HAYNES BENEFITS GUIDE TO SURVIVE

. . . Health Care Reform

Final Summaries of Health Benefits and Coverage Guidance

Final regulations and frequently asked questions (FAQs) have recently been issued with respect to Summaries of Benefits and Coverage ("SBC") for insured and self insured health plans under the Affordable Care Act. This update will describe some of the guidance that has been provided.

Background. The core requirements have not changed. In order to provide uniform information for consumers to compare health plan options, a prescribed four page (double sided) summary must be provided for each benefit package. A template is provided in the final regulations for this purpose. In addition a uniform glossary must be provided. The glossary has been prescribed by the HHS, Labor and the Treasury Departments and cannot be changed.

Benefit Package; Employee Premiums. A separate SBC needs to be provided for each "benefit package." However, the FAQ clarifies that each premium payment tier is not a "benefit package". Therefore, the premium amounts employees must pay for each tier of coverage in a benefit package may be included in a single SBC.

Different levels of deductibles, copayments and coinsurance may be included in a single SBC.

A major medical plan with add-ons, such as a health FSA and/or a health reimbursement account (HRA), and/or a health savings account (HSA) and/or a wellness program may also be described in a single SBC.

Effective Date; Timing Requirements. For either an insured or a self-insured health plan, that has an annual open enrollment period, the effective date of the initial SBC is the first day of the first open enrollment period that begins on or after September 23, 2012. If the plan does not have an annual open enrollment period, the initial SBC must be provided by the first day of the first plan year that begins on or after September 23, 2012.

For a special enrollment, the SBC must be furnished to the enrollee within 90 days after the special enrollment date pursuant to the same rules with respect to when summary plan descriptions must be provided to new participants.

Midyear material modifications to a plan must be communicated at least 60 days before the effective date of the changes.

Finally, an SBC must be provided upon request as soon as reasonably practicable and within at least seven *business* days after the request (not calendar days). The FAQ clarifies that this seven day deadline is based on when the SBC is sent, not when it is received.

Content and Delivery. The SBC does not need to be a standalone document, it can, for example, be included in the plan's summary plan description, provided the template is used and the SBC is prominently displayed at the beginning of the summary plan description.

An insured plan may distribute the SBC provided by the insurance company.

The SBC may be delivered electronically or in paper form in accordance with ERISA requirements. This means that, unless the employee regularly uses a computer as a part of his or her job, the employee must affirmatively consent to an electronic delivery. For newly eligible employees or beneficiaries, the plan can provide information about the availability of the SBC and glossary either electronically or in paper form (for example, by a postcard).

The required examples of benefits in SBCs are (a) having a baby (normal delivery) and (b) type II diabetes. Eventually up to six benefit examples may be required.

A grandfathered plan notice does not need to be included in the SBC.

Penalties for Non compliance. A plan administrator or health insurance issuer who willfully fails to provide a SBC is subject to a penalty of $1,000 per enrollee for each failure. The Labor Department and the Internal Revenue Service have the ability to assess additional penalties.

The HHS, Labor and Treasury Departments in recently published FAQs state that their "basic approach to implementation of the SBC requirement during the first year of applicability is compliance assistance and they will not impose penalties on plans and issuers who are working diligently and in good faith to provide the required SBC disclosure consistent with the final regulations."

Comment: *The Affordable Care Act required SBC guidance be provided by March 23, 2011 with the initial SBCs provided by issuers and plans by March 23, 2012. The final regulations were published on February 14, 2012, almost two years after the Affordable Care Act was enacted with a compliance deadline for health insurance issuers and some plans of September 23, 2012 (or about seven months later). The American Benefits Council contends that an 18-month compliance period would be more appropriate. We concur, but do not expect the September 23, 2012, compliance date to be extended.*

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Dated: May 17, 2012