



AMERICAN BENEFITS
COUNCIL

March 2, 2015

Submitted electronically via <http://www.regulations.gov>

Office of Health Plan Standards and Compliance Assistance
Employee Benefits Security Administration
Room N-5653
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210
Attention: Summary of Benefits and Coverage

Re: Proposed Rule - Summary of Benefits and Coverage

Dear Sir or Madam:

We write on behalf of the American Benefits Council (“Council”) to provide comment in connection with the proposed rule published in the Federal Register on December 30, 2014, by the Departments of Labor, Health and Human Services, and the Treasury (“Departments”) entitled “Summary of Benefits and Coverage and Uniform Glossary” (“Proposed Rule”).

The Council is a public policy organization representing principally Fortune 500 companies and other organizations that assist employers of all sizes in providing benefits to employees. Collectively, the Council’s members either sponsor directly or provide services to health and retirement plans that cover more than 100 million Americans.

The Council appreciates the opportunity to provide comment with respect to the Proposed Rule.

APPLICABILITY DATE OF NEW SBC REQUIREMENTS

The Proposed Rule provides that the changes therein would apply beginning the first day of the first open enrollment period beginning on or after September 1, 2015 for participants and beneficiaries who enroll or re-enroll in group health coverage through open enrollment, and on the first day of the first plan year beginning on or after September 1, 2015, for participants and beneficiaries who enroll in group health coverage other than through open enrollment.

The applicability date in the Proposed Rule does not allow plans and issuers sufficient time to update their internal processes to comply with the Proposed Rule's new requirements or changes in the SBC template. To allow employers and issuers sufficient time to ensure they are in compliance with final rulemaking, the Council encourages the Departments to change the effective date such that the new SBC requirements will apply to the open enrollment period related to coverage beginning on or after January 1, 2017, and on the first day of the first plan year beginning on or after January 1, 2017, for participants and beneficiaries who enroll in group health plan coverage other than through open enrollment.

SAFE HARBOR FOR GROUP HEALTH PLANS WITH TWO OR MORE INSURANCE PRODUCTS

The Departments, through frequently asked questions ("FAQs") issued on May 11, 2012, promulgated an enforcement safe harbor for a group health plan that uses two or more insurance products provided by separate issuers with respect to a single group health plan.

The safe harbor provides that the group health plan administrator may provide a single summary of benefits and coverage ("SBC") or multiple partial SBCs that, together, provide all the relevant information to meet the SBC content requirements. The safe harbor also provides that the plan administrator should take steps to indicate that the plan provides coverage using multiple insurance products and that individuals may contact the plan administrator for more information. The Departments extended this enforcement safe harbor indefinitely through FAQs issued on May 2, 2014.

The Council recommends that the safe harbor be codified in final regulations.

REQUIREMENTS APPLICABLE TO EMPLOYERS THAT CONTRACT WITH THIRD PARTIES TO PROVIDE SBCs

The Proposed Rule permits an entity required to provide an SBC to an individual (such as an employer who sponsors a self-funded plan) to contract with another party to provide the SBC if the following requirements are satisfied:

1. The entity monitors performance under the contract;
2. If the entity has knowledge that the SBC is not being provided in a manner that satisfies the SBC requirements and the entity has all information necessary to correct the noncompliance, the entity corrects the noncompliance as soon as practicable; and
3. If the entity has knowledge that the SBC is not being provided in a manner that satisfies the SBC requirements and the entity does not have all information necessary to correct the noncompliance, the entity communicates with participants and beneficiaries who are affected by the noncompliance regarding the noncompliance, and begins taking significant steps as soon as practicable to avoid future violations.

The Council is concerned that these requirements are unnecessary and may be unduly burdensome for parties contracting to provide SBCs. If an entity that is subject to the SBC requirements chooses to enter into a contract with a third party to facilitate or fulfill its SBC obligations, then it does so with full awareness of what the third party must do in order for the SBC requirement to be satisfied. As a result, a subject entity develops the contract with a third party with those obligations in mind. Subject entities are not under the impression that they are absolved from liability after entering into a contract with a third party. The potential liability spurs a subject entity to monitor contract performance on an ongoing basis to ensure that third parties are performing in accordance with not only contract terms but also SBC rules. Additional regulation of such arrangements is simply not necessary.

We also note that, as stated in the Proposed Rule, the selection and monitoring of a service provider for a group health plan is a fiduciary act subject to certain requirements under ERISA. As such, subject entities are already required to abide by a significant standard in selecting and monitoring a third party to carry out the SBC requirements.

For the above reasons, the Council strongly urges the Departments to not impose any performance monitoring requirements in final rulemaking.

PROPOSED SHORTER SBC TEMPLATE

The new proposed SBC template published contemporaneously with the Proposed Rule eliminates certain information from the SBC and is two-and-a-half double-sided pages in length rather than four double-sided pages.

