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Re: Health Care Reform Update – Regulators Propose Rules for the Summary of Benefits and Coverage (“SBC”) and the Uniform Glossary

Dear Clients and Other Friends:

The rules for the Summary of Benefits and Coverage (“SBC”) and the Uniform Glossary required under the Patient Protection and Affordable Care Act (“PPACA”) were proposed in regulations published by the Departments of Labor, Treasury and Health and Human Services on August 22, 2011.¹ The Departments also published SBC templates and instructions.²

This letter focuses on the provisions as they apply to employer-sponsored Group Health Plans (“GHPs”). It is important for employers to note that the SBC and the Uniform Glossary rules apply to all group health plans, *regardless* of grandfathered status.

What are the SBC and Uniform Glossary?

The SBC is a written summary of benefits and coverage that is intended to help participants and beneficiaries make health care decisions and comparisons. The SBC is also intended to assist plan sponsors in comparing and selecting health care coverage for employees. Under the proposed regulations, the SBC is a disclosure document that is separate from the Summary Plan Description (“SPD”). SPDs must continue to be issued for GHPs.

The Uniform Glossary is a list of health coverage and medical terms, defined by regulatory guidance, that is intended to help participants and beneficiaries understand those terms that are important for understanding their benefits and coverage.

Who distributes the SBC and to whom? And when must the SBC be distributed?

Generally, the SBC must be distributed when a group health plan sponsor or an individual is comparing health coverage options.

¹ Summary of Benefits and Coverage and the Uniform Glossary, Notice of Proposed Rule Making, 76 Fed. Reg. 52442 (Aug. 22, 2011). Available at: http://www.regulations.gov/#!documentDetail;D=HHS_FRDOC_0001-0419.

² Summary of Benefits and Coverage and Uniform Glossary – Templates, Instructions, and Related Materials Under the Public Health Service Act, Solicitation of Comments, 76 Fed. Reg. 52475 (Aug. 22, 2011). Available at: http://www.regulations.gov/#!documentDetail;D=HHS_FRDOC_0001-0418

Group insurance issuers must issue an SBC **to group health plan sponsors**, free of charge, in the following instances:

- Upon request for coverage or request for information about coverage, as soon as practicable but not later than 7 days following the request.
- If there is any change to the initial SBC prior to the start of GHP coverage, no later than the first day of coverage.
- Upon renewal or reissuance of the group health coverage, regardless of whether there have been any changes to the coverage, no later than:
 - 30 days prior to the first day of the new policy year (automatic renewal/reissuance), or
 - With the renewal/reissuance materials if a new written application is required.

Group health plans (“GHPs”) must also issue an SBC **to plan participants and beneficiaries**, free of charge, in the following instances:

- Participants and beneficiaries must receive an SBC for each benefit package offered under the plan for which they are eligible, no later than the first date of eligibility. The SBC(s) must be provided with any written application materials for enrollment or, if none, prior to the first date the employee is eligible to enroll in the GHP.
- Should there be any change to benefits and coverage between enrollment and the first day of coverage, no later than the first day of coverage.
- Within 7 days of a request for special enrollment under a GHP.
- Upon renewal of coverage (i.e., annual enrollment), not later than 30 days prior to the first day of the new plan year.
- Upon request, as soon as practicable, not later than 7 days following the request.

Generally, the GHP sponsor is responsible for providing SBCs to participants and beneficiaries. For self-insured plans, this means that the employer or the designated plan administrator must distribute SBCs; for fully-insured plans, both the insurer and plan administrator are responsible for distribution (timely distribution by either one satisfies this requirement for both). GHP sponsors of fully-insured plans should coordinate with their insurers to determine who will be responsible for preparing and distributing SBCs.

What happens if there is a material modification to the SBC during the plan year?

If there is a material change to the benefits or coverage in the SBC during the plan year, insurance issuers and GHP sponsors must provide notice of the change not later than 60 days prior to the date on which the change will become effective. For this purpose, a material change (or modification) is a change that affects the content of the SBC, including enhancements or reductions of covered services or benefits.

The proposed guidance indicates that notices of material modifications will only have to be provided in situations other than open enrollment, renewal or reissuance. For example, if the material modification coincides with the start of a new plan year, then only the required SBC (that includes the modified information) must be provided to participants and beneficiaries; not the notice. Also, compliance with the SBC notice of modification rules will satisfy the Summary of Material Modification requirements (for SPDs) for GHPs subject to ERISA.

What are the SBC content requirements?

The proposed regulations set forth content, appearance, form and language requirements for SBCs. Although the list of requirements is lengthy and detailed, much of the required language is provided in the draft templates. Use of the templates satisfies the content and appearance requirements. Plan sponsors and insurance issuers/TPAs will need to carefully work with the draft templates to ensure that the descriptions of coverage, cost sharing provisions, and exceptions accurately reflect the plan provisions.

