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LEGAL ALERT

Legal Alert: Final Regulations Issued Regarding Summary of Benefits and Coverage Explanation

2/14/2012

Final Regulations Issued Regarding Summary of Benefits and Coverage Explanation

Executive Summary: The Departments of Treasury, Labor, and Health and Human Services (HHS) have published final regulations implementing the requirement imposed by the 2010 Patient Protection and Affordable Care Act (PPACA) that group health plans and health insurance issuers provide an HHS-approved "easy to understand" summary of benefits and coverage explanation (SBC) and uniform glossary of terms prior to enrollment or re-enrollment or prior to delivery of the certificate of coverage. The final regulations extend the applicability date for the disclosure requirement to plan years beginning on or after September 23, 2012.

Who Provides the SBC? **[1]**

The SBC requirement applies to insured and self-funded group health plans, regardless of grandfathered status, and health insurance issuers offering group or individual health insurance coverage.

Final Regulations Differ from Proposed Regulations

On August 22, 2011, the Departments published proposed regulations and an accompanying document with templates, instructions and related materials. Subsequently, the Departments issued a series of Frequently Asked Questions that, among other things, indicated that the applicability date of the SBC requirement would be delayed. For more information, please see our November 22, 2011, Legal Alert *Summary of Benefits and Coverage Requirements Delayed,* available at: http://www.fordharrison.com/shownews.aspx?Show=7756.

After consideration of comments received on the proposed regulations, the Departments published final regulations in the Federal Register on February 14, 2012, http://www.gpo.gov/fdsys/pkg/FR-2012-02-14/pdf/2012-3228.pdf. On the same day, the Departments also published in the Federal Register "Templates, Instructions and Related Materials; and Guidance for Compliance," http://www.gpo.gov/fdsys/pkg/FR-2012-02-14/pdf/2012-3230.pdf.

The final regulations differ somewhat from the proposed regulations:

• Originally, the SBC requirements were to take effect on March 23, 2012. The final regulations make the requirements applicable to plan years beginning on or after September 23, 2012. According to the final regulations, the SBC must be provided 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. This means that an employer with a plan year that starts January 1 and an open enrollment period that runs from October 1 to November 1 would be required to provide the SBC by October 1.

• For disclosures to participants and beneficiaries who enroll in group health plan coverage other than through an open enrollment period (including individuals who are newly eligible for coverage and special enrollees), the SBC requirements apply beginning on the first day of the first plan year that begins on or after September 23, 2012. The final regulations provide that special enrollees must be provided the SBC no later than when a summary plan description is required to be provided under the timeframe set forth in ERISA section 104(b)(1)(A) and its implementing regulations, which is 90 days from enrollment.

• The final regulations also reduce the amount of information that must be included in the SBC. The proposed regulations included information on three coverage examples (relating to having a baby (normal delivery), breast cancer, and diabetes). The final regulations contain information for two coverage examples – having a baby (normal delivery) and managing type 2 diabetes (routine maintenance of a well-controlled condition).

• The proposed regulations would have required that a group health plan and a health insurance issuer provide an SBC as a stand-alone document. The final regulations eliminate this requirement with respect to group health plan coverage. With respect to group health plan coverage, the Departments authorize the SBC to be provided either as a stand-alone document or in combination with other summary materials (for example, a summary plan description), if the SBC information is intact and prominently displayed at the beginning of the materials (such as immediately after the Table of Contents in a summary plan description).

• Additionally, unlike the proposed regulations, the final regulations do not require the SBC to include information on premiums.

Situations in Which SBCs are Required

The regulations outline three different scenarios under which an SBC will be provided: (1) by a group health insurance issuer to a group health plan; (2) by a group health insurance issuer and a group health plan to participants and beneficiaries; and (3) by a health insurance issuer to individuals and dependents in the individual market. For each scenario, an SBC must be provided in several different circumstances, such as upon application for coverage, by the first day of coverage (if information in the SBC has changed), upon renewal or reissuance, and upon request.

For group health plans and health insurance issuers in the group and individual markets, the full SBC template must be used, including for the first year of applicability. To the extent a plan's terms that are required to be described in the SBC template cannot reasonably be described in a manner

consistent with the template and instructions, the plan or issuer must accurately describe the relevant plan terms while using its best efforts to do so in a manner that is still consistent with the instructions and template format as reasonably possible.

Information that Must Be Disclosed

The SBC must include the following information:

• A description of coverage, including cost-sharing for each category of benefits identified in the guidance document;

• The exceptions, reductions and limitations of coverage;

• The cost-sharing provisions of coverage, including deductible, coinsurance, and copayment obligations;

• The renewability and continuation of coverage provisions;

• Coverage examples;

• 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 under section 5000A(f) of the Internal Revenue Code and whether the plan's or coverage's share of the total allowed costs of benefits provided under the plan or coverage meets applicable requirements;

• A statement that the SBC is only a summary and that the plan document, policy, certificate, or contract 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 document or the insurance policy, certificate, or contract of insurance;

• For plans and issuers 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; and

• An Internet address for obtaining the uniform glossary required by the regulations as well as a contact phone number to obtain a paper copy of the uniform glossary, and a disclosure that paper copies are available.

The SBC must also provide coverage examples as identified by the Secretary that illustrate benefits provided under the plan or coverage for common benefit scenarios.

Format

The SBC must be presented in a uniform format, use terminology understandable by the average plan enrollee, not exceed four double-sided pages in length, and not include print smaller than 12-point font.

Language Requirements

Plans that have to provide appeals and review documents in a foreign language will also have to provide SBCs in a foreign language. HHS will provide written translations of the SBC template, sample language and uniform glossary in Spanish, Tagalog, Chinese and Navajo.

Materials Issued

In addition to the final regulations, the Departments have issued a Guidance Document; SBC Template; Sample Completed SBC; Instructions for Completing the SBC (for both Group Health Plan and Individual Health Insurance Coverage); Why this Matters language for Yes Answers; Why this Matters language for No Answers; HHS Information for Simulating Coverage Examples; and a Uniform Glossary of Coverage and Medical Terms. These materials are available at: www.dol.gov/ebsa/healthreform and www.cciio.cms.gov.

The Bottom Line:

The deadline to provide the SBC has now been established. Employers who sponsor group health plans should start planning to draft and distribute the SBC. If you have any questions regarding the information contained in this Legal Alert or the health care reform legislation in general, we encourage you to contact Tiffany Downs, tdowns@fordharrison.com, Isabella Lee, ilee@fordharrison.com, any member of Ford & Harrison's Employee Benefits practice group, or the Ford & Harrison attorney with whom you currently work.

You may also visit the health care reform tab of the Ford & Harrison website, http://www.fordharrison.com/HealthcareReform.aspx, for more helpful resources and tools on health care reform.

[1] The final regulations set forth separate standards applicable to the individual health insurance market; however, many of the provisions are similar to those for the group market. The final regulations are intended to more clearly reflect the similarity between the two sets of rules.