Departments Propose Regulations Updating SBC Requirements

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Proposed regulations issued on December 22, 2014, by the Departments of Health and Human Services (HHS), Labor, and Treasury (the Departments) update the rules regarding the Summary of Benefits and Coverage (SBC) required to be issued by employer group health plans and health insurance issuers under the Affordable Care Act. The proposed regulations:

- Add a new coverage example to the SBC;
- Provide guidance on SBC content requirements and enforcement;
- Clarify when and how a plan or issuer must provide an SBC;
- Streamline the SBC template;
- Extend certain SBC safe harbors; and
- Add new definitions to the Uniform Glossary.

The Departments have also released draft updated templates, instructions, and additional materials.

Background on SBCs

The Affordable Care Act requires a plan or issuer to provide an SBC that accurately describes the benefits and coverage provided under the plan, thus allowing participants and beneficiaries to make "apples-to-apples" comparisons of the main features of all available health plans offered by an employer, a family member's employer or a health insurer. The Departments published final SBC regulations on February 14, 2012, and subsequently issued sets of frequently asked questions (FAQs) providing additional guidance.

SBC Delivery and Timing

Plans must provide an SBC to participants and beneficiaries (including COBRA participants) with any written application materials for enrollment or, if there are no such materials, no later than the first day on which the participant can enroll. The proposed regulations clarify that a plan or issuer is not required to automatically provide another SBC upon application if it provided the SBC prior to the application for coverage and there is no change to the information required to be in the SBC. However, if there is any change to the information required to be in the SBC at the time of application and before the first day of coverage, the plan or issuer must provide an updated SBC as soon as practicable, but no later than seven business days, following receipt of the application.

The proposed regulations also clarify when a plan must provide an updated SBC if it is still negotiating coverage terms with an insurer at the time of application. An updated SBC is not required to be automatically provided until the first day of coverage if there is any change in the information required to be in the SBC that was previously provided. The updated SBC should reflect the final coverage terms of the contract, certificate, or policy of insurance that was purchased.

SBC Template and Content Requirements

New Coverage Example—The proposed regulations would add a third coverage example to the SBC content requirements. The new coverage example would illustrate the sample care cost of a simple foot fracture with an emergency room visit and describe how much the hypothetical patient would be responsible for paying, including deductibles, copayments, and coinsurance. The Departments seek comments on this coverage example.

Contact Information—The proposed regulations clarify that only insurance issuers (and not self-insured plans) are required to provide on the SBC an Internet Web address where a copy of the individual coverage policy or group certificate of coverage can be obtained and reviewed. However, all plans and issuers are required to provide contact numbers for consumers with additional questions on the SBC, and self-insured plans are still required to comply with any document disclosure requirements under ERISA.

Electronic Distribution—The proposed regulations also include the additional electronic distribution safe harbors first announced in the Affordable Care Act Implementation FAQs Part IX, question 1. That FAQ, now included in the proposed regulations, allows plans to provide SBCs electronically in connection with an online enrollment or online renewal of coverage. Additionally, plans may provide an SBC electronically to a participant or beneficiary who requests one online. In either case, the individual must have the option to receive a paper copy upon request. For non-federal governmental plans, SBCs may be provided electronically if the plan complies either with the requirements for ERISA plans or the requirements for individual health insurance coverage in the SBC regulations.

SBC Template Streamlined—The proposed regulations would eliminate much of the language required in the SBC template. However, the substantive requirements still remain, as well as information regarding minimum value (MV) and minimum essential coverage (MEC), required after the 2012 final regulations were released. The SBC template includes the new coverage example, as well as updated coding and pricing data for the existing examples.

SBC Anti-Duplication Rules

The final regulations currently provide three special rules to help plans avoid unnecessary duplication of the SBC with respect to group health coverage:

- A plan will be considered to comply with the SBC requirements if the SBC is provided by any entity, as long as all timing and content requirements are satisfied.
- A plan may provide a single SBC to participants and beneficiaries at the participant's last known address, unless the beneficiary's last known address is different than the participant's. In that case, the SBC has to be provided separately to the beneficiary.
- A plan with multiple benefit options may provide an SBC automatically only with respect to the benefit package in which the participant is enrolled and not for all options for which the participant is eligible.

Generally, these three special rules are retained, with some additional provisions.

First, the Departments propose a new anti-duplication rule that addresses circumstances in which a plan is required to provide an SBC and has entered into a binding contractual arrangement under which another party has assumed responsibility for providing the SBCs. Under the proposed regulations, a plan is deemed to have satisfied the SBC distribution requirement if the following conditions are met:

- The plan monitors performance under the contract (which would be considered a fiduciary duty under ERISA);

- The plan corrects any noncompliance as soon as practicable if the plan has knowledge that the provision of SBC is not compliant and has all the information necessary to correct the noncompliance; and
- If the plan has knowledge that the SBC is not being provided in a compliant manner and does not have all the information necessary to correct the noncompliance, the plan communicates with participants and beneficiaries regarding the noncompliance and begins taking significant steps as soon as practicable to avoid future violations.

The rule that SBC distribution is generally satisfied for all entities if it is provided by any entity, as long as the SBC content and timing requirements are met, would be extended to student health insurance coverage. An institution of higher education or other similar entity would satisfy the SBC distribution requirement if another party (e.g., an insurance issuer) provides a timely and complete SBC to an individual.

