

Legislative Brief

HCR - PROPOSED REGULATION ISSUED ON SBCs

Jan. 9, 2015

PROPOSED REGULATION ISSUED ON SUMMARY OF BENEFITS AND COVERAGE

SUMMARY:

- A proposed rule formally issued on Dec. 30, 2014, would amend final regulations on the SBC requirement and would revise the template, instruction guides, uniform glossary and other supporting compliance materials.
- The SBC template would be shortened from four double-sided pages to two and a half double-sided pages.
- The proposed changes would apply to coverage that begins on or after Sept. 1, 2015.

Proposed Regulations Overview

On Dec. 30, 2014, the U.S. Departments of Health and Human Services, Labor and the Treasury (Departments) released [proposed regulations](#) regarding the summary of benefits and coverage (SBC) and uniform glossary. The proposed regulations would amend the [final SBC regulations](#) from Feb. 14, 2012 (2012 regulations), and would revise the SBC template, instructions guides and uniform glossary. The proposed changes are designed to improve consumers' access to important health plan information, as well as to provide clarifications that will make it easier for group health plans and health insurance issuers to comply with the SBC requirement.

If the proposed regulations are finalized, the Departments expect that the new requirements for the SBC and uniform glossary would apply to coverage that begins on or after Sept. 1, 2015.

Existing SBC and Uniform Glossary Requirements and Penalties

The Affordable Care Act (ACA) expanded ERISA's disclosure requirements by requiring group health plans and issuers to provide an SBC to applicants and enrollees at certain times, including before enrollment and re-enrollment. The SBC requirement became effective for plan coverage that began on or after Sept. 23, 2012. In addition, a uniform glossary of health coverage-related terms and medical terms must be made available to participants. Plans and issuers must provide the uniform glossary upon request, in either paper or electronic form, within seven business days after receipt of the request. The 2012 regulations require plans and issuers to provide the SBC and uniform glossary in a standardized format. The Departments provided a template for the SBC and related materials, including a uniform glossary, for plans and issuers to use. The template and related materials are available on the Department of Labor's (DOL) [website](#).

After the 2012 regulations were issued, the Departments released a [series of Frequently Asked Questions](#) (FAQs) regarding the SBC requirement. FAQs Parts VII, VIII, IX, X, XIV and XIX addressed questions related to compliance with the 2012 regulations, implemented additional safe harbors and released updated SBC materials.

ACA establishes a penalty of up to **\$1,000** for each willful failure to provide the SBC. Failing to provide the SBC may also trigger an excise tax of **\$100** per day per individual for each day of noncompliance. However, the Departments have stated that their approach to implementation is marked by an emphasis on assisting (rather than imposing penalties on) plans, issuers and others that work diligently and in good faith to comply with the SBC requirement.

Proposed Regulations

The Departments released the proposed regulations, as well as a proposed SBC template, instructions, uniform glossary and other materials, to incorporate feedback the Departments received and to make improvements to the SBC template and related materials. Overall, the proposed modifications would:

- Clarify when and how a plan or issuer must provide an SBC;
- Streamline and shorten the SBC template;
- Add additional elements to the SBC template that the Departments believe will be useful to consumers; and
- Make some of the SBC enforcement safe harbors and transitions permanent, with some modifications.

Providing the SBC

The proposed regulations would provide additional guidance on when a plan or issuer must provide the SBC to participants and beneficiaries. For example, the proposed regulations would explain how to satisfy the requirement to provide an SBC when the terms of coverage are not finalized. Under the proposed rule, if the plan sponsor is negotiating coverage terms after an application has been filed and the information that is required to be in the SBC changes, the plan or issuer would not be required to provide an updated SBC (unless an updated SBC is requested) until the first day of coverage. The updated SBC should reflect the final coverage terms under the contract, certificate or policy of insurance that was purchased.

Reducing Duplication

The 2012 regulations provide three special rules to avoid unnecessary duplication when providing the SBC. For example, the 2012 regulations provide that if either the plan or the issuer provides the SBC to a participant or beneficiary in accordance with the timing and content requirements, both will have satisfied their SBC obligations. The proposed regulations would retain these rules, and would add rules to prevent unnecessary duplication where:

- A group health plan utilizes a binding contract where another party assumes responsibility to provide the SBC;
- A group health plan uses two or more insurance products provided by separate issuers to insure benefits with respect to a single group health plan; and
- The SBC for student health insurance coverage is provided by another party (such as an institution of higher education).

Formatting and Content Changes

ACA limits the length of the SBC to four pages. The 2012 regulations interpret this requirement to be four double-sided pages. The Departments propose to shorten the template from four double-sided pages to two and a half double-sided pages.

The Departments also propose to make a number of changes to the content of the SBC and uniform glossary to reflect ACA's insurance market reforms, such as:

- Removing references to annual limits for essential health benefits and preexisting condition exclusions;
- Revising disclosures related to continuation of coverage, minimum essential coverage and minimum value to provide more useful information to consumers, including those shopping in the individual market; and
- Updating the uniform glossary by further clarifying some existing definitions and adding new definitions (such as "claim," "screening," "referral" and "specialty drug"), as well as define key terms that are relevant in the context of ACA (such as "individual responsibility requirement," "minimum value" and "cost-sharing reductions").

Coverage Examples and HHS Coverage Calculator

The Departments are authorized to develop up to six coverage examples for the SBC, and have taken a phased approach to implementing the coverage examples. The proposed regulations would retain the two current coverage examples of "having a baby (normal delivery)" and "managing diabetes type 2 (for a well-controlled condition)" and add a third example regarding a simple foot fracture with emergency room visit.

The Departments also propose to permit plans and issuers to continue using the HHS-provided coverage examples calculator as an alternative means of completing the coverage examples, and propose updating costs associated with the calculator so that examples may more accurately reflect typical costs.

Next Steps

The draft-updated template, instructions and supplementary materials are available on the DOL's [website](#) under the heading "Templates, Instructions, and Related Materials – Proposed (SBCs On or After 9/15/15)." The Departments invite interested parties to submit comments on the proposed regulations and documents required for compliance (including the template, instructions, sample language, guide for coverage example calculations and the uniform glossary). Comments are due on or before March 2, 2015.

Until the proposed regulations become final, you should continue to follow the 2012 regulations regarding SBCs and the Uniform Glossary. We will keep you informed of the status of the proposed regulations and any necessary change that may subsequently arise from them.

The health care reform law—the Affordable Care Act (ACA)—has many complex requirements for employers and health plans. Please contact Kapnick Insurance Group with any questions about how you can prepare for any of the health care reform requirements. This Kapnick Insurance Group Update is not intended to be exhaustive nor should any discussion or opinions be construed as legal or tax advice. The information contained in this communication is intended to provide general information regarding health care reform and related topics, and is based on general information available at the time it was prepared. Readers should contact their tax and/or legal counsel for advice that is appropriate to their specific circumstances. This information cannot be used by any taxpayer to avoid tax penalties.

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