Summary Judgments

What is required in the summary of benefits and coverage?

ON AUGUST 22, 2011, the Departments of Health and Human Services, Labor, and Treasury published a proposed rule under PPACA that requires group health plans to provide participants and beneficiaries with a uniform Summary of Benefits and Coverage (SBC) (76 Fed. Reg. 52442). The proposed rule also requires plans to provide a uniform glossary to participants upon request. Comments were due October 21, 2011. The requirement is effective March 23, 2012.

Below, we will answer questions that health plans have been asking about these new rules.

Who Must Provide the SBC?

The new summary of benefits requirement applies to insured and self-funded ERISA group health plans, including grandfathered plans, as well as to non-ERISA group health plans. The new rules also apply to individual health insurance coverage. The departments request comment as to whether the requirement should apply to expatriate health insurance coverage.

What Information Must Be Included in the SBC?

The agencies issued a template showing what information must be included in the SBC and in what format. The SBC is limited to four pages (front and back—eight pages total) in 12-point font. The SBC template requires reporting of:

- Uniform definitions;
- A description of coverage;
- A description of the plan's exceptions, reductions, and limitations;
- The plan's cost-sharing provisions, including deductibles, co-insurance, and co-payments;
- Renewability and continuation of coverage provisions;
- For coverage beginning on or after 1/1/14, a statement whether the plan provides minimum essential coverage and whether the plan's share of total allowed costs of benefits meets applicable requirements;
- A statement that the SBC is a summary only and that the plan document or policy should be consulted to determine governing provisions;
- Contact information for questions or to obtain a copy of the plan or policy;
- If the plan maintains more than one network, the Internet address or similar contact information for obtaining a list of network providers;
- If the plan uses a prescription drug formulary, the Internet address or similar contact information for obtaining information on prescription drug coverage;
- The Internet address for obtaining the uniform glossary;
- Information on premiums for insured coverage or the cost of coverage for

 Illustration by Katherine Streeter

self-funded coverage;
- Coverage examples for common benefits scenarios adopted by HHS.

When Must a Group Health Plan Deliver an SBC to Plan Participants and Beneficiaries?

At Enrollment—The plan must provide an SBC for all options for which an individual is eligible to enroll with any written application materials distributed by the plan. If the plan does not distribute written application materials for enrollment, the SBC must be distributed no later than the first day the participant is eligible to enroll. In addition, if there is any change to the SBC before the first day of coverage, the plan must provide an updated SBC no later than the first day of coverage. The plan also must provide an SBC to HIPAA special enrollees within seven days of a request for enrollment.

At Renewal—The plan must provide an SBC for the option in which the individual is enrolled at renewal. If a written application is required for renewal, the plan must provide the SBC no later than the date application materials are distributed. If benefits automatically are renewed, the plan must provide the SBC at least 30 days prior to the first day of the new plan year.

Upon Request—If a participant or beneficiary requests, the plan must provide an SBC for any coverage option for which the individual is eligible as soon as practicable, but no later than seven days after request.

Modification of SBC Information—If the plan makes a mid-year material modification to coverage that would affect the content of the SBC, the plan must provide notice of the modification no later than 60 days *prior* to the date the modification becomes effective. The modification notice can be either a separate notice describing just the material modification or an updated SBC.

Is There a Penalty for Not Providing an SBC?

Yes—a group health plan that willfully fails to provide an SBC will be subject to a fine of up to $1,000 for each failure (assessed by DoL or HHS, depending on the type of coverage). A failure with respect to each participant and beneficiary will constitute separate offenses. Failures also are subject to excise taxes under the Internal Revenue Code.

Must the SBC Be Translated into Non-English Languages?

The proposed rule requires that the SBC be provided in a "culturally and linguistically appropriate manner." The rule says that a plan will be considered to meet this requirement if thresholds and standards under the PPACA appeals rules are met. The appeals rule requires plans to disclose the availability of language services and translate adverse benefit determinations into a non-English language for notices sent to addresses in certain counties that have been identified by the U.S. Census Bureau as having a concentration of non-English speakers. A recent amendment to the appeals interim final rule includes a chart of such counties and the applicable languages (which are Spanish, Mandarin, Navajo, and Tagalog) (76 Fed. Reg. 37208, June 24, 2011).

May the SBC Be Delivered Electronically?

For ERISA group health plans, the SBC may be delivered in electronic form if the delivery meets ERISA's general delivery rules at 29 CFR § 2520.104b-1 (which include the electronic delivery safe harbor). For nonfederal governmental plans, the SBC may be delivered in electronic form if the delivery meets either ERISA's general delivery rule or special rules related to electronic delivery for individual coverage.

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These Q&As first appeared on www.plansponsor.com in August and September 2011. As health-care law is evolving rapidly, there may be further developments since the initial publication.

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You can find a handy list of **Key Provisions of the Patient Protection and Affordable Care Act** and their effective dates at www.groom.com/HCR-Chart.html.