WILLCOX SAVAGE

New Summary of Benefits Coverage for employer health plans required on or after September 23, 2012

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If you are the sponsor of a group health plan, you must provide a standardized, easy-to-understand summary of benefits and coverage (SBC) for your plan and a uniform glossary of coverage terms on the first day of the first open enrollment period that begins on or after September 23, 2012 for participants and beneficiaries who enroll through an open enrollment period. Participants and beneficiaries who are newly eligible for coverage and special enrollees must receive an SBC on the first day of the first plan year that begins on or after September 23, 2012.

The SBC requirement applies to both insured and self-insured plans regardless of grandfathered plan status. The plan administrator (typically, the sponsoring employer) is responsible for providing the SBC. In the case of an insured plan, however, the insurer is equally responsible. Moreover, if an insurer provides a timely and accurate SBC, the plan administrator is not required to do so. In addition, an SBC must be provided for stand-alone health reimbursement arrangements, as well as "mini-med" plans that have received a waiver from the prohibition on annual benefit limitations. The only plans exempt from providing an SBC are stand-alone dental and vision plans and most flexible spending arrangements.

A group health plan must provide an SBC to a participant or beneficiary as part of any written enrollment materials. If there are written enrollment materials provided, an SBC must be provided no later than the first day on which the participant or beneficiary is eligible to enroll. Special enrollees must be provided with an SBC no later than 90 days from enrollment. Also, an SBC must be provided upon request no later than seven business day following receipt of the request. If a plan requires participants or beneficiaries to renew in order to maintain coverage, the plan must provide an SBC when the coverage is renewed.

Under the final guidance, some of the requirements with which an SBC must comply are:

- It must be presented in a uniform format, cannot exceed four double-sided pages in length and must not include print smaller than 12-point font;

- It must be provided to participants and beneficiaries, but a single SBC can be provided to a family unless any beneficiaries are known to reside at a different address;

- It does not have to include premium or cost coverage information, and statements whether the plan provides minimum essential coverage and whether the plan's share of the total allowed costs provided under the plan meets applicable minimum value requirements are not required until January 1, 2014;

- It can be provided either as a stand-alone document or in combination with other summary materials, if the SBC information is intact and prominently displayed at the beginning of such materials (such as immediately after the table of contents in a summary plan description);

- It can be provided electronically to participants and beneficiaries who are already covered under the group health plan, if it meets the Department of Labor electronic disclosure safe-harbor. Participants and beneficiaries who are eligible but not enrolled in coverage can be provided with an SBC electronically if the format is readily accessible and a paper copy is provided free of charge upon request. If the SBC is posted on the Internet, the participants and beneficiaries must

be informed through a postcard or e-mail that the document is available on the Internet, provide the Internet address, and that the SBC is available in paper form upon request;

- It must include contact information for questions and obtaining a copy of the plan document. If the plan maintains one or more networks of providers, an Internet address must be provided for obtaining the list of providers;

- It must include a statement that the SBC is only a summary and that the plan document should be consulted to determine the coverage provision;

- It must provide a description of the coverage provided, including cost sharing for each category of benefits; the exceptions, reductions, and limitations of the coverage; the cost sharing provisions of the coverage, including deductible, coinsurance, and copayment obligations; the renewability and continuation of coverage provisions;

- It must be provided in a culturally and linguistically appropriate manner.

To the extent a plan's terms that are required to be described in the SBC template cannot reasonably be described in a manner consistent with the template and instructions, the plan must accurately describe the relevant plan terms while using its best efforts to do so in a manner that is still consistent with the instructions and template format as reasonably possible.

A group health plan that willfully fails to provide an SBC that complies with the final guidance will be subject to a fine of not more than $1,000 for each participant or beneficiary. Plan administrators should therefore take immediate steps to prepare appropriate SBCs well in advance of the upcoming open enrollment season.

The DOL has published instructions, templates and related materials on its website at http://www.dol.gov/ebsa/.

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