



. . . Health Care Reform 2011

When “4” Means “8” (or more) Summary of Health Benefits and Coverage Proposed Regulations

Background: PPACA mandated that a standard form of Summary of Benefits and Coverage (“SBC”) and a Uniform Glossary be provided by group health plans and insurers. PPACA mandated the standards for the SBC and the Glossary be developed by the HHS with input from the NAIC and other stakeholders.

For a list of acronyms, go to: <http://www.haynesbenefits.com/terms.aspx>. Our comments are in italics.

Key Takeaways: We want to alert you to three takeaways from the beginning:

- These are merely proposed regulations. The actual content and format of the SBC will likely change as comments are received and addressed, and as further regulations define key terms to be included in the Uniform Glossary, such as essential health benefits. In other words, this is a work in process.
- The SBC will not be required for January 1, 2012 plan years. However, under the proposed regulations, the SBC will be required for all plans, at least for special enrollments, by March 23, 2012.
- The regulations determine that the 4 page requirement in PPACA meant 4 pages front and back, or 8 pages for the SBC. The regulations also determine requirements for the Glossary which can be up to an additional 4 pages (2 pages front and back) for a total of up to 12 pages.

Proposed Regulations: On August 22, 2011, the SBC proposed regulations were published in the Federal Register with a sixty-day comment period and a proposed effective date of March 23, 2012. Therefore, final regulations will probably not be issued until sometime in December, 2011 or perhaps even later.

The SBC will apply to all health insurance plans, individual and group, and all employer sponsored plans, insured and self-insured, grandfathered and non-grandfathered. According to a DOL News Release, dated August 17, 2011, the SBC “will be a critical resource for more than 180 million health insurance consumers with private health insurance coverage.” This News Release also stated that the proposed rules “would enable consumers both to more easily understand the coverage they already have and, when purchasing new coverage, to make apples to apples comparisons of available options.”

Summary of Benefits and Coverage Contents: The proposed regulations include an SBC template which must be used to provide the following information:

- uniform definitions of standard insurance and medical terms;
- cost sharing provisions, including deductible, coinsurance and copayment obligations;
- renewability and continuation of coverage provisions;
- coverage facts in a form similar to a “nutrition facts” label for packaged food to illustrate the cost of three common benefits—(1) having a baby; (2) treating breast cancer; and (3) managing diabetes; (HHS may require plans and insurers to illustrate the cost of three additional common benefits);
- beginning January 1, 2014, whether the plan or policy provides “minimum essential coverage,” as defined and prescribed under PPACA;
- a statement that the plan document for a self-insured plan or the certificate of insurance for an insured plan or policy is the governing document (with a telephone number and internet address for obtaining a copy of such document);
- internet addresses for a list of network providers and prescription drug coverage formulary information; and
- premium (or cost of self-insured plan coverage) information.

The SBC template was drafted by the NAIC for insurers and will need to be modified for self-insured plans. The proposed regulations indicate that states may require additional disclosures by insurers.

Uniform Glossary: The Uniform Glossary which is in the solicitation of comments must be provided to plan participants and policyholders. The plan or issuer cannot edit this document to be consistent with the terms and definitions actually used in its plan document or insurance policy or contract. The plan or issuer may provide access to the Uniform Glossary by distributing it with the SBC or by providing an internet address where the Glossary may be reviewed and obtained. As noted above, the writers determined that the Glossary does not count toward the 4 page requirement.

When Must an SBC be Provided by a Group Health Plan:

- When written application materials for an enrollment are distributed, which must be by no later than the first day an employee is eligible to enroll in the plan;
- If there is a change in any required SBC information, a new SBC must be provided by no later than the first day of coverage;
- Within seven days of a request for special enrollment;
- When coverage is renewed if the plan or issuer requires participants or beneficiaries to renew in order to maintain coverage and, in any event, by no later than the date other renewal materials are distributed;
- Thirty days before an automatic renewal; and
- As soon as practicable and, in any event, within seven days after any request for an SBC by a participant or beneficiary.

Distribution of SBCs on March 23, 2012 to all participants and beneficiaries is not required. Rather, the SBC must be “available” on that date so it may be distributed, if necessary, such as to respond to a special enrollment request.

How Must an SBC be Provided: The SBC may be provided in either paper form or electronically.

Special Rules to Prevent Unnecessary Duplication:

- Either an insured plan or the issuer (but not both) must provide an SBC.
- If two or more participants reside at the same address, only one SBC needs to be sent to that address.
- If a plan offers multiple benefit packages, the plan or issuer is only required upon renewal to furnish information with respect to the plan in which the participant or beneficiary is enrolled. However, if a participant or beneficiary is eligible for other benefit packages and requests the other SBCs, they must be provided as soon as practicable, and in any event within seven days.

Advance Notice of Material Modifications: Any material modification of an SBC must be provided to enrollees at least 60 days prior to the date the modification will become effective, except for material modifications at the time of a renewal.

Potential Penalties: The potential penalties for an insurer or group health plan that willfully fails to provide the required SBC information is \$1,000 per participant for each failure under the PHSA; up to \$100 per day per individual for each day any plan, other than a governmental plan, fails to comply with a request for an SBC under the Internal Revenue Code; and up to \$110 per day by an order of a Federal court with respect to any plan that is subject to ERISA.

Request for Comments: The proposed regulations request comments about several issues, including the March 23, 2012 effective date for the initial availability of an SBC (which is referred to in the proposed regulations as the “availability date”).

Recommendation: We recommend you send a comment to one or all three agencies requesting a delay in the March 23, 2012 availability date to one year after the date the final SBC regulations are published in the Federal Register. We believe such a later availability date is consistent with Congressional intent. PPACA provided that the SBC standards would be developed by HHS by not later than 12 months after date of enactment, which we believe should be interpreted to mean when final regulations are issued, not proposed regulations.

The availability date was mandated to be 24 months after date of enactment, or 12 months after the standards were to be developed by HHS. A March 23, 2012 deadline, only a few months after final SBC regulations is unreasonable and should be extended. The 12 month implementation standard mandated by Congress should start running when final regulations are published.

Here are links to the Proposed Regulations and Solicitation of Comments, as published by the Federal Register on August 22, 2011: <http://www.regulations.gov/#!documentDetail;D=CMS-2011-0140-0002> and <http://www.regulations.gov/#!documentDetail;D=CMS-2011-0140-0001>. The comment addresses are at the beginning of each document. Please note that your comments will be a public document. You may submit comments anonymously.

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