The Council supports the simplification of the SBC template. The removal of content not required under the statute and the reduction in the length of the SBC to two-and-a-

half double-sided pages reduce administrative cost and burden for employers. The Council recommends that the Departments retain the proposed simplified, shorter SBC template when the final rule is issued.

SBCs AS STAND-ALONE DOCUMENTS OR IN COMBINATION WITH OTHER SUMMARY MATERIALS

The preamble to the Proposed Rule reiterates prior guidance that SBCs provided in connection with group health plan coverage may be provided either as stand-alone documents or in combination with other summary materials, if the SBC information is intact and prominently displayed at the beginning of the materials. The Proposed Rule does not make changes to these requirements.

Such flexibility in how plans may provide SBCs is helpful for plans and issuers, as coordination with other mailings will help to reduce administrative burden and allow cost efficiencies. The Council supports the existing guidance permitting this flexibility and appreciates that changes are not suggested in the Proposed Rule.

REFERENCES TO SPDs OR OTHER DOCUMENTS

The Proposed Rule reiterates the Departments' position that SBCs provided in connection with a group health plan may include a reference to the summary plan description ("SPD") or other documents, such as enrollment materials or benefit plan comparisons.

The Council believes that allowing such cross-references helps to ensure that individuals have broader access to important information about their coverage options. SPDs and other coverage-related materials often provide greater detail about coverage offered under group health plans. The Council supports continuing to allow employers to include in SBCs a cross-reference to other helpful documents such as SPDs and enrollment materials.

REQUIREMENTS TO POST PLAN DOCUMENTS ONLINE

In addition to satisfying existing distribution requirements with respect to SBCs, the Proposed Rule also would require issuers to include on the SBC a web address where a copy of the actual policy or certificate of coverage can be reviewed and obtained. The Proposed Rule also invites comment on requiring self-insured plans to post underlying plan documents on the Internet.

The Council recommends that such a requirement should not be extended to self-

insured plans. Self-insured plans are subject to several disclosure requirements under ERISA. In particular, self-insured plans are required to provide SPDs on a periodic basis, upon enrollment, and upon request. Similarly, self-insured plans are required to provide plan documents to individuals upon request. In most instances, such documents are provided as hard copies or through online disclosure that is subject to ERISA's electronic delivery requirements. Mandating self-insured plans to post such documents online and provide a web address where these documents can be reviewed and obtained would add an extra layer of disclosure that is unnecessary. In the group health plan context, individuals have well-protected rights to obtain information relating to coverage. As such, the Council believes that mandating self-funded plans to also post underlying plan information online is redundant and burdensome.

THE FINAL RULE SHOULD REITERATE THAT ERISA'S ELECTRONIC DELIVERY SAFE HARBOR APPLIES TO SBCs

The Proposed Rule reiterates that, for individuals already covered under a group health plan, the SBC may be provided electronically if ERISA's electronic disclosure safe harbor requirements are met. For individuals who are eligible for, but not enrolled in, coverage, the Proposed Rule reiterates that the SBC may be provided electronically if a paper copy is readily accessible and available free of charge upon request.

The Council's employer members have a substantial interest in using electronic delivery to the extent permitted. As stated in prior comments, the Council strongly supports improved electronic delivery rules that will enable employers to better utilize modern technologies to facilitate paperless and more cost-effective notice and disclosure, which are often preferred by employees for receiving plan health plan information. Accordingly, while the Council continues to urge adoption of more flexible electronic delivery rules, in the absence of further improvements, we certainly support a final rule that allows for the continued use of electronic delivery, at least as provided for in the Proposed Rule.

CLARIFICATION ON APPLICATION OF SBC REQUIREMENTS TO EAPs, HRAs, HSAs, AND FSAs

The Proposed Rule makes clear that the following arrangements are not subject to the SBC requirements:

- employee assistance programs ("EAPs") that qualify as excepted benefits;
- health flexible spending arrangements ("FSAs") that qualify as excepted benefits;
- health reimbursement arrangements ("HRAs") that are integrated with other

major medical coverage under a group health plan; and

- health savings accounts (“HSAs”).

Although the Departments had previously issued piecemeal guidance regarding the applicability of market reforms, including the SBC requirements, to such arrangements, the Council very much appreciates the clear description in the Proposed Rule as to the treatment of such arrangements for purposes of the SBC requirements.

GOOD FAITH SAFE HARBOR FOR IMPLEMENTATION OF NEW CHANGES

Under existing guidance, the Departments have stated that penalties will not be imposed on plans and issuers that are working diligently and in good faith to provide the required SBC content in an appearance that is consistent with final regulations (FAQs About Affordable Care Act Implementation (Part XIX, Q8)). The Council requests that the Department reiterate this safe harbor in any final regulations, given that final regulations are requiring complex new content in the form of additional coverage examples, as well as other content and appearance changes.

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Thank you for considering these comments submitted in response to the Proposed Rule. If you have any questions or would like to discuss these comments further, please contact us at (202) 289-6700.

Sincerely,



Kathryn Wilber
Senior Counsel, Health Policy