

“Meeting employee needs is a challenge. Meeting the government’s is critical.”

Employer Compliance Alert

GUIDANCE ISSUED ON ACA'S SUMMARY OF BENEFITS AND COVERAGE

The Affordable Care Act (ACA) requires each employer group health plan to provide a 4-page summary of its benefits to all individuals who are eligible for coverage. This requirement takes effect on March 23, 2012 (two years after the enactment of the ACA). The three agencies charged with implementing many of the ACA's requirements have just issued [proposed regulations](#), along with [templates](#) of proposed formats, under which a plan may furnish this new "summary of benefits and coverage" (SBC).

Under the proposed rules, employers or plan administrators (for self-funded plans) and insurers (for insured plans) must provide participants and beneficiaries with SBCs detailing, in a "culturally and linguistically appropriate manner," simple and consistent information about health plan benefits and coverage. Conceding that this cannot be done in only four pages, the agencies propose to read the statutory reference to "four pages" as four *double-sided* pages (i.e., eight pages). Plans also must provide a separate glossary with uniform definitions of specific medical and coverage-related terms.

Each SBC must include the following:

- Uniform definitions of standard insurance terms and medical terms;
- A description of the coverage, including cost sharing, for certain benefit categories;
- Exceptions, reductions, and limitations on coverage;
- Cost-sharing provisions of the coverage, including deductible, coinsurance, and copayment obligations;
- Renewability and continuation of coverage provisions;
- Coverage examples illustrating three common benefit scenarios;
- Beginning January 1, 2014, a statement as to whether the plan provides "minimum essential coverage" (a determination that will be important under the "Exchanges" that are to be established as of that date);
- A statement that the SBC is only a summary and that the plan document, policy, or certificate of insurance should be consulted to determine the governing contractual provisions of the coverage;
- A contact number to call with questions and an Internet address where a copy of the actual individual coverage policy or group certificate of coverage can be reviewed and obtained;
- An Internet address or directions for obtaining a list of network providers, if applicable;
- An Internet address or directions for obtaining information about the prescription drug formulary, if applicable;
- An Internet address to access and review the uniform glossary; and
- Premium information (or the cost of coverage under self-insured plans).

The SBC templates were prepared by the National Association of Insurance Commissioners (NAIC), and even the NAIC concedes that they will need some tweaking before they can be used by a self-funded plan. They include not only a blank template, but also detailed instructions for completing the template and a sample of an SBC with the blanks completed.

The templates also include the glossary of uniform definitions, which would have to be used without modification. Both the templates and the uniform definitions are designed to allow individuals (and employers looking to purchase a health insurance policy) to more easily compare the provisions of multiple plans or policies on an apples-to-apples basis.

Group health plans must provide SBCs as a part of their written enrollment materials (or if none, upon eligibility for enrollment); upon a change in information included in the SBC; upon a special enrollment event; and within seven days of a request. SBCs need only be provided with respect to benefit packages in which a participant or beneficiary is enrolled, unless an individual *requests* an SBC for another option as to which he or she is eligible.

SBCs may be furnished in paper form or electronically. For ERISA plans, SBCs may be delivered electronically so long as the Department of Labor's electronic disclosure safe-harbor requirements are satisfied. Group health plan sponsors should note that the obligation to provide SBCs is in *addition* to any current duty to furnish ERISA summary plan descriptions, summaries of material modifications, or other disclosures.

The proposed rules also require plans to give covered individuals at least 60 days' advance notice of any mid-year material modifications that affect SBC content. For this purpose, a "modification" includes not only a benefit *reduction*, but also a benefit *improvement*. A plan (or its administrator) that willfully fails to provide an SBC may be fined up to \$1,000 for each affected individual.

Comments on the proposed rules are due by October 21, 2011. The agencies specifically request input on special considerations for self-funded plans and the feasibility of meeting the March 23, 2012, deadline to begin providing SBCs. It appears likely that changes will be made to the proposed rules; therefore, group health plans should pay close attention to any changes in the final guidance, which should be issued within the next several months.

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