

# FAQS ABOUT AFFORDABLE CARE ACT IMPLEMENTATION PART 41

February 3, 2020

Set out below are additional Frequently Asked Questions (FAQs) regarding implementation of the Affordable Care Act. This FAQ has been prepared jointly by the Departments of Labor, Health and Human Services (HHS), and the Treasury (collectively, the Departments). Like previously issued FAQs (available at <http://www.dol.gov/ebsa/healthreform/> and <http://www.cms.gov/ccio/resources/fact-sheets-and-faqs/index.html>), this FAQ answers questions from stakeholders to help people understand the Affordable Care Act and benefit from it, as intended.

## **Summary of Benefits and Coverage**

Public Health Service (PHS) Act section 2715, as added by the Affordable Care Act and incorporated by reference into section 715 of the Employee Retirement Income Security Act and section 9815 of the Internal Revenue Code, directs the Departments to develop standards for use by a group health plan and a health insurance issuer offering group or individual health insurance coverage in compiling and providing a summary of benefits and coverage (SBC) that “accurately describes the benefits and coverage under the applicable plan or coverage.” On November 7, 2019, the updated SBC coverage examples calculator (the “2021 Calculator”), the Guide and Narratives for coverage examples (the “2021 Guide and Narratives”), the instructions for completing the SBC Template (the “2021 Instructions”), and the SBC Template and associated materials (the “2021 SBC”) were released (available at: <https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/affordable-care-act/for-employers-and-advisers/summary-of-benefits> and <https://www.cms.gov/CCIIO/Resources/Forms-Reports-and-Other-Resources/index>).

The release modifies the SBC Template and Instructions as authorized for use on and after April 1, 2017 to update the statement after the Minimum Essential Coverage disclosure, “If you don’t have Minimum Essential Coverage for a month, you’ll have to make a payment when you file your tax return unless you qualify for an exemption from the requirement that you have health coverage for that month.” The new statement reads “Minimum Essential Coverage generally includes plans, health insurance available through the Marketplace or other individual market policies, certain Medicare and Medicaid coverage, CHIP, TRICARE, and certain other coverage. If you are eligible for certain types of Minimum Essential Coverage, you may not be eligible for the premium tax credit.” This statement is being updated because, starting January 1, 2019, the tax payment required for not having Minimum Essential Coverage or a coverage exemption was reduced to zero. The Uniform Glossary is updated as well to remove the definition of Individual Responsibility Requirement and update the definition of Minimum Essential Coverage to reflect this change.

The SBC Template and Instructions have also been updated to include an additional option for issuers completing the Minimum Value disclosure on the SBC. As clarified in the Final 2019 Letter

to Issuers in the Federally-facilitated Marketplace,<sup>1</sup> the concept of minimum value is not relevant with respect to individual market coverage. Thus, the 2021 SBC Template adds “Not Applicable” as a response option for the Minimum Value disclosure, such that the disclosure reads: “Does this plan meet the Minimum Value Standards? [Yes/No/Not Applicable].” The 2021 Instructions indicate that issuers of individual market coverage should answer “Not Applicable.” The update also adds the “Total Example Costs” for each of the three coverage examples to the template.

The release also updates the versions of the Calculator, Guides, and Narratives that were authorized for use on and after April 1, 2017 in a number of ways. The 2021 Calculator and 2021 Guide and Narratives replace 2013 Truven Health MarketScan® data with 2016 data, update some of the treatment protocols for the SBC medical scenarios, and update the Calculator’s logic to better align its underlying assumptions with how most plans and issuers apply cost sharing rules. A complete list of updates to the Calculator, Guide, and Narratives is available at: <https://www.cms.gov/CCIIO/Resources/Forms-Reports-and-Other-Resources/Downloads/Crosswalk-of-Changes-11-2019.pdf>.

**Q1. What is the intended implementation date for SBCs using the new template and associated documents?**

Group health plans and health insurance issuers of individual and group market coverage will be required to use the 2021 SBC, 2021 Instructions, 2021 Guide and Narratives, and, should they choose to use the Calculator, the 2021 Calculator, beginning on the first day of the first open enrollment period for any plan years (or, in the individual market, policy years) that begin on or after January 1, 2021, with respect to coverage for plan or policy years beginning on or after that date.

**Q2. Are plans and issuers required to use the updated Calculator?**

No. Use of the Calculator is not required. The Calculator was developed by HHS, in consultation with the Departments of Labor and the Treasury, for group health plans and health insurance issuers to use as a tool to generate the estimated out-of-pocket costs that a consumer can expect to pay under the plan or coverage for three hypothetical medical scenarios: maternity care, type II diabetes, and a simple foot fracture.

Plans and issuers may create their own calculator using the Guide and Narratives provided by HHS, or modify the logic of the Calculator to provide their own method of calculating estimated out-of-pocket-costs for the coverage examples, which may be more accurate based on their particular plan or policy design. The Calculator makes several assumptions that may not be accurate for all plan or policy designs. Affordable Care Act Implementation FAQs Part IX Q9<sup>2</sup> announced a Calculator provided by HHS for the completion of the coverage examples, along with a safe harbor for plans and issuers that use the Calculator for the first year of applicability for the SBC requirements.

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<sup>1</sup> Available at: <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/2019-Letter-to-Issuers.pdf>.

<sup>2</sup> Affordable Care Act Implementation FAQs Part IX, Q9 at [https://www.cms.gov/cciiio/resources/fact-sheets-and-faqs/aca\\_implementation\\_faqs9.html](https://www.cms.gov/cciiio/resources/fact-sheets-and-faqs/aca_implementation_faqs9.html) and <https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/faqs/aca-part-ix.pdf>.

Affordable Care Act Implementation FAQs Part XIX, Q8<sup>3</sup> stated that this safe harbor will continue to be in effect until further guidance is issued. To date, no such further guidance on the Calculator has been issued. Therefore, plans and issuers may continue to use the Calculator, even where it would be possible to develop a more accurate method for generating coverage examples, including applicable cost sharing, for the benefit design for which the plan or issuer is creating an SBC.

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<sup>3</sup> Affordable Care Act Implementation FAQs Part XIX, Q8 at [https://www.cms.gov/cciio/resources/fact-sheets-and-faqs/aca\\_implementation\\_faqs19.html](https://www.cms.gov/cciio/resources/fact-sheets-and-faqs/aca_implementation_faqs19.html) and <https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/faqs/aca-part-xix.pdf>.