GROOM LAW GROUP CHARTERED

BENEFITS BRIEF

April 26, 2016 www.groom.com

Authors: Tamara S. Killion, Lisa K. Lowenstein
If you have questions, please contact your regular Groom attorney or one of the attorneys listed below:

Kathryn Bjornstad Amin
kamin@groom.com
(202) 861-2604

Sravya Boppana
sboppana@groom.com
(202) 861-6338

Jon W. Breyfogle
jbreyfogle@groom.com
(202) 861-6641

Lisa M. Campbell
lcampbell@groom.com
(202) 861-6612

Thomas F. Fitzgerald
tfitzgerald@groom.com
(202) 861-6617

Katy S. Kamen
kkamen@groom.com
(202) 861-6646

Christine L. Keller
ckeller@groom.com
(202) 861-9371

Tamara S. Killion
tkillion@groom.com
(202) 861-6328

Emily C. Lechner
elechner@groom.com
(202) 861-9386

Rachel Leiser Levy
rlevy@groom.com
(202) 861-6613

Lisa K. Lowenstein
llowenstein@groom.com
(202) 861-5410

Mark C. Nielsen
mnielsen@groom.com
(202) 861-5429

Seth T. Perretta
sperretta@groom.com
(202) 861- 6335

Malcolm C. Slee
mslee@groom.com
(202) 861-6337

Ryan C. Temme
rtemme@groom.com
(202) 861-6659

Christy A. Tinnes
ctinnes@groom.com
(202) 861-6603

Vivian Hunter Turner
vturner@groom.com
(202) 861-6324

Allison Ullman
aullman@groom.com
(202) 861-6336

Will E. Wilder
wwilder@groom.com
(202) 861-6640

Brigen L. Winters
bwinters@groom.com
(202) 861-6618

Departments Issue New Summary of Benefits and Coverage Templates and Accompanying Documents

On April 6, 2016, the Departments of Health and Human Services ("HHS"), Labor, and Treasury (the "Departments") jointly released final changes to the Summary of Benefits and Coverage ("SBC") template, the Uniform Glossary, and accompanying documents. This release follows the publication of the Departments' SBC final rule ("Final Rule"), which finalized certain SBC requirements. 80 Fed. Reg. 34292 (June 16, 2015). For additional information about the Final Rule, please consult our July 8, 2015, client alert, available at: http://www.groom.com/resources-985.html.

What Actions You Should Take

Begin using the updated templates, available here (under the 4/01/17 (Final)), by the deadlines outlined below.

Executive Summary

The Affordable Care Act ("ACA") requires group health plans and health insurance issuers to provide SBC templates to consumers, in an effort to help them make more informed choices among health plan options and to understand their coverage better. Health insurance issuers and group health plans are currently using SBC templates released April 23, 2013. Issuers and plans must use the new SBC templates by the following dates:

- For calendar year plans, on the first day of open enrollment beginning on or after April 1, 2017;
- For non-calendar year plans, the first plan year beginning on or after April 1, 2017.

Although the Departments suggested that they were making changes to the template in order to streamline and shorten it, they also added certain additional elements that they believed would be useful to consumers. For instance, the revised template

- Adds a description of the SBC to the first page
- Shortens the definition box from the top of the second page
- Changes the "Limitations & Exceptions" column to a "Limitations, Exceptions, & Other Important Information" column
- Adds disclosure language about minimum essential coverage, minimum value, and language access services
- Adds a third coverage example
- Makes various other changes to the content and format of the document.

As discussed in more detail below, the Departments also made changes to the instructions for the templates and the Uniform Glossary.

I. Background

The ACA requires group health plans and health insurance issuers to compile and provide an SBC that "accurately describes the benefits and coverage under the applicable plan and coverage." This requirement applies to insured and self-funded ERISA group health plans, including grandfathered plans, as well as to non-ERISA group health plans and individual health insurance coverage.

The SBC must follow a uniform format, which includes a series of content requirements such as: uniform standard definitions of medical and health coverage terms; a description of the coverage, including the cost-sharing requirements (e.g., deductibles, coinsurance, and copayments); and information regarding any exceptions, reductions, or limitations under the coverage.

On December 30, 2014, the Departments issued a proposed rule amending the final SBC regulations and, at the same time, they issued for comment revised SBC templates, samples, instructions, coverage examples and the Uniform Glossary. A summary of these proposed regulations is available at http://www.groom.com/resources-947.html. On June 16, 2015, the Departments issued a Final Rule, which finalized most of the provisions in the December 30, 2014, proposed rule. While the Final Rule provided instructions regarding the SBC, the Departments did not release a new SBC template or associated documents with the Final Rule. Instead, the Departments stated that they anticipated releasing a new SBC template and accompanying documents by January 2016.

On February 25, 2016, the agencies released the awaited revised SBC templates and accompanying documents, including instructions and a Uniform Glossary. They released final templates and documents on April 6, 2016. The effective date for these forms varies; group health plans and health insurance issuers with calendar year plans must use these forms starting on the first day of open enrollment beginning on or after April 1, 2017; group health plans and health insurance issuers with non-calendar year plans must use these forms on the first day of the first plan year (or, in the individual market, policy year) beginning on or after April 1, 2017.

II. Changes to Requirements

Plans and issuers must still use 12-point font and replicate all symbols, formatting, bolding, and shading where applicable on the SBC. However, to maintain the statutorily-required four double-sided page limit, the updated instructions add some flexibility to the form language and formatting. For example, although the Departments encourage plans and issuers to use Arial Narrow font, they allow plans and issuers to use different font types and to modify the margins as necessary.

