 3/23/2012, regardless of plan year. Therefore, SBCs must be provided to newly eligible employees and special enrollees on or after 3/23/2012, and at renewal for plan years beginning on or after 5/1/2012 (distribution by 4/1/2012).

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SUMMARY OF BENEFITS AND COVERAGE (cont.)

Electronic distribution is permitted under the same rules as other plan notices. As always, if you distribute electronically, paper copies should be made available upon request at no cost. The SBC must be provided as a standalone notice, in the exact format of the template. However, regulators are considering allowing the SBC to be incorporated with other required notices to reduce the administrative burden on employers. We will keep you notified if later guidance provides some administrative relief to this process.

Please note that the SBC will **not** replace other employee notice requirements for group health plans, such as the Summary Plan Description (SPD) and Initial Notice of COBRA Rights.

Additional SBC Resources:

- ◆ [Summary of Benefits and Coverage Fact Sheet](#)
- ◆ [Summary of Benefits and Coverage \(SBC\) Template](#)
- ◆ [Sample Completed SBC - Individual Health Insurance Coverage](#)
- ◆ [Instructions for Completing the SBC - Group Health Plan Coverage](#)
- ◆ [Instructions for Completing the SBC - Individual Health Insurance Coverage](#)
- ◆ [Why This Matters Language for "Yes" Answers](#)
- ◆ [Why This Matters Language for "No" Answers](#)
- ◆ [Guide for Coverage Examples Calculations](#)
- ◆ [Uniform Glossary of Coverage and Medical Terms](#)

60 DAY PROSPECTIVE NOTICE OF PLAN CHANGES

After passage of health care reform, this particular provision caused much speculation that all changes to benefits would have to be communicated 60 days prior to a new plan year. Recent regulations provided good news that only plan changes affecting the content of the SBC **during the plan year** require this prospective notice. **Plan changes that take effect at renewal or that do not affect the content of the SBC will not require a 60 day prospective notice.**

EMPLOYER RESPONSIBILITY

The recent regulations provide insight on employer responsibility provisions that take effect in 2014. Detailed guidance is still pending.

Which employers are subject to the employer responsibility?

Employers with 50 or more full-time equivalent (FTE) employees have to provide minimum essential coverage to all full-time (FT) employees in order to avoid potential penalties. Employers will count all full-time and part-time employees towards the FTE threshold, but coverage must only be made available to FT employees averaging 30 hours per week.

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EMPLOYER RESPONSIBILITY (cont.)

What coverage must employers offer under the employer responsibility?

Employers who offer “minimum essential coverage” to all FT employees will not be liable for any penalty taxes that could apply when employees qualify for federal assistance. Minimum essential coverage must be both:

1. “minimum value,” which means the plan pays at least 60% of benefit costs (guidance pending); and
2. “affordable,” which means the employee’s cost for single coverage under the lowest cost plan is less than 9.5% of the employee’s household income (even if the employee enrolls in family coverage). **There is a safe harbor referenced in the new regulations that will allow employers to base affordability on an employee’s “current W-2 wages” since employers would be unaware of actual household income.** This safe harbor offers employers the ability to predict potential penalties or restructure plan contributions to avoid any penalties.

Example: In 2014, Maria is a full-time employee at Largeco with an annual salary of \$47,000. Largeco charges its employees \$3,450 for single coverage (7.3% of Maria’s annual salary) and \$5,300 for family coverage (11.3% of Maria’s annual salary). Because Maria’s cost of single coverage does not exceed 9.5% of her annual salary, Largeco’s health plan is considered “affordable” for Maria, even if she enrolls in family coverage.

How does the employer responsibility penalty tax work?

Employers will potentially face a penalty tax only if full-time employees who decline the employer’s health plan enroll in an individual Exchange plan with federal assistance. There are two different ways an employer could be subject to a penalty tax.

- ◆ Minimum value penalty: Applies if an employer does not offer health coverage to all FT employees or offers coverage that is not “minimum value” AND at least one FT employee enrolls in an individual Exchange plan with federal assistance
 - ◇ \$2,000 per FT employee (excluding the first 30 FT employees)

OR

- ◆ Unaffordability penalty: Applies if an employer offers “minimum value” coverage but it is not “affordable” AND at least one FT employee enrolls in an individual Exchange plan with federal assistance
 - ◇ \$3,000 per FT employee who receives federal assistance (capped)

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EMPLOYER RESPONSIBILITY (cont.)

How can an employer avoid possible penalty taxes?

Although we are awaiting further clarification of “minimum value” requirements, we anticipate that the majority of health plans offered by our clients will meet the required standards.

The primary concern for most employers will be ensuring that coverage is “affordable.” To ensure affordability, employers may simply need to restructure employee contributions to include a salary-based floor. For example:

Tim is a full-time employee at Bigco with no dependents and an annual salary of \$24,000. Bigco charges its employees \$2,520 for single coverage (10.5% of Tim’s annual salary). Therefore, the Bigco health coverage is not affordable to Tim. If Tim declines Bigco’s coverage, enrolls in coverage in an Exchange, and qualifies for federal assistance, Bigco would pay an unaffordability penalty of \$3,000 for Tim.

