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SBC and Uniform Glossary Modifications

Issue Date: January 15, 2015

On Dec. 22, 2014, the Department of Labor (DOL), Health and Human Services (HHS) and the Treasury (IRS) jointly released proposed rules regarding the requirements relating to the Summary of Benefits and Coverage (SBC) and the accompanying uniform glossary. Most notably, these proposed rules shorten the template to 2½ pages; add a new example to illustrate coverage; add new definitions to the uniform glossary; and provide updated templates, instructions, and other related documents.

Background

The Affordable Care Act (ACA) requires that an SBC and an accompanying uniform glossary be provided for all group health plans “to help plans and individuals better understand their health coverage, as well as to gain a better understanding of other coverage options for comparison.”

On July 29, 2011, the Departments released proposed rules which were then followed by final rules and accompanying templates and instructions on February 14, 2012. In addition, the Departments released various FAQs providing further clarification, safe harbors, and templates. Responding to ongoing feedback, the Departments released these latest proposed rules to amend some of the previous requirements and to provide new templates and examples, as well as an updated uniform glossary.

Effective Date

These proposed rules apply for plan years beginning on or after September 1, 2015.

Who Must Comply

Generally, all group health plans (but not excepted benefits) are required to distribute the SBC upon certain events. The insurance carrier (issuer) will generally provide the SBC on behalf of fully insured plans, but the plan administrator should ensure that is the case as the plan administrator is jointly responsible. For self-funded plans, the plan administrator (typically the employer) must provide the SBC.

The proposed rules clarify that Medicare Advantage plans are exempt from these requirements and also continue to provide expatriate plans with relief from these requirements until further guidance is provided.

The proposed rules add a few provisions to prevent duplication of efforts:

- A plan administrator may enter into a contractual agreement for responsibility of providing the SBC so long as the plan administrator monitors performance under the contract and takes steps as soon as is practicable to correct things if the administrator becomes aware that the SBC requirements are not being met.
- For a group health plan that uses two or more insurance products provided by separate issuers, the plan administrator is responsible for providing complete SBCs with respect to the plan. The plan administrator may contract with one of its issuers (or other service providers) to perform that function, but absent a contract, an issuer has no obligation to provide coverage information for benefits that it does not insure.
- A previous FAQ safe harbor for a group health plan that uses two or more insurance products provided by separate issuers with respect to a single group health plan allowed the plan administrator to provide the information in a single SBC or via multiple partial SBCs to meet the SBC content requirements. This safe harbor remains available.

SBC Distribution and Timing

The new regulations did not significantly change the SBC distribution rules. The SBC must be provided to participants and beneficiaries (including COBRA-qualified beneficiaries) at open enrollment or renewal, upon initial enrollment and special enrollment, and also upon request (within 7 business days). Previous regulations state that as long as the SBC is provided to the employee, the distribution requirement is met for all dependents living at the same address.



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SBC Content Requirements

The proposed rules continue to require that certain content be included in the SBC, but the new rules also add and modify a number of requirements:

- New requirements:
 - o For plans that maintain a network of providers, an Internet address (or similar contact information) for obtaining a list of the network providers;
 - o For plans that use a formulary in providing prescription drug coverage, an Internet address (or similar contact information) for obtaining information on prescription drug coverage under the plan or coverage; and
 - o An Internet address for obtaining the uniform glossary, as well as a contact phone number to obtain a paper copy of the uniform glossary, and a disclosure that paper copies of the uniform glossary are available.
- A plan or issuer may choose to add premium information to the SBC. If a plan or issuer wishes to include this information, it should be added at the end of the SBC template.
- The statements regarding MEC and MV are required to be included in the SBC. The option previously available to include this information in a cover letter or similar disclosure furnished with the SBC is no longer available.
- It is no longer necessary to include information regarding annual limits on essential health benefits or preexisting conditions.
- All plans and issuers must include contact information for questions. However, only issuers (not employers) must also include an Internet web address where a copy of the actual individual coverage policy or group certificate of coverage can be reviewed and obtained.
- Previous rules required the SBC to include two coverage examples (hypothetical situations

describing a sample treatment plan and medical costs and how much the patient will be responsible for paying, including deductibles, copayments and coinsurance):

- i. having a baby (normal delivery), and
- ii. routine maintenance of well-controlled type 2 diabetes.

The proposed regulations require a third coverage example—a simple foot fracture (with emergency room visit). The proposed regulations also provide updated claims and pricing data for the two existing coverage examples.

- A calculator was provided that plans could use as a safe harbor for the first year of applicability to complete the coverage examples in a streamlined fashion. The calculator allows plans and issuers to input a discrete number of informational elements about the benefit package, and the output of the calculator is a coverage example that can be added to the SBC.

