



Legal Alert: Summary of Benefits and Coverage Requirements Delayed

11/22/2011

Executive Summary: Group health plans and health insurance issuers appear to have been granted a reprieve from the March 23, 2012 deadline for complying with the Summary of Benefits and Coverage (SBC) and uniform glossary requirements imposed by the 2010 Patient Protection and Affordable Care Act (PPACA). The federal agencies charged with implementing these requirements recently stated in a series of Frequently Asked Questions (FAQs) that when final regulations are issued, they will "include an applicability date that gives group health plans and health insurance issuers sufficient time to comply." The FAQs also state that until final regulations are issued and applicable, plans and issuers are not required to comply with the SBC and uniform glossary requirements of the PPACA.

Background

On August 22, 2011, the Departments of Health and Human Services (HHS), Labor and Treasury (the Departments) issued proposed regulations and proposed templates in conjunction with the implementation of the SBC and uniform glossary requirements imposed by the PPACA. The proposed regulations set forth standards intended to help consumers better understand the coverage they have and easily compare coverage options.

Under the proposed regulations, health insurers and group health plans are required to provide consumers with an easy to understand SBC and, upon request, a uniform glossary of terms commonly used in health insurance coverage such as "deductible" and "co-pay." To help ensure the document is easily accessible for consumers, the HHS and the Department of Labor will also post the glossary at www.HealthCare.gov and www.dol.gov/ebsa/healthreform/.

The proposed regulations also provided a draft template of the SBC and instructions for completing the SBC.

Who Provides the SBC? [1]

The new 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.

Who Receives the SBC?

All individuals who are eligible to enroll in the group health plan will receive

the SBC. If a participant and any beneficiaries are known to reside at the same address, providing a single SBC to that address will satisfy the obligation to provide the SBC for all individuals residing at that address. However, if a beneficiary's last known address is different than the participant's last known address, a separate SBC must be provided to the beneficiary at the beneficiary's last known address.

The group health plan is also entitled to receive an SBC from a health insurance issuer.

When Does the SBC Need to Be Distributed?

For group policies, the SBC must be provided during enrollment periods, within seven days of a request, and within seven days of a request for special enrollment rights. Advanced distribution of the SBC is required for certain events, such as automatic renewals during enrollment periods (30 days) and mid-year modifications (60 days).

What are the Content and Format Requirements?

The SBC will provide uniform definitions of key terms and summarize key features of the particular coverage option. These features include covered benefits, coverage limitations and exceptions, cost-sharing, renewability and continuation of coverage provisions, coverage examples of common benefits scenarios (e.g. having a baby, treating breast cancer, and managing diabetes), and contact information for questions.

The SBC must be printed in at least 12-point font, and it must be written with terminology "understandable by the average plan enrollee." Also, the proposed rule requires that the SBC be provided in a "culturally and linguistically appropriate manner." Thus, employers with large numbers of non-English speakers in their workforce must provide non-English language versions of the SBC. The SBC may be printed in color or black and white.

The template forms, which were prepared by the National Association of Insurance Commissioners (NAIC), are available at the Department of Labor website at <http://www.dol.gov/ebsa/healthreform>.

How is the SBC Distributed?

For delivery from group health plans to individuals, the SBC can be issued in paper form, or electronically under the conditions set forth in the Department of Labor's electronic disclosure safe harbor regulations. The regulations set forth strict requirements on plan administrators to ensure that the information sent electronically is sent by means "reasonably calculated to ensure receipt."

For delivery from insurers to group health plans, the SBC may be delivered in electronic form if: (1) the format is readily accessible by the plan; (2) the SBC is provided in paper form free of charge upon request; and (3) if the electronic form is an Internet posting, the insurer timely advises the plan in paper form or email that documents are available on the Internet with the Web address.

Under the proposed regulations, the SBC would be provided free of charge.

Applicability Date Likely Delayed

The proposed regulations provided for an implementation date of March 23, 2012. The Departments solicited and received numerous comments regarding the proposed regulations and templates, including comments on the applicability date.

In a series of FAQs regarding the implementation of these provisions, the Departments stated that they are taking these comments into consideration as they prepare the final regulations, which have not yet been issued. According to the FAQs, the final regulations will "include an applicability date that gives group health plans and health insurance issuers sufficient time to comply." The FAQs also state that until final regulations are issued and applicable, plans and issuers are not required to comply with the SBC and uniform glossary requirements of the PPACA. The FAQs are available at: <http://www.dol.gov/ebsa/faqs/faq-aca7.html>.

The Bottom Line:

The Departments have not yet identified a specific applicability date for the SBC requirements; however, it appears likely that the date will be later than the March 23, 2012 date set forth in the proposed regulations. We will keep you updated as additional information become available.

If you have any questions regarding these requirements or other employment-related benefits issues, please contact [Tiffany Downs](mailto:Tiffany.Downs@fordharrison.com), tdowns@fordharrison.com, [Isabella Lee](mailto:Isabella.Lee@fordharrison.com), ilee@fordharrison.com, any member of Ford & Harrison's [Employee Benefits](#) practice group or the Ford & Harrison attorney with whom you usually work.

[1] Separate rules apply for individual policies issued under individual health insurance coverage.