

Compliance Alert

Departments Release Benefit Summary Rules

Alert Date: August 19, 2011

The IRS, Department of Labor, and Health and Human Services (The Regulatory Agencies) have released proposed regulations on the Summary of Benefits and Coverage (referred to as the SBC by the Regulatory Agencies) requirements contained in the Affordable Care Act (ACA). Beginning March 2012, the ACA requires that health insurance carriers and employer health plans provide an SBC to participants and enrollees. The Regulatory Agencies were originally supposed to release regulations regarding the SBC by March 23, 2010; however the rules are now scheduled to be published in the Federal Register on August 22nd.

The Regulatory Agencies will be taking comments on the proposed rules for 60 days and will presumably issue final rules prior to the scheduled March 2012 effective date of the requirement.

Effective Date Still In Question

The ACA originally required that plans distribute an SBC beginning on March 23, 2012. However the proposed regulations recognize that a mid-year communication requirement may be problematic for employers, and is seeking comments on a phased in approach to the rule.

In an additional development, America's Health Insurance Plans (AHIP), the trade group representing health insurance companies, has called for a delay in the effective date due to the fact that the agencies were four months late in issuing the regulations.

Samples and Templates Also Released

The Agencies have also published samples and templates that can be used as a basis for developing an SBC. The templates were created by a working group put together by the National Association of Insurance Commissioners (NAIC). The templates and instructions can be found on the DOL website at <http://www.dol.gov/ebsa/healthreform/>.

Who is responsible to send the SBC?

The proposed regulations confirm that in the case of fully insured plans, the insurance carrier is responsible to produce and provide a valid SBC. However, the rules also require that the summary be provided to individuals *"as part of any written application materials that are distributed by the plan or issuer for enrollment. If the plan does not distribute written application materials for enrollment, the SBC must be distributed no later than the first date the participant is eligible to enroll in coverage..."*. As a result, employer's will need to provide the summary as part of the new employee enrollments and their open enrollment process, and not just after an employee actually enrolls in a plan.

Employers who sponsor self-funded plans will be responsible for the production and distribution of the SBC. However, it is anticipated that most administrators will provide some assistance to their employer clients in meeting these requirements.

Distribution Rules

SBCs must be provided for each "benefit package" for which an employee is eligible. Upon renewal, an SBC need only be provided for the specific benefit package in which a participant is enrolled. The SBC must also be provided to participants upon request no later than seven days following a request.

Individuals who enter the plan due to a HIPAA special enrollment must be provided with an SBC within seven days of when they request special enrollment.

60 Day Advance Notice Requirement

The ACA also required that plans notify participants of certain changes to the plan at least 60 days in advance. This is a significant new communication obligation for employers and plans to meet. The proposed regulations provide important guidance on this rule.

- Employers will be relieved to learn the 60 day advance notice requirement does not apply to changes made as part of the annual renewal of the plan.
- Plans will be required to distribute a new SBC whenever a mid plan year “material” change is made to the plan

Specific Content Requirements

The proposed regulations contain a number of specific content requirements that largely mirror the language in the ACA.

- Uniform definitions of standard insurance and medical terms
- A description of the coverage, including cost sharing, for each category of benefits
- The exceptions, reductions, and limitations of the coverage
- The cost-sharing provisions of the coverage, including deductible, coinsurance, and copayment obligations
- The renewability and continuation of coverage provisions
- With respect to coverage beginning on or after January 1, 2014, a statement about whether the plan or coverage provides minimum essential coverage as defined in the ACA
- A statement that the Summary 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
- Contact information for questions and obtaining a copy of the plan
- For plans that maintain one or more networks of providers, an Internet address (or similar contact information) for obtaining a list of network providers
- For plans and issuers that use a formulary in providing prescription drug coverage, an Internet address (or similar contact information) for obtaining information on prescription drug coverage
- An Internet address for obtaining the uniform glossary of terms required by the rule
- Premiums (or in the case of a self-insured group health plan, cost of coverage).
- Coverage examples that illustrate benefits provided under the plan or coverage for common benefits scenarios (including pregnancy and serious or chronic medical conditions)

Plans must also provide access to a uniform glossary of terms. The Regulatory Agencies have provided a glossary of terms for this purpose and an employer can meet this requirement by providing a link to an internet location that contains the glossary.

Summary

If the effective date of the SBC rules are not delayed employers will need to work quickly to prepare for this new benefit disclosure requirement. However there are a number of outstanding issues on which the Regulatory Agencies are seeking comments, one of the most significant being the possible phased in effective date. We expect final regulations or a delay in the effective date to be announced fairly quickly after the end of the 60 day comment period.

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