



For your information

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Departments Issue Additional FAQs That Ease Some SBC Rules

The Departments of Labor, the Treasury and Health and Human Services recently issued additional FAQs that provide guidance on the summary of benefits and coverage required under PPACA. The FAQs provide additional relief in several areas but, most important, expand plan sponsors' ability to distribute SBCs electronically.

Background

The Patient Protection and Affordable Care Act (PPACA) directed the Departments of Labor, the Treasury and Health and Human Services (the Departments) to develop standards for a summary of benefits and coverage (SBC) and a uniform glossary of health insurance and medical terms that group health plans and health insurance issuers (insurers) must provide to participants and beneficiaries. The primary purpose of the SBC is to enable participants to compare coverage options easily and to help them better understand their health benefits.

On February 14, 2012, the Departments issued final regulations governing SBCs, an SBC template, and a uniform glossary (see our March 1, 2012 [For Your Information](#)). On March 19, 2012, the Departments released additional guidance in the form of Frequently Asked Questions (FAQs) (see our March 27, 2012 [For Your Information](#)).

On May 11, 2012, the Departments issued additional [Frequently Asked Questions](#) on the SBC requirements. They also issued a new SBC template that includes formatting changes and other revisions. The new FAQs provide significant relief in several areas but, most important, make it easier for SBCs to be distributed electronically. The FAQs also confirm that the Departments will not impose penalties on plans and issuers that are making a good faith effort to comply with the requirements for plan years during "the first year of applicability," which generally will be plan years beginning before January 1, 2014. This *FYI* primary focuses on the subjects addressed in the FAQs that affect employer-sponsored plans.

Electronic Distribution of SBCs

PPACA permits SBCs to be provided in either paper or electronic form. The final regulations set out two rules for electronic distribution of SBCs.

- For individuals who are eligible for a plan but not yet enrolled, SBCs may be provided electronically as long as the SBCs are readily accessible. The plan must advise the individuals in paper form (such as a postcard) or by email how to obtain the SBC.
- For individuals already covered under a plan, the final regulations only permit electronic distribution if the Department of Labor (DOL) requirements for electronic distribution are satisfied. (See our March 1, 2012 [For Your Information](#).) This means that SBCs generally could be distributed electronically only to employees whose access to the sponsor's electronic information system is an integral part of their employment duties; otherwise, prior consent to the electronic distribution would have to be obtained. Satisfaction of the DOL requirements means that many plan sponsors would not be able to electronically distribute SBCs to all affected individuals.

The FAQs provide an important additional electronic distribution safe harbor that will be of benefit to many plan sponsors. Under this safe harbor, SBCs may be provided electronically to participants and beneficiaries in connection with their online enrollment or online request for an SBC. Individuals must still be able to obtain a paper copy on request.

INSIGHT

This additional safe harbor represents very welcome relief for many plan sponsors and will eliminate the need for distribution of paper SBCs for plans with online enrollment. Importantly, this safe harbor does not appear to be a temporary transition approach and should be available in future years. However, because this safe harbor is only available “in connection with online enrollment,” apparently it cannot be used by plan sponsors that provide an option for paper or telephone enrollment in addition to online enrollment. In other words, in those situations, paper delivery appears to be required.

COMPLIANCE ALERT: Plans that do not have online enrollment may still have to distribute paper SBCs to individuals where the DOL electronic distribution requirements are not satisfied. This would include retiree plans that are subject to the SBC requirements.

The FAQs permit minor adjustments to electronic SBCs, such as an expansion of columns to accommodate an electronic display method. They also state that it is permissible to display the SBC electronically on a single webpage so a viewer can scroll through the information. In addition, the FAQs state that it is permissible to display SBCs, or parts of an SBC, in a way that facilitates comparison of various benefit options, such as allowing online viewers to compare only deductibles, out-of-pocket limits, or other features. However, the full SBC for each benefit option must be made available as otherwise required.

Carve-out Arrangements

Many large-employer plans have “carve-out arrangements” for providing coverage for prescription drugs and managed behavioral health services. These arrangements can complicate the preparation of SBCs because there may be multiple issuers. The FAQs provide important, but limited, enforcement relief for sponsors of insured plans with carve-out arrangements.

Under PPACA, both the group health plan and the health insurance issuer offering group health insurance coverage are responsible for providing an SBC for each benefit option offered by the plan or issuer for which a participant or beneficiary is eligible. The FAQs confirm that unless it contracts otherwise, an issuer has no obligation to provide coverage information in the SBC for benefits that it does not insure. They also confirm that responsibility for providing complete SBCs for the plan, including information related to “carve-out arrangements,” lies with the plan administrator.

