



PPACA Summary of Benefits and Coverage Guidance

American Benefits Council Webinar
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Statutory Requirement – Summary of Benefits and Coverage (“SBC”)

- Section 2715 of the PHSA. Part of the ACA’s near term insurance reforms
- Requires a coverage document that
 - Covers key terms of coverage
 - Coverage facts label – examples of common benefit scenarios, including pregnancy
 - Uniform glossary of medical and insurance terms
- Statute mandates uniform appearance – 4 pages, 12 pt font, format

Statutory Requirement – SBC

- Imposes 60 day advance notice for changes in the SBC document
- HHS “shall consult” with NAIC
- Regulations were to be published 1 year after ACA’s date of enactment (3/23/11)
- Rule to be effective 2 years after enactment (3/23/11)
- New \$1,000/failure fine for willful violations

Purpose – SBC

- Applies to both “group health plans” and insurance coverage, indicating intent to reach self-insured plans
- Intended to facilitate shopping and comparison across plans available to individuals
 - Key example: allowing individual to compare his employer coverage, with spouse’s employer coverage, with coverage in individual market

Proposed Regulation – SBC

- Published as NPRM (not IFR) on 8/22/11. Comments due 10/21/11
- HHS adopted, almost without change, the NAIC recommendations
- Comments sought on many issues
- No extension of effective date yet

Proposed Regulation – SBC

Who must provide the SBC?

- Insurers must provide the SBC to the group policyholder
- The group health plan (the plan administrator) must provide an SBC for each option a participant is eligible for
- If the group health plan is insured, the group health plan, and the insurer, have a joint obligation to deliver to a participant (there is a coordinating rule)
- The insurer must deliver the SBC for individual market coverage

Proposed Regulation – SBC

What Content must be included?

- SBC which must include: uniform definitions, description of coverage, limitations, cost sharing, renewability information, coverage examples, whether the plan is minimum essential coverage, disclaimer, contact information, internet addresses with information on network providers, formulary and uniform glossary, premiums
- Uniform glossary (definition)
- Coverage examples

Proposed Regulation – SBC

What are coverage examples?

- Plans must produce examples that show level of coverage and cost sharing that would be required for each SBC
- 3 examples now – breast cancer, pregnancy, diabetes
- HHS may include total of 6
- HHS to specify the information needed to create examples and will update information

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Summary of Benefits Guidance

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Overview of Discussion

- » Required format for the Summary of Benefits and Coverage (“SBC”)
- » When the SBC must be provided
- » How, *i.e.*, the manner in which the SBC must be provided
- » Advance notice of material modifications to SBC

Required Format

- » **Uniform format as prescribed by the agencies**
 - Specific form, completed in accordance with agency instructions
- » **Understandable by the average plan enrollee**
- » **No more than four double-sided pages**
- » **At least 12-point font**
- » **Stand-alone document**

Delivery of SBC from Issuers to Plans



» When?

- Generally, must be provided to the plan (or sponsor) at the following times:
 1. Upon application for coverage by the plan
 2. As soon as practicable following request by the plan, but in no event later than seven (7) days after such request

Note: ONLY applies to insurance, not where issuer acts solely as ASO

Delivery of SBC from Issuer to Plan



» When?

– Additional requirements

- If an SBC is provided upon request and the plan subsequently applies for coverage, an updated SBC must automatically be provided to the plan only if the information required to be in the SBC has changed
- If there is any change in the SBC-required information before coverage is offered, or before the first day of coverage, the plan must be provided an updated SBC by the date of offer, or first day of coverage, as applicable

– Regarding renewal

- A new SBC must be provided to the plan upon renewal or reissue
 - If written application is required, must provide SBC no later than date of application distribution
 - If renewal/reissue is automatic, SBC must be provided no later than 30 days prior to first day of new policy/plan year

Note: Comments are requested regarding what to regarding changed premiums

Delivery of SBCs from Issuer to Plan



» How?

- Must be delivered in either paper form (for free) or electronically (including email transmittal or internet posting on issuer’s website or at *www.healthcare.gov*)
- If electronic:
 - Must be “readily accessible” by the plan
 - Must provide in writing to plan upon request
 - If posted to internet, must notify plan by email or paper regarding availability for review

Note: Comments are requested regarding “readily accessible” and whether modifications are necessary to the proposed rules to facilitate electronic delivery of the SBC

Delivery from Plan to Participants/Beneficiaries

» Generally

– Who has the burden?

- Legal obligation rests with plan administrator as well as issuer to the extent the coverage is insured
 - Like COBRA in that appears to be joint liability; however, regulations make clear that timely delivery of the SBC by either plan administrator or issuer satisfies the disclosure obligation for both plan administrator and issuer
 - If the plan is self-insured, then legal liability rests with plan administrator (although a plan administrator could presumably contract with a third-party provider, such as the ASO, to deliver the SBC, it appears the legal liability would remain with the plan administrator)

Delivery from Plan to Participants/Beneficiaries

» When?

– Regarding initial enrollment

- Must be provided as part of any written application material that is distributed for initial enrollment
 - If the plan does not distribute such written application material, the SBC must be provided no later than the first day the participant or beneficiary is eligible to enroll
 - If there is any change in the SBC-required information before the first date of coverage, the plan must provide an updated SBC by first day of coverage
- Must be provided with respect to each “benefit package” offered for which the participant or beneficiary is eligible
- Must be provided to each participant and eligible beneficiary
 - Only one SBC need be sent to participant if all reside at same address
 - If, however, a beneficiary’s last known address (such as an adult child) is different, then must send to beneficiary at her last known address



Delivery from Plan to Participants/Beneficiaries

» When?

– Regarding renewal

- A new SBC must be provided by the plan upon reenrollment
 - If written application is required, must provide SBC no later than date of application distribution
 - If reenrollment is automatic, SBC must be provided no later than 30 days prior to first day of new plan year

– HIPAA special enrollees

- Must be provided with the SBC within seven (7) days of their request for special enrollment
 - It appears there is no obligation to provide other SBCs to HIPAA special enrollees



Delivery from Plan to Participants/Beneficiaries

» How?

- May be provided in paper form (for free) or electronically per specific rules
- If ERISA- or IRC-governed:
 - May provide electronically in accordance with DOL's existing e-delivery safe harbor (note: has limitations)
- For non-federal government plans:
 - May provide electronically if either:
 1. Substance of DOL rule is met, or
 2. If applicable state individual market rules are met



Delivery from Plan to Participants/Beneficiaries

» How?

- Generally, the same rules as apply for purposes of claims and appeals rules under PPACA. Specifically, where at least 10% of residents in a given county are only literate in the same non-English language:
 - Must provide interpretive services
 - Must provide written translations of the SBC upon request in certain non-English languages
 - Must disclose in English-version SBC the availability of language services in the relevant language



Note: Comments are requested regarding if, and how, to provide written translations of the SBC

Advance Notice of Material Modifications

- » If intend to materially modify the plan and doing so would affect the content of the SBC, then need to provide advance notification of the intended modification
 - ERISA’s definition of “material modification” applies for this purpose

- » Must provide notice by no later than 60 days prior to the effective date of the material modification
 - Can be satisfied either by providing a (i) separate notice describing the material modification, or (ii) an updated SBC reflecting the modification

- » Compliance with this requirement also satisfies ERISA requirement that plans provide a summary of material modification (“SMM”) to participants and beneficiaries
 - Note: This only works in one direction here; compliance with SMM requirements does not mean compliance with new SBC requirement

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