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REFORM UPDATE

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NEW PROPOSED REGULATIONS ON SUMMARY OF BENEFITS AND COVERAGE (SBC)

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On December 22, 2014, the Departments of Health and Human Services (HHS), Labor and Treasury (the Departments) issued proposed regulations related to changes to the SBC.

Most employer plans were first impacted by SBCs in late 2012. The final regulations were addressed in our *Reform Update* at http://www.mcgrawwentworth.com/Reform_Update/2012/Reform_Update_39.pdf. The newly proposed regulations make a number of changes to the current regulations:

- Streamline the SBC template
  - Remove specific content
  - Add a third cost example
  - Update the uniform glossary
- Clarify when and how a plan administrator or insurer must provide an SBC
- Provide updates on a number of requirements related to SBCs

The proposed regulations incorporate some of the FAQs that were released after the final regulations. Feedback received from key stakeholders also influenced these proposed regulations. The government has also requested comments on these new rules.

The proposed regulations and new templates will be effective for plan years beginning on or after September 1, 2015. It will also apply as of the first day of the first annual enrollment period beginning on or after September 1, 2015. For example, assume your organization's plan year runs from January 1 through December 31. The new template should be used at open enrollment for the 2016 plan year (presumably held during the fall of 2015). It should also be used for new hires, special enrollees and any individual requests received on or after January 1, 2016.

This *Update* will review the newly proposed SBC regulations.

STREAMLINED SBC TEMPLATE

The intention of the SBC is to provide consumers with a standardized tool to compare key features of various health plan options. The ACA statute limits the length to four double-sided pages and specifies at least a 12-point font. The content of the SBC is fixed. These rules apply to both insurance carriers and group health plans. Some plan designs, however, do not fit within the structure of the SBC. The Departments do allow some flexibility in this situation.

The new template and other resources can be found at http://www.dol.gov/ebsa/healthreform/regulations/summaryofbenefits.html. The webpage provides resources for SBCs issued both before and after September 1, 2015. The new format is only 2.5 double-sided pages. The most significant change is the addition of a third coverage example. Originally, the SBC included only two coverage examples, a maternity case and a diabetic case. The new coverage example details a simple foot fracture with an emergency room visit. The webpage includes all of the information plans will need to determine how to price the coverage examples. The new regulations also include updated information for pricing the maternity and the diabetic care claims.

The claim pricing on the coverage examples created challenges for some plans. The Departments previously offered a calculator that could be used, but it was intended only as a temporary measure. It did not provide the best estimation of member costs. The Departments have, however, authorized the continued use of the calculator based on stakeholder feedback.

The new SBC must specify if the plan is considered Minimum Essential Coverage (MEC). The SBC must specify whether the plan offers Minimum Value (MV) coverage (i.e., at least a 60 percent value). MEC is employer-sponsored medical coverage that is not considered an excepted benefit. This content was added after the 2012 final regulations. The Departments granted a temporary safe harbor that allowed employers to address this information in a cover memo, rather than adding it to the SBC. The proposed regulations do not continue this temporary safe harbor. This information will have to be included in the new SBC.

The proposed regulations maintain the requirement that the SBC include contact information for members who have questions. They only require insurance carriers to include a web address where the actual coverage or group certificate of coverage can be obtained. Group insurance carriers, prior to an employer actually purchasing a plan, must post a sample certificate of coverage.

Flexibility is retained for employers using two vendors to administer the group health plan. For example, the employer may use one vendor for health plan administration and a different vendor for pharmacy benefit administration. Employers have the option of providing two SBCs, with a note explaining the relationship of both vendors to providing benefits under the health plan. Employers could also merge the information from both SBCs into a single document.

The SBC must still include the link to the Uniform Glossary. It also has to state that a paper copy is available upon request. It must provide the contact information for a member to make that request. The proposed regulations revise the Uniform Glossary. Some definitions have changed and new terms have been added. The revised glossary is available at http://www.dol.gov/ebsa/healthreform/regulations/summaryofbenefits.html .

WHEN AND HOW A PLAN ADMINISTRATOR MUST PROVIDE AN SBC

The SBC must be provided to all plan members and beneficiaries covered by the plan. For insured plans, the provision of the SBC is a shared responsibility between the employer and the insurance carrier. If one entity provides the SBC, that will meet the other entity's requirement to provide the SBC.

The insurance carrier must create the SBC, but the distribution requirement is typically triggered by employer communication events. For self-funded plans, the employer is ultimately responsible for both creating and distributing the SBC. Some TPAs, however, will create SBCs for self-funded plans.

SBCs must be provided:

1. **Upon application (i.e., when a participant is initially eligible for coverage).** An SBC must be distributed with the application materials for all health plan options for which the participant is eligible. If the plan does not distribute application materials, then the SBC(s) must be delivered no later than the first day on which the participant is eligible to enroll.
2. **By the first day of coverage (if there have been any changes).** An SBC is distributed only if there is any change to the SBC information from the one provided with enrollment materials. If there is a change, an updated SBC must be provided no later than the first day of coverage.
3. **When an event triggers HIPAA special enrollment rights.** The SBC should be provided within 90 days of enrollment. However, plans may wish to provide the SBC sooner with other informational materials to assist the enrollee in making coverage decisions.
4. **At annual enrollment.** The regulations refer to this as "upon renewal." If a plan requires a positive enrollment, then the SBC must be distributed with the annual enrollment materials. If enrollment is passive, the SBC must be provided 30 days prior to the effective date. If renewal decisions are not made within 30 days, the SBC must be provided as soon as practical, but no later than seven business days before the effective date. During annual enrollment, participants need to be provided with an SBC only for the plan option in which they are currently enrolled.
5. **Upon request.** An SBC must be provided within seven business days after receiving a request.