SBC Appearance and Language

The SBC is to be presented in a uniform format in a culturally and linguistically appropriate manner, utilizing terminology understandable by the average plan enrollee. The SBC is not to exceed four double-sided pages in length and is not to include print smaller than 12-point font.

The new SBC template eliminates some information from the SBC that is not required by statute to make it easier to include all of the required information while satisfying the statutory page limit. The sample template has been reduced from four double-sided pages to two and a half double-sided pages (i.e. five single-sided pages).

SBCs provided in connection with group health plan coverage may be provided either as a stand-alone document or in combination with other summary materials (e.g. SPD), if the SBC information is complete and is prominently displayed at the beginning of the materials



(such as immediately after the Table of Contents in an SPD) and in accordance with the SBC timing requirements.

The proposed rules retain the requirement that in specified counties, plans and issuers must provide interpretive services and written translations upon request, in certain non-English languages. The applicable counties are those in which at least 10% of the population residing in the county is literate only in the same non-English language—this determination is based on U.S. Census data and includes four languages: Spanish, Chinese, Tagalog, and Navajo. To comply with the language requirement, SBCs sent to addresses in an applicable county must include a one-sentence statement clearly indicating how to access the language services provided by the plan (or insurer). To help plans meet the language requirements, HHS has provided written translations of the SBC template, sample language, and the uniform glossary in Chinese, Navajo, Spanish, and Tagalog. HHS may also make these materials available in other languages to facilitate voluntary distribution of SBCs to other individuals with limited English proficiency.

SBC Distribution

SBCs may be provided in either paper or electronic form. The proposed regulations adopt the safe harbors related to electronic delivery of SBCs provided via previous FAQs. SBCs may be provided electronically to participants and beneficiaries in connection with their online enrollment or online renewal of coverage under the plan, and may be provided electronically to participants and beneficiaries who request an SBC online. But in either case, the individual must have the option to receive a paper copy upon request and free of charge. Therefore,

- For current participants who actually enroll online, the SBC may be provided electronically in conjunction with and at the same time as other online enrollment material (prior consent not required);

- For current participants who enroll using any other means, the SBC may be provided electronically to those individuals who satisfy the DOL's safe harbor for electronic distribution; and
- For individuals not currently enrolled, the SBC may be provided electronically if the individuals are notified (either in paper form or by email) that the documents are available on the Internet.

In addition, the proposed rules provide model language to meet the requirement to advise participants and beneficiaries that the SBC is available on the Internet:

Availability of Summary Health Information

As an employee, the health benefits available to you represent a significant component of your compensation package. They also provide important protection for you and your family in the case of illness or injury.

Your plan offers a series of health coverage options. Choosing a health coverage option is an important decision. To help you make an informed choice, your plan makes available a Summary of Benefits and Coverage (SBC), which summarizes important information about any health coverage option in a standard format, to help you compare across options.

The SBC is available on the web at: www.website.com/SBC. A paper copy is also available, free of charge, by calling 1-XXX-XXX-XXXX (a toll-free number).

Uniform Glossary

Group health plans are required to provide a uniform glossary of insurance and medical-related terms to accompany the SBC in the appearance specified by the Departments without modification. Plans must include an Internet address in each SBC for the uniform glossary developed by the Departments so that the glossary is presented in a uniform format and uses terminology understandable by the average plan enrollee.



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The proposed rules revise definitions for several of these terms and add several new terms.

Penalties for noncompliance

A group health plan that “willfully fails to provide the information required under this section shall be subject to a fine of not more than \$1,000 for each such failure.” In addition, a separate fine may be imposed for each individual or entity for whom there is a failure to provide an SBC (consistent with section 4980D of the Code—\$100 per day per affected individual).

Summary

These proposed rules provide a variety of modifications and additions to the previous SBC content and appearance requirements effective for plan years beginning on or after September 1, 2015. To incorporate many of the proposed rules and previously issued FAQs, the Departments have also provided an updated SBC template, a uniform glossary, and other related documents.

The proposed regulations, fact sheets, templates and additional information can be found at the links set forth below:

- Proposed Regulations, available at <https://www.federalregister.gov/articles/2014/12/30/2014-30243/summary-of-benefits-and-coverage-and-uniform-glossary>
- HHS fact sheet, available at <http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/SBC-Proposed-Rule-Fact-Sheet-122214.pdf>
- An updated SBC Template, available at <http://www.dol.gov/ebsa/pdf/sbctemplateproposed.pdf>
- SBC Web page for additional information, available at <http://www.dol.gov/ebsa/healthreform/regulations/summaryofbenefits.html>
- HHS news release, available at <http://www.cms.gov/Newsroom/Newsroom-Center.html>

As always, should you have any questions, please contact your Parker, Smith & Feek Benefits Team.

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