

October 21, 2011

To: Department of Labor; RIN 1210-AB52; via email at E-OHPSCA2715.EBSA@dol.gov

Re: Summary of Benefits and Coverage and the Uniform Glossary

We are a third party administrator of self-funded group medical and dental plans. We are writing these comments from that point of view.

Dear Department of Labor,

PPACA requirements are putting a significant strain on the benefits industry and the current March 23, 2012 deadline is fast approaching. With several key issues unresolved, we are requesting a delay in the effective date of the Summary of Benefits and Coverage (“SBC”) requirement for at least a year, and then have it applicable on the first day of the plan year following the effective date. Below are some of the key issues outstanding.

1. It appears that the proposed SBC template was created from the fully-insured point of view, but the vast majority of US health plans are self-funded. This is understandable since NAIC works with state insurance departments in their management of the fully-insured health marketplace, so its approach envisions fully-insured plans. As you know, under ERISA’s preemption provisions, state insurance departments generally do not have authority over self-funded welfare benefit plans.
2. The terminology used in self-funded programs does not usually coincide with that used by insurance carriers in their fully-insured policies of insurance. For example, the following terms could be replaced in the SBC to be more user friendly for self-funded plans:

<u>Replace:</u>	<u>with the following:</u>
Policy Period	Benefit Plan Year
Policy	Summary Plan Description and/or Plan Document
Insurer	Plan Administrator and/or Employer
Health Insurance	Health Coverage
Premium	Employee Contribution

Under Important Questions: Is there an overall annual limit on what the insurer pays? – “Insurer” should be “Plan”

3. The template is not user friendly for the self-funded plan sponsor nor for third party administrators that will be managing the process for their employer clients. Using the template in the suggested version from the NAIC could

lead persons covered under a self-funded plan to believe that the plan they are looking at is a fully-insured program, which it would not be. Providing a self-funded version of the SBC will help dissuade them of such a belief. Keeping this clarification has been a priority of NAIC for years, so proceeding with the template would be a step backward.

4. A lot of employee time will be required to create these SBCs. In the self-funded market each plan has customized features. They are not the standard plans used by many insurance carriers. Each SBC will have to be individually crafted at a significant expense to the self-funded employer. If an employer has an indemnity plan, PPO plan, and a High Deductible HSA compatible plan, with 4 tiers of coverage each (single, single and spouse, single and children, and family) the number of separate SBCs multiplies quickly.

Also, if a service provider/TPA is delegated to produce the SBC for the employers that are its clients, and since each service provider/TPA may not have a single customer service line for all plans, for self-funded plans, it would be much less cumbersome and time consuming to be able to put a generic comment referring the claimant to their Benefit Identification Card for contact information instead of having to put the individual phone number for each employer.

Service providers/TPAs normally do not have knowledge of employee contribution amounts that employers require for coverage. If the service provider/TPA has been hired to coordinate the development of the SBC for the plan sponsor, it would be easier if a generic statement could be put on the SBC stating that the employee contributions can be obtained from the employer under separate cover. Or they can be handed out at the same time with the SBC.

5. Clarification is needed on what a “beneficiary” is regarding distribution of the SBCs on page 52445 of the August 22, 2011 Federal Register. Is this a COBRA beneficiary or does this mean that all dependents of the employee are required to receive a copy of the SBC? If all dependents are required to receive the SBC, this would be an extreme burden on resources for plans/TPAs. Most, if not all, plan sponsors are not going to have the address(es) of dependents available to them as a normal course of business. Also, there is no reason to send SBCs to the dependent children as they do not make decisions in benefit plan selection.
6. Clarification is also needed on who is ultimately responsible under the rule for production and distribution of the SBC. Our view is that the production of the SBC could be delegated to service providers/TPAs with the ultimate responsibility of content falling on the plan sponsor as they are the fiduciary in most cases. Distribution should be the sole responsibility of the plan sponsor although they may delegate this to the service providers/TPAs.

7. On pages 52449-52450 of the Federal Register, it states that the SBC must be provided in a culturally and linguistically appropriate manner using the same method as the new appeal rules require (census data). This is extremely cumbersome for self-funded plans. For example, if a self-funded plan has one participant in an area that requires the model notice to be on the SBC, that notice would need to be printed out separately and sent individually to that one participant. Since the SBC must be posted on a website and this language is required for this one participant, that language would be required to be posted on the SBC that is posted on the website. Adding that statement on the SBC that is posted on the website opens up the translation services to the entire population of the plan and not just that one participant which could prove to be extremely costly to the plan sponsor. It would be much more efficient and less costly to allow self-funded plans to use the plan-specific analysis that is normally allowed under ERISA.
8. Historically, plan sponsors are not timely in providing benefit changes to service providers/TPAs. If the service provider/TPA has been delegated to produce the SBC for the plan sponsor, they may not be given enough time to make the changes and get the SBC back to the plan sponsor in time for distribution to participants. 30 days may be more feasible.

We thank you for your consideration to give us the time and opportunity to improve compliance with the changes that fit self-funded benefit plans and we look forward to a positive response to our suggestions.

If you have questions please contact Mary Beth Hachey at the address above or at Marybeth.Hachey@ebsrmsco.com or (315) 448-9236.

Sincerely,

Mary Beth Hachey
Paralegal/Technical Writer