The final 2012 regulations relieve a group health plan of the obligation to automatically provide SBCs upon renewal for each benefit package option in the group health plan. In this case, the issuer or plan is only required to provide an SBC automatically upon renewal or reissuance with respect to the benefit package in which a participant or beneficiary is enrolled. The proposed regulations would amend this anti-duplication rule by requiring new SBCs to be issued with the same timing requirements that apply to a renewal or reissuance of coverage with respect to a plan in which a participant or beneficiary is automatically re-enrolled.

Finally, the proposed regulations clarify that the group health plan administrator is responsible for providing complete SBCs with respect to a group health plan that use carve-out arrangements (e.g., pharmacy benefit managers and managed behavioral health organizations) to help manage certain benefits under the plan. The group health plan may contract with one of its issuers or other service providers to provide SBCs if the conditions described above are met.

SBC Safe Harbors

HHS Coverage Example Calculator—In May 2014, the Departments extended the use of the HHS coverage example calculator until further guidance was issued. The proposed regulations authorize the continued use of the coverage example calculator to complete the coverage examples in the SBC. The Departments invite comments on that proposal.

SBC Carve-Out Benefit Safe Harbor—The Departments published an FAQ after the final 2012 regulations provided a safe harbor for a group health plan that uses two or more insurance products provided by separate issuers. Under this safe harbor, the group health plan administrator may issue a single SBC or provide multiple partial SBCs from the insurers that provide all the relevant information to meet the SBC content requirements. The Departments state that this safe harbor will continue indefinitely and seek comments whether it should be codified in the regulations.

SBC Safe Harbor Regarding MEC and MV Statements No Longer Available—The Departments issued updated SBC templates in April 2013 that included statements regarding whether the plan provided MEC and whether the plan met the MV requirements under the Affordable Care Act. At that time, an FAQ by the Departments provided that if a plan was unable to modify its SBC template to include these disclosures, the Departments would not take any enforcement action for using the original template provided with the 2012 final regulations, provided that the SBC included a cover letter stating whether the plan did or did not provide MEC and MV. These proposed regulations caution that the Departments will **not** extend that temporary safe harbor to plans that were unable to modify their SBC templates to incorporate those statements. If the proposed regulations are finalized, all SBCs provided after the applicability date (e.g., September 1, 2015) would be required to include statements regarding MEC and MV.

Uniform Glossary Definitions

The proposed regulations also include several additional terms to the Uniform Glossary, as well as revised definitions for several of the existing terms. Distribution requirements regarding the Uniform Glossary remain the same.

Nonenforcement of SBC Requirements for Certain Plans

Expatriate Coverage—Recent legislation passed by Congress exempts expatriate plans from certain provisions of the Affordable Care Act, including the requirement to provide an SBC. In these proposed regulations, the Departments noted that they will not take any enforcement action against a group health plan or group health insurance issuer for failing to provide an SBC with respect to expatriate health coverage until the Departments issue guidance implementing recent legislation exempting expatriate plans from the SBC requirement, in accordance with prior guidance relating to SBCs and expatriate plans.

Medicare Advantage Plans—The Departments issued guidance in August 2012 implementing a temporary nonenforcement policy with respect to group health plans that provide Medicare Advantage benefits because Medicare Advantage benefits are not health insurance coverage and Medicare Advantage organizations are not required to provide an SBC. The proposed regulations clarify that the SBC and Uniform Glossary requirements do not apply to Medicare Advantage benefit packages.

Insurance Products No Longer Being Offered—In guidance issued in May 2012, the Departments noted that SBCs are not required for insurance products that are no longer actively marketed as long as certain requirements are met. The Departments reiterate in these proposed regulations that this temporary relief would continue to be provided as long as these requirements continue to be met.

Applicability Date

If the changes in the proposed regulations are finalized, the new SBC requirements would apply to group health plans beginning on the first day of the first open enrollment period that begins on or after September 1, 2015. For employers that sponsor calendar year health plans, the new SBC requirements would apply to SBCs provided during annual enrollment periods that begin on or after September 1, 2015, for the January 1, 2016 plan year.

For participants and beneficiaries who enroll other than through an open enrollment period (including special enrollees and newly-eligible individuals), the new SBC requirements would apply beginning on the first day of the first plan year beginning on or after September 1, 2015. For calendar year health plans, the new SBC requirements for such individuals would apply beginning on January 1, 2016.

Request for Comments

Comments on the proposed regulations are due on or before March 2, 2015.

Resources

The full text of the proposed regulations is available at:
http://webapps.dol.gov/FederalRegister/HtmlDisplay.aspx?DocId=28023&AgencyId=8&DocumentType=1

The sample SBC template is available at: http://www.dol.gov/ebsa/pdf/sbctemplateproposed.pdf

The sample completed SBC template is available at: http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Sample-completed-sbc-12-19-14-FINAL.pdf

The Uniform Glossary is available at: http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Uniform-Glossary-12-19-14-FINAL.pdf

The updated instructions are available at: http://www.dol.gov/ebsa/pdf/sbcinstructionsgroupproposed.pdf

Aon Hewitt's Regulatory Guidance Under the Affordable Care Act page, which provides links to Aon Hewitt bulletins on Affordable Care Act guidance and regulations, is available at: http://www.aon.com/human-capital-consulting/thought-leadership/leg_updates/healthcare/index_regulatory_guidance_affordable_care.jsp

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