The Departments also added definitions to the Uniform Glossary, which is a repository of commonly-used health coverage and medical terms that plans and issuers must provide to consumers. Plans and issuers providing electronic SBCs may also hyperlink the terms to a micro-site that HHS will maintain, at: https://www.healthcare.gov/sbc-glossary/. Please note that while providing SBCs with embedded links to definitions is not a requirement, the blank template includes embedded hyperlinks.

III. SBC Template Changes

The Departments added, deleted, and changed language and terms in the new sample completed SBC template. For example, they:

- Added a simple explanation at the beginning of the SBC. At the top of the first page of the sample completed SBC template, plans and issuers must use the template language to describe what an SBC is and where consumers can find more information.
- Changed language in the Certain Important Questions portion of the template.
    - The Departments changed the description of deductible to note that, for a family plan, each family member must meet his or her own individual deductible "until the total amount of deductible expenses paid by all family members meets the overall family deductible." They also added a row discussing services covered before an individual meets his or her deductible.
    - The Departments also made some clarifying changes. For example, they changed the term "person" to "individual" throughout the section, and they added that copayments for certain services may not be included in out-of-pocket limits.
- Removed definitions from second page of the template. The current SBC template includes definitions pertaining to cost sharing (e.g., copayments and coinsurance) at the top of page two. The new template removed these definitions but includes language stating that copayments and coinsurance are imposed after a consumer hits his or her deductible, if applicable.
- Changed the "Limitations & Exceptions" column to a "Limitations, Exceptions, & Other Important Information" column. Plans and issuers must include the following information in this column in the new template:
    - When the plan or issuer does not cover a particular service category, or a substantial portion of a service category (e.g., if a plan only covers generic drugs, the column should note that brand name drugs are excluded);
    - When cost sharing for covered in-network services does not factor into the out-of-pocket limit;
    - Visit or dollar limits; and
    - When services require prior authorization.

  The instructions require plans and issuers to describe as many core limitations and exceptions as reasonably possible in this column, but if including all of these limitations and exceptions would make complying with the four double-sided page limit not reasonably possible, they should cross reference the pages or sections where consumers can find descriptions in another applicable document (e.g., a summary plan description or a policy document).
- Changed other information in the Common Medical Events section.
    - In the "If you visit a health care provider's office or clinic" row, either at the end of the "Limitations, Exceptions, & Other Important Information" column, or in the "Preventive care/screening/immunization" row, plans and issuers should always include the following language: "You may have to pay for services that aren't preventive. Ask your provider if the services needed are preventive. Then check what your plan will pay for."
    - Plans and issuers must provide a direct link or URL address to the formulary drug list where the consumer can find more information about prescription drug coverage. The new sample completed SBC template also added tier information to the "If you need drugs to treat your illness or condition" row. The instructions allow plans and issuers to describe tiered formularies using plan

terminology, but, in those cases, the plan or issuer should also include the corresponding terms (e.g., generic, brand, preferred, or specialty) in parenthesis, if applicable.
    - The new template combines mental/behavioral health and substance use rows into one row for inpatient services and one row for outpatient services.
    - The Departments revised and added a row to the "If you are pregnant" category. The current template has two rows: (1) Prenatal and postnatal care; and (2) Delivery and all inpatient services; the new template has three rows: (1) Office visits; (2) Childbirth/delivery professional services; and (3) Childbirth/delivery facility services.
- Added disclosure language about minimum essential coverage, minimum value, and language access services. Plans and issuers must provide this information on the new SBC template. Issuers offering QHP coverage through a Marketplace must include an addendum with 15 language taglines and any additional taglines required by the claims and appeals rule.
- Added a third coverage example. The Departments added a third coverage example – a simple fracture – to the existing coverage examples of having a baby and type 2 diabetes.
- Changed formatting and other language in the Coverage Examples page. The Coverage Examples page of the new SBC template includes an updated note about wellness programs. It also includes a new note that the plan has other deductibles for specific services included in this coverage example, and referring consumers to the "Are there other deductibles for specific services?" row in the template. Furthermore, the new Coverage Examples page includes a footnote stating: "The **plan** would be responsible for the other costs of these EXAMPLE covered services."

Qualified Health Plan issuer requirements

- Added disclosure language regarding abortion coverage for qualified health plans ("QHPs"). A QHP issuer offering coverage through a Marketplace must reflect on the SBC whether it covers abortion services. Non-QHP issuers are not required to disclose this information, but they may choose to do so.

Effective Dates

Depending on a plan or policy's start date, group health plans and health insurance issuers should be prepared to provide new SBC templates as soon as April 1, 2017.

Plans and issuers operating on a calendar year plan year must provide the new SBC templates in time for the first open enrollment period beginning on or after April 1, 2017. Therefore, most individual market issuers will need to use the new SBC documents by November 1, 2017, for the plan year beginning January 1, 2018; most group health plans operating on a calendar year will also have to use the new template for next fall's open enrollment.

Non-calendar year plans must use the new SBC documents beginning on the first plan year beginning on or after April1, 2017. For example, if a group health plan has a September 1 plan year, that plan would need to provide the new SBC documents to its participants no later than September 1, 2017.

Group health plans and health insurance issuers should carefully review the modifications to the SBC template, the instructions, the Uniform Glossary, and accompanying documents to determine how these modifications will change the plan or issuer's compliance efforts.

Please contact any of the attorneys in the Health and Welfare Practice Group at Groom Law Group or your regular Groom Law Group attorney for further information.