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New Summary of Benefits and Coverage Required for Health Plans in 2012

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On August 22, the Departments of Treasury, Labor, and Health and Human Services (the Departments) jointly published proposed regulations on the new Summary of Benefits and Coverage (SBC) that insurers and group health plan administrators will be required to distribute beginning next year. The SBC is intended to provide clear and consistent information that will enable employers and participants to compare and understand the costs and benefits of different health coverage options.

The Patient Protection and Affordable Care Act (PPACA) requires that insurers and group health plans (whether or not grandfathered) provide an SBC for each coverage option offered by the insurer or plan. The Departments have proposed a template for the SBC, as well as a separate uniform glossary of terms commonly used to describe health coverage, such as "co-pay" and "deductible."

The new SBC requirements are proposed to apply as of March 23, 2012, although the Departments signaled in the proposed regulations that "practical considerations might affect the timing of implementation."

Key points from the proposed regulations are highlighted below.

What must be in the summary?

The SBC may be no longer than four double-sided pages in 12-point font. The SBC must summarize key features of the coverage option, such as covered benefits, coverage limitations and exceptions, cost-sharing provisions, renewability and continuation of coverage provisions, and contact information for questions, including a website where the uniform glossary of terms may be found.

The SBC must also contain three coverage examples that illustrate what the plan will cover for common benefits scenarios. The template includes coverage examples for having a baby, treating breast cancer, and managing diabetes. The template and glossary can be viewed online at http://www.gpo.gov/fdsys/pkg/FR-2011-08-22/pdf/2011-21192.pdf. The template may be expanded to cover additional examples in future years.

The SBC must be presented in a "culturally and linguistically appropriate manner." The proposed regulations state that this requirement will be satisfied by following the rules set forth in earlier guidance

issued with respect to claims and appeals, which requires the provision of interpretive services and written translations in certain non-English languages in specified counties, based on U.S. Census Bureau data.

Who must receive the summary and when?

Insurers must provide consumers (including employer plan sponsors) with the SBC for a particular health coverage option automatically upon an application or request for information about the coverage. The SBC must be provided as soon as possible, but not later than seven days following the application or request.

Group health plans, and insurers in the case of insured group health plans, are obligated to provide an SBC to participants and beneficiaries with respect to each benefits package for which they are eligible. The proposed regulations also state that if either the insurer or the plan administrator provides an SBC that meets the applicable timing and content requirements, the obligation will be considered satisfied for both. The SBC must be provided:

- With any written enrollment materials distributed by the plan or, if no written enrollment materials are distributed, no later than the first day the individual is eligible to enroll.
- During open enrollment each year; however, only the SBC for the coverage option in which a participant is already enrolled must be provided automatically. SBCs for other coverage options must be provided upon request.
- Not more than seven days following a request for special enrollment during a plan year.
- To participants and beneficiaries (or to an employer plan sponsor in the case of an insured plan) upon request at any time, within seven days.

In addition, a revised SBC will be required *at least 60 days in advance* of the effective date of any midyear change to a plan (whether positive or negative) that affects the information provided in the most recent SBC. Prior to PPACA, notice of a material reduction in health benefits was required within 60 days *after* the date the change was adopted.

How may the summary be delivered?

The SBC may be provided to participants and beneficiaries in paper form, or electronically if the requirements of the electronic disclosure safe harbor for ERISA plans under Department of Labor regulations are met. Note that many ERISA plans and insurers currently employ electronic disclosure methods that do not necessarily fall within the Department of Labor's safe harbor (e.g., posting on a website), but arguably still comply with ERISA's electronic disclosure rules. The new proposed regulations suggest that only a safe harbor electronic delivery method is acceptable for SBCs. The electronic disclosure rules are currently under review by the Department of Labor and it is possible that the safe harbor will be expanded to encompass more electronic delivery options.

What are the penalties for noncompliance?

A willful failure to provide the SBC as required may result in a fine of up to $1,000 per failure under rules that will be incorporated into section 715(f) of ERISA. Also, an excise tax of $100 per day per

failure to deliver the SBC may apply under section 4980D of the Internal Revenue Code. Violations must be reported and excise taxes paid annually using IRS Form 8928 (the same form used to report COBRA violations and other failures). Additional penalties and interest may apply if the excise tax return is not timely filed.

Comments

The development of the proposed SBC template and the uniform glossary of terms was led by the National Association of Insurance Commissioners (NAIC) and a working group of "stakeholders," which did not include employer plan sponsors. As a result, the NAIC proposals (which were adopted by the Departments with few changes) lean heavily towards the individual insurance market and do not mesh well with group health plans. In light of these disconnects, the Departments have requested comments on the new rules, such as how the SBC requirements should be coordinated with the summary plan description requirements applicable to ERISA plans, what information should be provided about employer subsidies for various coverage options, and whether the midyear effective date of March 23, 2012 will cause problems for plans. Comments are due by October 21, 2011.

If you would like more information or have any questions about the issues discussed in this LawFlash, please contact any of the following Morgan Lewis attorneys:

Chicago
Andy R. Anderson 312.324.1177 anderson@morganlewis.com
Brian D. Hector 312.324.1160 bhector@morganlewis.com

New York
Craig A. Bitman 212.309.7190 cbitman@morganlewis.com

Philadelphia
Robert L. Abramowitz 215.963.4811 rabramowitz@morganlewis.com
Brian J. Dougherty 215.963.4812 bdougherty@morganlewis.com
I. Lee Falk 215.963.5616 ilfalk@morganlewis.com
Vivian S. McCardell 215.963.5810 vmccardell@morganlewis.com
Steven D. Spencer 215.963.5714 sspencer@morganlewis.com

Pittsburgh
Lisa H. Barton 412.560.3375 lbarton@morganlewis.com
John G. Ferreira 412.560.3350 jferreira@morganlewis.com
Lauren B. Licastro 412.560.3383 llicastro@morganlewis.com
R. Randall Tracht 412.560.3352 rtracht@morganlewis.com

Washington, D.C.
Althea R. Day 202.739.5366 aday@morganlewis.com
Benjamin I. Delancy 202.739.5608 bdelancy@morganlewis.com
David R. Fuller 202.739.5990 dfuller@morganlewis.com
Mary B. (Handy) Hevener 202.739.5982 mhevener@morganlewis.com
Gregory L. Needles 202.739.5448 gneedles@morganlewis.com

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