The regulations address how the SBC must be provided. For example, a plan can send one paper copy of the SBC to the participant's home address. This will meet the distribution requirements for any plan participants living at that same address. But if the plan is ***aware*** of a plan participant living at a different address, a copy of the SBC should be sent to the participant at that address as well.

It also addresses when it can be provided electronically. The regulations have changed the allowable methods for electronic SBC distribution:

1. When the participant is enrolled or eligible for coverage:
    a. For participants who are already covered by the benefit plan, the plan must take necessary measures to ensure that the system furnishes the SBC:
        i. Use a return receipt, undelivered mail feature or use some other reliable method to check receipt of the SBC
        ii. The electronically delivered document is prepared and furnished in a manner that is consistent with the style, format and content requirements applicable to that particular document
        iii. Recipients are notified of the significance of the document and their right to request a paper copy
        iv. The recipient must have either:
            1) The ability to effectively access documents furnished electronically, where the participant is reasonably expected to perform his or her employment duties and has access to the employer's electronic system
            2) Provided consent (which includes having the necessary hardware and software) to receive the documents electronically

   b. For participants who are eligible but not yet enrolled in the plan, the employer can provide SBCs electronically. The format must be readily accessible and a paper copy must be provided free of charge upon request. If the electronic format is an internet posting, the plan must advise participants that the information is also available through either paper or e-mail. The communication must include the internet address.
2. When the employer uses an online enrollment system (again, the right to a no-cost paper copy of the SBC must be communicated):
   a. SBCs can provided through the online enrollment system in connection with initial enrollment or re-enrollment during the plan's annual enrollment period
   b. SBCs can be provided electronically to individuals who request one online

The proposed regulations continue to allow an employer to hire a third party to provide the SBCs. The employer must:

- Monitor performance under the contract
- Take action to correct any situation in which the employer has knowledge that the SBC is not being provided as required

Please note that employers also need to send SBCs to COBRA-qualified beneficiaries. Although COBRA-qualifying events do not prompt the issuance of an SBC themselves, one must be provided to any qualified beneficiaries on your medical plan at annual enrolment.

UPDATES ON A NUMBER OF REQUIREMENTS RELATED TO SBCs

These newly proposed regulations made no changes to the appearance requirements of the SBC. They also maintain the requirement that the SBC be culturally and linguistically appropriate. If a plan participant lives in a county where at least 10 percent of the population is literate **only** in the same non-English language, then the plan must provide additional information in the SBC:

1. The plan must include a statement in the SBC, in that particular non-English language, advising that the SBC is available in the non-English language upon request.
2. A translated SBC must be provided upon request.
3. The plan must provide interpretive services in that language for participants' questions.

The Departments recently published an updated list of the affected counties. It can be found at http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/2009-13-CLAS-County-Data_12-05-14_clean_508.pdf. No Michigan counties are on this list.

The Departments will provide SBC templates in the required languages. The languages are Chinese, Navajo, Spanish and Tagalog. The Departments anticipate that these translated versions will be available once the proposed regulations are finalized.

The proposed regulations also indicate that the SBC does not need to be provided on stand-alone basis, and can be provided with other plan materials related to enrollment. If provided with other materials, the SBC information must be intact and displayed prominently at the beginning of such materials. In addition, exercise caution if you include the SBC with the Summary Plan Description (SPD). You must adhere to the delivery timing of the SBC requirement rather than to the SPD rules.

The proposed regulations added that the SBC could include references to the plan's SPD. However the reference cannot be used to replace any content required by the SBC. The SPD reference could be related to general information regarding the plan. A plan could also reference direct pages in the SPD to provide more details on the specific coverage requirements addressed by the SBC.

The proposed regulations retained the requirement that notification of a material modification of coverage detailed in the SBC must be made 60 days in advance of the effective date of the change. **This requirement does not apply to changes made during the plan's renewal period.** It only applies to mid-year changes. Notification could be an updated SBC or a memo describing the changes.

CONCLUDING THOUGHTS

Most employers have integrated the distribution of SBCs into their benefit administration process. The fine for failing to provide the SBC can be up to $1,000 per occurrence, which is substantial.

The Departments have requested specific comments on these proposed regulations. They intend to issue final regulations prior to September 1, 2015. Employers should set aside time this summer to address the new SBC formats. If your organization has an insured plan, the carrier should be providing the revised SBC. Your organization should confirm that the new SBC is distributed as of the effective date of your plan.

Self-funded plans may need to take a more hands-on approach. If your TPA provides the SBC, make sure the new format is being used, when applicable. If your organization must create the SBC, the new format is available in a Word document that can be modified.

It is important to understand that SBCs apply to comprehensive group health plans. Employers are not required to provide SBCs for the following types of coverage:

- Any HIPAA-excepted benefits, which includes most medical FSAs, qualifying dental and vision coverage and most employee assistance plans (EAPs)
- Expatriate plans
- Health savings accounts (HSAs)

Health reimbursement arrangements (HRAs) are considered self-funded medical plans. An SBC must be provided for an HRA. However, employers could have a single SBC for the comprehensive medical plan that includes information about the HRA within the scope of that SBC.

The proposed regulations made substantive changes to the content of the SBC. Employers should make time in the coming months to create any needed SBCs in the new format.