Noting the administrative challenges that administrators may face in combining benefit package information from multiple issuers, the FAQs state that for enforcement purposes during the first year of applicability, the Departments will consider the provision of multiple partial SBCs that, when read together, provide all relevant information to satisfy the SBC requirements. The FAQs note that the plan administrator should take steps, such as providing a cover letter or notation on the SBC, to indicate that the plan provides benefits using different issuers and offering assistance in understanding how the products work together. This treatment of carve-out plans is only transitional relief that applies to coverage beginning before January 1, 2014.

INSIGHT

This relief for carve-out arrangements has very limited applicability because, although self-insurance is mentioned, it appears that the relief only applies to group health plans with two or more issuers with respect to the same group health plan. Self-insured plans with carve-out benefits will still have to provide a single SBC that incorporates the carve-out benefits. Similarly, it appears that the administrator of an insured medical plan with self-funded carve-out benefits, such as prescription drugs or behavioral health, will still have to provide a single SBC that incorporates the self-insured benefits.

COMPLIANCE ALERT: This relief only means that the Departments will not assert that a plan is not in compliance with the SBC requirements. It does not mean that a participant or beneficiary cannot bring an individual action against a plan.

Coverage Example Calculator

PPACA requires that SBCs contain “coverage examples” that describe common benefit scenarios. The purpose of these coverage examples is to provide consumers with a standard basis for reviewing and comparing their plan choices. Although ultimately up to six coverage examples may be required, the final regulations only require two: the normal delivery of a baby and the management of diabetes.

The FAQs state that the Departments are developing a calculator that plans and issuers can use as a safe harbor for preparing coverage examples. The calculator inputs are expected to be taken from data fields used to populate the front portion of the SBC template (e.g., relevant deductibles, coinsurance, and copayments) and the output will provide a coverage example that can be added to the SBC. This calculator can only be used on a transition basis for SBCs provided with respect to plan years beginning before January 1, 2014. The calculator and the algorithm used to create it will be posted at <http://cciio.cms.gov/resources/other/index.html#sbcug>.

INSIGHT

This transition relief will be especially helpful to sponsors of self-funded plans with carve-out benefits (e.g., prescription drugs) where the coverage example must reflect the total benefits provided under the plan.

Language Requirements

SBCs must be presented “in a culturally and linguistically appropriate manner.” The final regulations require that an SBC be provided on request in a non-English language to individuals who reside in counties identified by the Census Bureau as having 10% or more of their population literate only in the same non-English language. An SBC furnished to residents of those counties must include a statement in the applicable non-English language advising participants of the availability of the language service. The current required additional languages are Spanish, Chinese, Tagalog, and Navajo.

The FAQs announced that written translations of the SBC templates are now available in Spanish, Chinese, and Tagalog. In addition, the Departments provided sample taglines in the four required languages that can be included in the SBC to instruct readers how to obtain translated documents.

INSIGHT

Translated versions of the SBC must only be provided on request and delivered within seven business days. Because of the administrative difficulty of determining in which county a participant or beneficiary lives, plan sponsors may want to include the taglines in all four languages in all their SBCs. If plan

sponsors with employees in the affected counties wait to start the translation process, it likely will be difficult for them to meet the deadline.

Expatriate Plans

The FAQs acknowledge the additional administrative costs of and barriers to completing SBCs for expatriate plans. Accordingly, the Departments will not take any enforcement action against a group health plan or issuer for failing to provide SBCs for expatriate coverage beginning before January 1, 2014.

Conclusion

The new FAQs provide additional relief for employer plans, particularly concerning electronic distribution of SBCs and for insured plans. However, the basic requirements and effective dates remain in place. For self-insured plans, responsibility for compliance with the SBC requirements falls on the plan sponsor, including integration of carve-out benefits and preparation of coverage examples.

Buck prepared a [Health Care Reform Timeline](#) and [Health Care Reform Comparison in Brief](#) that provide an overview of the health care reform requirements, reflecting current guidance.

Buck Can Help

- Identify the active and retiree plans subject to the SBC requirements
- Develop a compliance and communication approach to describing benefit provisions and packaging of the SBCs with other communication activities for annual enrollment and new hires
- Prepare SBCs and/or coverage examples
- Coordinate the translation effort
- House the SBCs online so that they are “readily accessible”
- Coordinate the printing and distribution of SBCs

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.
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