Current Contributions for Lowest Cost Plan	Monthly Premium	Employee Contribution	Monthly Employee Cost	Annual Employee Cost
Single Coverage	\$700	30%	\$210	\$2,520

To avoid the unaffordability penalty, Bigco could restructure its contributions as shown below:

2014 Restructured Contributions for Lowest Cost Plan	Monthly Premium	Employee Contribution	Monthly Employee Cost	Annual Employee Cost
Single Coverage	\$700	30%	Lesser of:	
			\$210 or 9.5% of salary	\$2,520 or 9.5% of salary

Under the new plan contributions, since the employee’s cost of single coverage would never exceed 9.5% of salary, Bigco would avoid employer responsibility penalty taxes. From the example, Tim’s cost of single coverage would now be the lesser of \$2,520 OR \$2,280 (\$24,000 * 9.5%). Tim’s coverage would now be “affordable.”

Please note that some lower income employees could still be eligible for federal assistance for coverage through an Exchange due to actual household income. There would be no resulting penalty to the employer as long as its coverage was affordable based on that employee’s “current W-2 wages.”

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EXCHANGES

Exchanges are state-based private insurance marketplaces which will provide an alternative method for individuals and small employers to purchase health insurance beginning in 2014. The intent of Exchanges is to encourage competition amongst insurance companies, provide a choice of health plans for consumers, and increase purchasing power of individuals and small businesses. States will have flexibility in designing their Exchanges including the ability to operate separate or integrated Exchanges for individuals and small employers. If a state does not create an Exchange by 2014, the federal government will establish and operate an Exchange for taxpayers in that state until the state has an operational Exchange.

Exchanges will have an annual open enrollment period of October 15 – December 7 and mid-year special enrollment opportunities. Health plans in the Exchanges will be generally classified based upon the percent of benefit costs paid by the plan: Bronze (60%), Silver (70%), Gold (80%), and Platinum (90%). For this bulletin, our focus is on the small employer Exchange.

The small employer Exchange (“SHOP”) will be open to employers with less than 100 employees in the prior calendar year. States have the option to restrict eligibility to employers with less than 50 employees (instead of 100) and, in 2017, the option to open the SHOP to larger employers. Participation in the SHOP is voluntary and we anticipate that employers will be able to continue relationships with their benefits brokers.

Eligible small employers who elect to offer coverage through the SHOP will select a set of plans within the SHOP to offer to all full-time employees. Employers will be able to re-evaluate their plan selection and SHOP participation every year at renewal.

Employers will send a list of eligible full-time employees to the SHOP. Eligible employees will contact the SHOP directly to select a plan and enroll. Employees will only be able to purchase health plans that the employer elects to offer in the SHOP. Similar to your current health plan rules, employees will be able to change their election annually at open enrollment or mid-year if they experience a special enrollment right (e.g. marriage, birth, divorce, loss of eligibility for other group coverage).

Employees will still be able to pay their portion of the premiums through pre-tax payroll deductions. Employers will be billed and submit payments directly to the SHOP. The SHOP will forward payments to the appropriate insurers.

For small employers with employees in multiple states, the employer can elect to offer coverage either through one SHOP based upon the employer’s principal location, or through multiple SHOPS based upon each employee’s primary worksite.

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FEDERAL ASSISTANCE TOWARDS INSURANCE FOR INDIVIDUAL TAXPAYERS

Federal assistance, known as insurance affordability programs, will be available to lower-income individuals who purchase coverage through an Exchange in the form of premium tax credits and cost-sharing reductions.

For individuals who are not eligible for government-sponsored health coverage or affordable employer-sponsored coverage, premium tax credits will help pay for premiums of health insurance purchased through an Exchange. Since a tax credit claimed at the end of the year is not helpful to a lower-income individual who has to pay premiums each month, individuals may be able to receive an advance payment of premium tax credits in the form of reduced monthly premium payments. Advance payments will be calculated by the Exchange based upon an individual's projected household income. Individuals will have to settle any overpayments at the end of the year if his/her actual household income exceeds projected income.

Certain individuals who qualify for advance payment of premium tax credits may be eligible for cost-sharing reductions to reduce out-of-pocket expenses for health insurance purchased through an Exchange. Cost-sharing reductions will decrease the plan's out-of-pocket limits and member coinsurance.

How are individuals determined eligible for insurance affordability programs? How are employers involved in this process?

The Exchange will determine an individual's eligibility for an insurance affordability program at the individual's request. The Exchanges will be responsible for pre-approving lower-income individuals for these insurance affordability programs, not employers. Exchanges must re-determine an individual's eligibility for insurance affordability programs annually.

As part of the Exchange's eligibility determination process, the Exchange will contact employers to verify information about an employee applying for assistance including the employee's full-time status, eligibility for health coverage, and cost of health coverage. The exact format and method of this verification process has not been determined. The regulators are considering various options to minimize the administrative burden on employers including a template of all necessary Exchange application information provided to employees or possibly a voluntary central database where employers can pre-populate eligibility/plan information. Future guidance will provide more details on this verification process.

If an Exchange determines that an individual is eligible for insurance affordability programs and the employer is liable for an employer responsibility penalty tax, the Exchange will notify the employer of its determination. Employers will be able to appeal the penalty in a process yet to be determined.

HEALTH CARE REFORM UPDATE WEBINAR—SEPTEMBER 20TH

Keller is conducting a health care reform webinar for our clients on **Tuesday September 20th from 11 am – 12 pm**. We will recap reform provisions already in effect and review the latest regulations outlined in this bulletin. You will be able to submit questions during the webinar and follow up as needed with the Legislative Compliance Team.

Clients will receive a registration email shortly. You may also register directly with [Theresa Yost](#).