

ACA OVERVIEW

Provided by Cottingham & Butler

60-Day Advance Notice of Plan Changes

The Affordable Care Act (ACA) requires health plans and health insurance issuers to provide a summary of benefits and coverage (SBC) to applicants and enrollees. The SBC is a concise explanation of important health plan information intended to help consumers understand their coverage options.

The ACA requires plans and issuers to keep the SBC up to date by giving at least 60 days' advance notice of changes to information reflected in the SBC. The 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.

Plans and issuers are only required to give 60 days' advance notice of mid-plan year changes. This notice requirement does NOT apply to changes that occur in connection with a renewal of coverage.

LINKS AND RESOURCES

- [Final regulations](#) on the SBC and the 60-day advance notice requirement were issued in 2012.
- More information on the SBC requirement, including the requirement for providing 60-days' advance notice of material modifications, is available at the Center for Consumer Information & Insurance Oversight [website](#).

HIGHLIGHTS

60-DAY NOTICE RULE

60 days' advance notice must be given for any mid-plan-year changes that are material modifications affecting the content of the SBC.

MATERIAL MODIFICATION

A "material modification" is any change to a plan's coverage that would be considered by the average plan participant to be an important change in covered benefits or other terms of coverage.

This ACA Overview is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice.

BACKGROUND

The 60-day advance notice rule is a significant change to the existing time frames under the Employee Retirement Income Security Act (ERISA) for disclosing material modifications. ERISA's existing 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 plan's covered services or benefits is adopted.

WHEN MUST THE 60-DAY ADVANCE NOTICE BE PROVIDED?

Under the ACA's SBC rules, 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 (it does not occur in connection with a coverage renewal).

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.

MATERIAL MODIFICATIONS

A "material modification" is 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. This 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 midyear 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 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.