

Proposed Regulations Issued for the Group Health Plan Summary of Benefits and Coverage

Section 2715 of the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act ("PPACA"), mandates that group health plans provide a summary of benefits and coverage ("SBC") to all participants and beneficiaries. The SBC is a brief description of benefits and coverage intended to help participants compare different health plans. On August 22, 2011, the Departments of Labor ("DOL"), Health and Human Services ("HHS"), and Treasury ("IRS") (collectively, the "Departments") issued proposed regulations to implement the SBC requirement, along with a proposed SBC template (and proposed instructions and sample language for completing the template), and a uniform glossary of key terms.

The PPACA states that plans will be required to furnish SBCs beginning March 23, 2012. However, the Departments stated in their seventh set of PPACA frequently asked questions ("FAQs") that plans are not required to comply with the SBC requirement until final regulations are issued. The FAQs also provided assurances that the final regulation's effective date will afford sufficient time to comply with the SBC requirements.

Furnishing the SBC

All group health plans must provide SBCs, including insured, self-insured, and grandfathered plans. The plan sponsor or administrator (or third-party administrator) must provide the SBC for self-insured plans, and the insurer or plan administrator must provide it for insured plans. The requirement is deemed satisfied for all entities if any entity provides the SBC. The SBC must generally be provided without charge in connection with initial eligibility, renewal, HIPAA special enrollment, and upon request. The SBC is a stand-alone document in addition to the other disclosure requirements under the Employee Retirement Income Security Act of 1974 ("ERISA"). However, the Departments are soliciting comments on how the SBC can be coordinated with other disclosures (for example, application and open-enrollment materials), and whether the SBC could be provided within a summary plan description.

SBC Contents and Appearance

The SBC template and instructions on the DOL's website satisfy the contents and appearance requirements discussed below (template available at <http://www.dol.gov/ebsa/pdf/SBCtemplate.pdf>; and instructions available at <http://www.dol.gov/ebsa/pdf/SBCInstructionsGroup.pdf>).

Contents

The SBC must include:

- Uniform definitions of standard insurance and medical terms (the SBC template and instructions contain all required definitions);
- A coverage description, including cost sharing;
- Exceptions, reductions, and limitations on coverage;

- Cost-sharing provisions, including deductible, coinsurance, and copayment obligations;
- Renewability and continuation of coverage provisions;
- A “coverage facts label” that includes examples of common benefits scenarios;
- For coverage on or after January 1, 2014, a statement of whether the plan provides “minimum essential coverage” and meets the “minimum value requirements”;
- A statement that the SBC is only a summary and that the plan document, policy, or certificate should be consulted for further information about coverage;
- A contact number for participants and beneficiaries to call with questions, and a web address for obtaining a copy of the plan document or policy;
- A web address for obtaining a list of network providers (for plans maintaining one or more provider networks);
- A web address for obtaining more information about any prescription drug formulary;
- A web address for obtaining the uniform glossary; and
- Information on premiums for insured plans, or cost of coverage for self-insured plans.

Appearance

The SBC must be presented in a uniform format, contain terminology the average plan participant can understand, be no more than 4 double-sided pages (i.e., 8 pages), and be printed in at least 12-point font. The SBC must also be presented in a culturally and linguistically appropriate manner. In counties where at least 10% of the population is only literate in the same non-English language: (1) plans must provide interpretive services and written SBC translations upon request in the relevant non-English language; and (2) an English version of the SBC must disclose that language services are available in the relevant non-English language. This rule is similar to the PPACA notice requirements for claims and appeals procedures. (For a more detailed discussion of PPACA’s claims and appeals rules, see the Employee Benefits Law Action Memo (September 2011), available at <http://www.bsk.com/archives/detail.cfm?archive=publication&ID=1318>).

The SBC may be transmitted in paper or electronic form. If electronic, plans subject to ERISA and the Internal Revenue Code must meet the DOL’s electronic disclosure requirements.

Notice of Material Modifications

Plans must provide notice to enrollees of midyear material modifications to SBC content at least 60 days before the effective date. The notice rule is inapplicable to modifications made during coverage renewal or reissuance. The requirement may be satisfied either by providing a separate notice describing the modification or an updated SBC. A timely SBC also satisfies ERISA’s summary of material modifications (“SMM”) requirement. For both the SBC and SMM requirements, “material modification” means any coverage modification that, independently or in conjunction with other contemporaneous modifications, an average plan participant would consider an important change in coverage. The change could be a coverage enhancement or reduction. Without a timely SBC, an SMM must generally be provided no later than 210 days after the close of the plan year in which the modification was adopted, or, if it is a material reduction in covered services or benefits, no later than 60 days after the date on which the modification was adopted.

Uniform Glossary

The plan must make a “Uniform Glossary” of insurance and medical terms available to participants and beneficiaries within seven days of their request. A request may be satisfied by providing an internet address where participants can review the glossary. Acceptable internet addresses include the plan sponsor’s, HHS’s, or the DOL’s website (see <http://www.dol.gov/ebsa/pdf/SBCUniformGlossary.pdf>). A paper copy, however, must also be made available upon request.

Recommended Action

Despite the effective date uncertainty, final regulations will probably be issued in the near future. Therefore, plan administrators and sponsors should begin working with their providers and third-party administrators to compile the information needed to meet the SBC requirements.

If you have any questions about the SBC requirements, please contact Mark Burgreen in our Syracuse office (315.218.8279, mgburgreen@bsk.com) or any of the other members of our Employee Benefits and Executive Compensation Practice Group (<http://www.bsk.com/groups/detail.cfm?id=7&ShowAll=4>).

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