ISLER DARE RAY RADCLIFFE & CONNOLLY, P.C.

EMPLOYEE BENEFITS UPDATE

April 2012

Helpful Tips for New Summaries of Benefits and Coverage Required Under Your Group Health Plan

Executive Summary

Later this year, each group health plan will need to provide participants with two new documents—a "Summary of Benefits and Coverage" and a "Uniform Glossary"—which are designed to help individuals better understand their health coverage options. Recently, the government issued helpful new guidance (summarized below), which signals some flexibility on the part of the government and which is intended to make the design and implementation of these new disclosure tools as efficient as possible.

What You Should Do

Work with your HR and Benefits team, brokers, consultants, health plan insurers, and plan administrators to pull together the new Summaries of Benefits and Coverage for your health plans in a way that meets the government's model forms and new guidance, so that you will be ready for open enrollment later this year. If you have a fully-insured plan, the responsibility to provide the SBC falls on your health insurance issuer, but if you have a self-insured health plan, the responsibility falls on you, as plan sponsor and administrator.

As previously described in our February 2012 Employee Benefits Update, located at the following link (http://www.islerdare.com/documents/HealthPlansFeb2012.pdf), group health plans will be required to provide all participants, later this year, with a four-page Summary of Benefits and Coverage (the "SBC") and Uniform Glossary of commonly-used terms, in order to help individuals better understand their health coverage and enable them to compare coverage options. The SBC is different from a plan's Summary Plan Description, which must continue to be provided.

The government has issued new guidance, which provides helpful information about this new disclosure obligations and generally provides health plan sponsors with some added flexibility. This new guidance is timely, because HR professionals and consultants alike will be using the late spring and early summer months to fine-tune their health plan design and open enrollment process for 2013.

Some of the key elements of this new guidance can be summarized as follows:

Even though the SBC does not completely replace the Summary Plan Description (SPD), can it nevertheless cross-reference the SPD or other plan documents?

Yes, with certain limits. Although an SBC cannot substitute a reference to the SPD or other plan documents for any of the 12 content requirements that it is required to include, it can refer to specified pages or portions of the SPD in order to supplement or elaborate upon that information. In addition, an SBC may include a reference to the SPD at the bottom of the SBC (in the "footer"), by using language similar to the following:

> *"Questions: Call 1-xxx-xxx-xxxx or visit us as www.companysite.com, for more information, including a copy of your plan's summary plan description."*

Since the SBC and Uniform Glossary are new disclosure requirements, do any special rules or transitional grace periods apply for the first year?

Yes. The government has advised that for the first year of applicability (beginning September 23, 2012), no penalties will be imposed on plans and issuers if they are working diligently and in good faith to provide SBC content information, in an appearance that is consistent with the final regulations.

Do separate SBCs have to be provided for each level of coverage and benefit option?

No. Plans may combine information in one SBC for different coverage tiers (such as self-only coverage; employee plus one coverage; family coverage, etc.), and information for different cost-sharing options (such as levels of deductibles, copayments, and coinsurance), provided that the appearance is understandable and any examples clearly note the assumptions that were used in creating them.

SBCs can also use generic terms, such as "Standard Option" or "High Option", and can offer information about health flexible spending arrangements, health reimbursement arrangements, health savings accounts, or wellness programs that could affect an individual's cost-sharing.

Furthermore, SBCs can add premium information, if desired, and/or information about whether the plan is a "grandfathered plan" from some of the requirements under the Federal health reform law, but these additional elements should be added at the end of the SBC. Plan sponsors may wish to exercise caution about adding this information—especially regarding premiums—since new SBCs would have to be provided if this changes.

Can we provide the SBC electronically?

Yes.

For currently enrolled participants, an SBC can be provided electronically, but only to those employees who have regular access to company e-mail as an integral part of their job duties or who opt to receive electronic delivery.

For individuals who are eligible, but not yet enrolled in your health plan, an SBC can be provided electronically if the following three requirements are satisfied:

- The format is readily accessible (in html, MS word or excel format);
- The SBC is provided in paper form, free of charge and upon request; and
- The SBC is provided via an internet posting, and the individual has been advised of this through an e-card or e-postcard. For this purpose, the government has provided model language, which can be tailored and modified, as appropriate, for your plan:

Model E-Card: Availability of Summary Health Information

As an employee, the health benefits available to you represent a significant component of your compensation package. They also provide important protection for you and your family in the case of illness or injury.

Your plan offers a series of health coverage options. Choosing a health coverage option is an important decision. To help you make an informed choice, your plan makes available a Summary of Benefits and Coverage (SBC), which summarizes important information about any health coverage option in a standard format, to help you compare across options.

The SBC is available on the web at www.companyintranet.com. A paper copy is also available, free of charge, by calling 1-xxx-xxx-xxxx (a toll-free number).

Do SBCs have to be offered in other languages?

Yes, if 10% or more of the population in a county where the SBC is being provided is literate only in a non-English language, then the SBC (like explanations of benefit issued by your health plan) must be translated. Furthermore, the English version of the SBC must include a statement in the non-English language clearly indicating how to access the language services provided by the plan. Sample language for this statement is available on the model notice of adverse benefit determinations, which can be found at http://www.dol.gov/ebsa/IABDModelNotice2.doc; current county-by-county data can be accessed at http://www.cciio.cms.gov/resources/factsheets/clas-data.html.

Who gets the SBC, and when do they get it?

Who	*When*
Current plan participants (including COBRA recipients), and current employees who are eligible to enroll in the plan *Note: Providing the SBC to the plan participant will also satisfy the requirement to provide the SBC to the participant's enrolled dependents*	**Initial notice:** • By the first day of the first open enrollment period that begins on or after 9/23/2012. **Upon renewal/open enrollment:** • If a plan requires participants to actively enroll or re-enroll, or provides them with an opportunity to change coverage options during open enrollment season, the SBC must be distributed with the open enrollment materials. • If there is no requirement to re-enroll because of an "evergreen" election, and no opportunity to change coverage options, then renewal is considered to be automatic and the SBC must be provided no more than 30 days before the first day of the new plan or policy year. **Upon changes to information:** • If there is any change in the information required to be provided in the SBC that was distributed upon application/renewal (or before the first day of coverage), the plan must provide an updated, current SBC no later than the first day of coverage.
New hires/newly-eligible participants (Effective as of the first day of the first plan year that begins after 9/23/2012)	**Upon application:** • If a plan distributes application or enrollment materials (either in paper form or through a website or email), then the SBC must be provided at that time. • If there are no written enrollment materials, the SBC must be provided no later than the 1st day on which the participant is eligible to enroll in coverage.
Special enrollees (Effective as of the first day of the first plan year that begins after 9/23/2012)	When the SPD is provided, which must occur within 90 days after eligibility for enrollment.

In addition, upon request for an SBC or summary information about health coverage, the SBC must be sent out as soon as practicable, but no later than 7 business days, following receipt of the request.

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If you have any questions about this new guidance, about the requirement to provide SBCs for your group health plan options, or about your open enrollment process, please let me know.

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