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ERISA Group Benefits Alert

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Health Care Reform - Summary of Benefits and Coverage

One of the requirements under Health Care Reform is the preparation and distribution of a Summary of Benefits and Coverage ("SBC") along with a Uniform Glossary. The purpose of this requirement is to provide consistency in the method in which the provisions of a health plan are presented so that participants and beneficiaries better understand their health coverage as well as any available coverage options. The SBC requirements generally go into effect on September 23, 2012.

Final regulations have been issued with respect to the SBC. Generally, the SBC disclosure requirements are applicable to most employer plans that provide medical coverage. However, retiree only plans and plans providing HIPAA excepted benefits (e.g., stand alone vision and dental and many health FSAs) are not subject to the SBC requirements. The SBC is a new requirement and does not replace the requirement to provide Summary Plan Descriptions (SPDs). The following paragraphs summarize the SBC requirements:

SBC Characteristics and Criteria

Under the final regulations the SBC must be in a uniform format, cannot exceed four double-sided pages in length, and must not include print smaller than 12-point font. The final regulations set forth 12 required elements that must be included in the SBC:

1. Uniform standard definitions of insurance terms and medical terms so that consumers may compare health coverage and understand the terms of (or exceptions to) their coverage;
2. A description of the coverage, including cost sharing requirements such as deductibles, coinsurance, and copayments;

3. Information regarding any exceptions, reductions, or limitations of the coverage;
4. The cost sharing provisions of the coverage, including deductible, coinsurance, and copayment obligations;
5. The renewability and continuation of coverage;
6. Examples illustrating benefits provided under the plan or coverage for common benefit scenarios and related cost sharing based on recognized clinical practice guidelines;
7. A statement about whether the plan provides minimum essential coverage and whether the plan's or coverage's share of the total allowed cost of benefits provided under the plan or coverage meets applicable requirements;
8. A statement that the SBC is only a summary and that the plan document, policy, or certificate of insurance should be consulted to determine the governing contractual provisions of the coverage;
9. A contact number to call with questions and an internet web address where a copy of the actual individual coverage policy or group certificate of coverage can be reviewed and obtained;
10. For plans and insurers that maintain one or more networks of providers, an internet address (or similar contact information) for obtaining a list of the network providers;
11. For plans and insurers that maintain a prescription drug formulary, an internet address where an individual may find more information about the prescription drug coverage under the plan or coverage; and
12. An internet address where an individual may review and obtain the Uniform Glossary.

Party responsible for providing SBC

In the case of a fully insured plan, either the insurance carrier or the sponsor must provide the SBC to participants and beneficiaries. The plan administrator of a self-insured plan must provide the SBC to plan participants and beneficiaries. Although the plan administrator or insurer must provide the SBC to plan participants and beneficiaries, no enforcement action will be taken on the plan administrator or insurer if another party assumes the responsibility of providing the SBC under a binding contract. It should be noted that in any event, the employer will need to assist in compliance with the SBC requirements by identifying non-enrolled beneficiaries. Further, the plan administrator must monitor the distribution of the SBC in order to avoid a lapse.

SBC distribution requirements

The SBC must be provided to participants and beneficiaries at the following times:

Initial Enrollment - Effective for the first plan year beginning on or after September 23, 2012, the final regulations require that a SBC be provided to participants and beneficiaries at the time of their initial enrollment. The SBC must be provided as part of any written application materials that are distributed by the plan or issuer for enrollment.

Open Enrollment - Effective for the first open enrollment beginning on or after September 23, 2012, a SBC must be provided to participants and beneficiaries.

First Day of Coverage - If there is any change to the information required to be in the SBC (as described above) between the application for coverage and the first day of coverage, the plan administrator or insurer must provide a current SBC to the participant or beneficiary no later than the first day of coverage.

At Special Enrollment - Effective for the first plan year beginning on or after September 23, 2012, the final regulations provide that special enrollees must be provided the SBC no later than when a summary plan description is required to be provided, which is 90 days after enrollment.

Upon Request - Effective for the first plan year beginning on or after September 23, 2012, the SBC must be provided at any time that it is requested, including prior to the participant or beneficiary submitting an application for coverage.

Penalty for failure to provide SBC

The final regulations include a penalty of up to \$1,000 per failure (per participant) for the "willful" failure to provide the SBC. In addition, plan sponsors are subject to excise taxes of \$100 per day with respect to each individual to whom the failure relates.

Uniform Glossary

The final regulations require that a Uniform Glossary be provided along with the SBC. A Uniform Glossary is required to include standard uniform definitions of terms commonly used in health insurance coverage. A Uniform Glossary has been prepared by the Department of Health and Human Services and is posted on the Department of Labor website at <http://www.dol.gov/ebsa/pdf/SBCUniformGlossary.pdf>.



Please note that this *Benefits Alert* only highlights the most significant changes in the law. The details of these changes are complex and beyond the scope of this Alert. We look forward to discussing these changes and how they may impact your plans with you. Please do not hesitate to contact any of the following members of our Employee Benefits and Executive Compensation Practice if you have any questions or if you would like additional information.



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