



HEALTH CARE REFORM UPDATE

September 28, 2011

This update was written by Maria Robles Meyers, Health Law Advisors, PLLC, for the sole use of members of Advantage Health Plans Trust. It is intended to be informational and does not constitute legal advice regarding any specific situation.

PPACA's Uniform Summary of Benefits and Coverage Proposed Regulations Published

One of the requirements added by the Patient Protection and Affordable Care Act of 2010 ("PPACA") is that health plans must provide participants and beneficiaries a "four page" summary of the plan describing benefits and coverage ("SBC"). The intent is for the SBC to be in a format that is easy to understand and easy to use to compare different plans.

On August 22, 2011, the Departments of the U.S. Treasury (Treasury), Labor (DOL) and Health and Human Services (HHS) ("Agencies") jointly published proposed regulations (Regulations) that purport to define the standards for the uniform explanation of coverage. Administrators have been waiting for these Regulations to determine just what should be included in the "four page summary."

The Regulations provide a "template" for the SBC that is to be filled in and delivered to participants at various times. The template is accompanied by a "glossary" that defines the terms that participants should know. These items were prepared by the National Association of Insurance Commissioners (NAIC) and were apparently adopted by the Agencies without any changes to allow immediate release of the Regulations. The instructions are over 30 pages detailing how to complete the template, including canned responses that must be used as written. There is no room for tailored explanations. Presumably this is because the SBC is "presented in a culturally and linguistically appropriate manner and utilizes terminology understandable by the average plan enrollee."

While the concept is to allow participants to be able to make real comparisons of the various benefits, exclusions and limitations, the means to get there do not work well. The template and glossary were drafted by the NAIC.

The SBC must be provided on a very strict basis: at annual enrollments, at special enrollments, whenever changes are made mid-year, and the regulators added, when the participant requests it. Your human resources department will be responsible for delivering the SBCs on a timely basis. **Why does it matter to you?** Potential penalties for a failure to comply with the SBC requirements are severe and are imposed under each of the three agencies involved in PPACA:

- Under the Public Health Act, the fines are **up to \$1,000 for each willful failure** to distribute an SBC.
- Under the tax code, there is a self-reported excise tax applicable to group health plans under Section 4980D of the Internal Revenue Code that can be from \$100 per day up to a maximum of 10% of the cost paid by the employer during the prior year, for failure to meet group health plan requirements.
- Under ERISA, the Department of Labor has indicated that it will issue **separate enforcement penalty regulations** in the near future.

To help you understand the complexity of the SBC requirement, a very brief summary is attached.

The effective date for providing the SBC is March 23, 2012. The Agencies have requested comments to be provided on or before October 21, 2011. Please submit a comment requesting that the effective date be delayed until employers are able to obtain more information to be able to comply with the requirements. A sample letter that you may use to request a delayed effective date is also included. The letters you send will be available to the public.