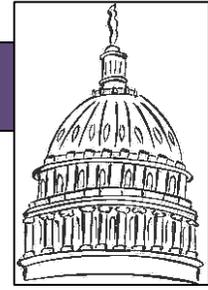




Health Care Reform Update



IMPORTANT NOTICE REGARDING HEALTHCARE REFORM Update #47 June, 2015

Final SBC Regulations Issued

The IRS, DOL, and HHS have issued final regulations addressing health care reform's summary of benefits and coverage (SBC) requirements. The final regulations, will apply to group health plans for plan years beginning on or after September 1, 2015. They generally track along with the December 2014, proposed regulations.

Here are highlights:

Providing the SBC at Application or at Enrollment: The final regulations adopt the proposed clarification that if an SBC was provided prior to a plan's application for insurance coverage or a participant's eligibility for enrollment, then an SBC is not required to be provided again automatically at the time of application or eligibility, so long as the required SBC information has not changed. The final regulations also clarify that an insurer need not provide a plan with a new SBC during negotiations if provided upon application.

Allocating Contractual Responsibility: The final regulations adopt the proposed provision treating an entity that has contracted with another party to provide SBCs as satisfying the SBC requirement if the entity;

1. monitors the other party's performance;
2. corrects any noncompliance determined to have occurred; and
3. if it does not have information necessary to correct the noncompliance, it communicates with participants and beneficiaries about the noncompliance and takes "significant" steps as soon as practicable to avoid future violations.

Plan sponsors seeking to rely on this provision should note the three requirements and the agencies' unwillingness, expressed in the preamble, to remove the obligation to monitor performance.]

Formalizing Prior FAQ Guidance: As under the proposed regulations, the final regulations incorporate previously issued FAQ guidance to exclude Medicare Advantage plans from the SBC requirement; permit a group health plan with multiple benefit packages to provide either a single or multiple SBCs; and allow the SBC to be provided electronically in connection with online enrollment or in response to an online request, however it must be provided in paper form if so requested.

Insurers Must Include Online Access to Insurance Documents: The final regulations clarify that insurers must include an Internet address where a copy of the actual individual coverage policy or group certificate of coverage is "easily available" to individuals shopping for coverage. For insured group coverage, because the actual certificate will not be available until the plan sponsor has negotiated the terms of coverage, insurers would post a sample group certificate of coverage for each product and make the actual certificate (once executed) available to the plan sponsor, participants, and beneficiaries via an Internet address.

Fine for Willful Violations. The final regulations adopt the proposed approaches for IRS and DOL enforcement of the statutory fine (\$1,000 per failure) for willful failure to provide the SBC.

Applicability Date: For group health plan enrollments and re-enrollments, the final regulations adopt the proposed applicability dates. They apply to open enrollment periods that begin on or after September 1, 2015, and to enrollments other than via open enrollment (e.g., newly eligible enrollees and special enrollees) on the first day of



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the first plan year that begins on or after September 1, 2015. For disclosures to plans, the final regulations apply to health insurers beginning on September 1, 2015.

The preamble to the final regulations explains (consistent with the agencies' March 2015 FAQ guidance;) that the agencies anticipate finalizing revisions to the SBC template, instructions, and uniform glossary by January 2016; the revised materials will apply to plan or policy years beginning on or after January 1, 2017 (including open enrollment periods that occur in the fall of 2016 for coverage beginning on or after January 1, 2017). The preamble also explains that, until the new template and associated documents are finalized and applicable, plans and insurers may continue to rely on the agencies' April 2013 FAQ guidance allowing the required statements about "minimum essential coverage" and "minimum value" to be provided in a cover letter or similar disclosure with the SBC instead of in the SBC itself.

EBIA Comment: The good news for plans with open enrollment periods just around the corner, is that the final regulations do not contain any surprises for plan sponsors. And, consistent with the proposed regulations and the agencies' stated purpose, they should make the SBC more useful to readers and perhaps less burdensome to provide. The missing pieces are the final revisions to the SBC template and related materials, i.e., the SBC remains something of a moving target for another year, while plan sponsors and insurers comply with the new final regulations but continue to use the old template and glossary.

Refer to the links below for more detailed information.

[Regulations](#)

[Fact Sheet](#)

[HHS News Release](#)

[March FAQ Guidance](#)

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