- **Content:** The SBC must include the following information:
 - Uniform definitions of standard insurance terms and medical terms (which is satisfied by completing the “Why this Matters” column on the SBC template);
 - Description of coverage, including cost sharing, for each category of benefits identified by the DHHS (see draft template);
 - Exceptions, reductions, limitations on coverage;
 - Cost-sharing provisions, including deductibles, coinsurance and copayments;
 - Renewability and continuation of coverage provisions;
 - Coverage examples (currently required in the template are: having a baby, treating breast cancer and managing diabetes, and how the coverage would apply under the plan);
 - Premiums (fully-insured GHPs) or cost of coverage (self-insured GHPs);
 - Contact information for questions and obtaining a copy of the plan document;
 - Internet addresses for participants to obtain a list of network providers, information on prescription drug coverage, access to the Uniform Glossary;
 - A statement that the SBC is only a summary and the provisions of the plan document or insurance contract govern; and
 - Starting January 1, 2014, a statement regarding whether the plan provides minimum essential coverage and whether the plan’s share of total allowed costs of benefits meets applicable minimum essential coverage requirements.³

- **Appearance:** The SBC must be a stand-alone document, formatted exactly as provided by regulatory guidance, using terminology understandable by the average plan enrollee, not to exceed four double-sided pages in length, and not to include print smaller than 12-point font. Plan sponsors will have the option of providing full color or gray-scale SBCs.

- **Form:** The SBC may be provided by the insurer to the GHP sponsor either in paper form, or electronically if: (1) the format is readily accessible, (2) a copy of the paper format is free of charge upon request, and (3) if available on an internet posting, the insurer timely advises the plan sponsor in paper form that the SBC is available on the internet and provides the internet address.

For SBCs provided to participants and beneficiaries, the distribution requirements mirror those for distributing SPDs. Generally, a paper copy must be provided to participants and beneficiaries, unless the safe harbor requirements for the electronic distribution under Department of Labor rules are satisfied (see 29 CFR § 2520.104b-1; generally, these rules are onerous and, in part, require confirmation of actual receipt of electronic disclosures to

³ The proposed rules explain that this statement does not appear on the current SBC template since it is not currently applicable. The Departments and NAIC will develop recommended language that will be provided at a later date.

participants). The Department of Labor is currently reviewing its electronic delivery rules with the goal of simplifying them, but it is unclear when those revised rules will be released.

- **Language:** The language must be culturally and linguistically appropriate for the intended enrollees. If at least 10% of the population in a county is literate in only a particular non-English language and speaks English less than “very well” as determined by data published by the U.S. Census Bureau, then the SBC must contain at least a one-sentence statement in that non-English language about the availability of language services and translated SBCs.⁴
- **Template:** See the Departments’ proposed SBC template here: <http://www.healthcare.gov/news/factsheets/labels08172011b.pdf>. See the entire set of SBC and Uniform Glossary templates and instructions here: http://www.regulations.gov/#!documentDetail;D=HHS_FRDOC_0001-0418.

What are the special considerations for GHPs?

In an effort to address challenges that face employers regarding the implementation of health care reform mandates, the Departments designed special rules for plan sponsors that are intended to prevent unnecessary duplication and help limit compliance costs. These rules are:

- The SBC distribution requirement is deemed satisfied if the insurer or TPA distributes a fully-compliant SBC (content, appearance, form and timing) on behalf of the plan sponsor. Responsibility to ensure the SBC is fully compliant, however, remains with the plan sponsor.
- If the participant and beneficiaries live at the same address, the plan sponsor may satisfy the distribution requirement by sending only one SBC to the participants and beneficiaries residing at that address.
- Upon renewal (or annual enrollment), SBCs must only be provided for the plan in which the participant or beneficiary is enrolled, unless otherwise requested by the individual.

Additionally, the Departments have requested comments on how SBCs could be better coordinated with Summary Plan Descriptions (“SPDs”). For example, could the SBC be included in the SPD if it meets certain requirements? The Departments also are seeking comments on how better to coordinate the SBC requirements with open enrollment practices and other GHP disclosures.

What is required for the Uniform Glossary?

The Uniform Glossary requirement, which is a part of the SBC, may be satisfied by including an Internet address on the SBC where the individual may review and obtain a copy of the Uniform Glossary. The Uniform Glossary must be made available to participants and beneficiaries in paper form upon request, free of charge, not later than 7 days following the request. The templates include an initial draft of the Uniform Glossary, which may be changed or updated by future guidance.

When do these requirements become effective?

Under PPACA, the SBC and Uniform Glossary rules are applicable as of March 23, 2012, which means an SBC must be distributed for enrollments, renewals or requests on or after this date.

⁴ The proposed SBC templates do not include this statement but it would still need to be added as applicable to address this regulatory requirement.

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However, the Departments explain in the preamble to the proposed rules that they are reviewing this deadline and may delay the applicability date. Comments are invited on the proposed regulations and templates, as well as on the practical considerations for insurance issuers and GHP sponsors in preparing these documents. Certainly many comments will be submitted to the Departments and future guidance will clarify content and timing requirements for the SBC and Uniform Glossary.

What penalties apply for failure to distribute an SBC or Uniform Glossary?

A group health insurer or plan sponsor that willfully fails to provide the SBC and/or access to the Uniform Glossary to a participant or a beneficiary may result in a fine of up to \$1,000 per failure. A failure with respect to each individual constitutes a separate offense. Also, failure to satisfy these requirements may trigger excise taxes for the group health plan sponsor under § 4980D, which could be \$100 per day per individual. Other regulatory penalties may apply as well.

Please contact us if we may be of assistance to you in addressing the new SBC and Uniform Glossary requirements, or with other questions you may have in implementing changes brought about by health care reform.

Sincerely,

Theodore K. Rice

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