



October 20, 2011

Office of Health Plan Standards and Compliance Assistance
Employee Benefits Security Administration (EBSA)
Room N-5653
U.S. Department of Labor (DOL)
200 Constitution Avenue NW, Washington, DC 20210
Attention: RIN 1210-AB52

Centers for Medicare & Medicaid Services (CMS)
Department of Health and Human Services (HHS)
Attention: CMS-9982-NC
P.O. Box 8016, Baltimore, MD 21244-1850

CC:PA:LPD:PR (REG-140038-10)
Room 5205
Internal Revenue Service (IRS)
P.O. Box 7604, Ben Franklin Station
Washington, DC 20044

Re: Comments on Notice of Proposed Rulemaking (NPRM) on Summary of Benefits and Coverage (SBC) and Uniform Glossary, issued on August 22, 2011

To Whom It May Concern:

Thank you for the opportunity to comment on the NPRM.

Based in Coldwater, Michigan, Infinisource, Inc. is a payroll and benefit administrator that provides administrative services related to payroll, flexible benefits (including Health FSAs, Health Reimbursement Arrangements [HRAs] and Health Savings Accounts [HSAs]), online benefits enrollment and eligibility, COBRA and HIPAA. Our client base numbers more than 15,000 employers nationwide.

The NPRM does an excellent job of providing guidance on the mechanics of issuing the SBC, as required under the Affordable Care Act (ACA). Accordingly, on behalf of our clients, Infinisource would like to provide the following comments and recommendations:

- 1. Clarify the application (if any) to Health FSAs, HRAs and HIPAA-excepted benefits.** Many of our clients offer flexible benefits like Health FSAs, HRAs and stand-alone dental and vision plans. The NPRM does not directly address whether these benefits are subject to the SBC requirement. Per the Interim Final Rule on Grandfathered Plans, issued on June 17, 2010, it could be argued that Health FSAs and all other HIPAA-excepted benefits are exempt from the SBC requirement. It remains unclear whether HRAs must comply, especially those that are stand-alone and not integrated with a major medical plan. In reviewing the SBC template, it would be

impracticable to complete the form for these types of benefits. For example, flexible benefits typically do not distinguish between participating and non-participating providers.

In addition, it is unclear whether you must factor in HRA or Health FSA coverage in completing the SBC template for a major medical plan. For example, if an HRA has a \$500 annual contribution, does that reduce the major medical plan's deductible by \$500? Again, in our view, it would be impracticable to require such coordination.

Therefore, Infinisource respectfully requests that HRAs, Health FSAs and HIPAA-excepted benefits be completely exempt from the SBC requirement.

- 2. Simplify the format of the SBC template.** The template has a long list of Common Medical Events that are not specifically required by the ACA. Many medical plans have detailed limitations and exceptions for these types of Events, much more than the space that is provided. In addition, the field for Excluded Services and Other Covered Services is only one line. The note says to check the policy for other services. It would seem to be more practicable simply to have the note without the required fields.

The coverage examples assume a uniform treatment of three types of expenses: having a baby, treating breast cancer and managing diabetes. It should be pointed out that two of the examples relate only to women, and if examples are to be used, they should be more common and less complicated than what is in the template. The reality is that any number of factors (e.g., in-network vs. out-of-network, varying fees for doctors and hospitals, severity of the condition) can cause the reimbursement amounts to vary widely.

In addition, the ACA explicitly states that the SBC shall be no more than four pages long. The ACA includes the Uniform Glossary in the definition of the SBC in §2715(b)(3) of the amended Public Health Service Act. The current templates are a total of 10 pages (six for the SBC and four for the Uniform Glossary). Even allowing for double-sided pages, this exceeds the statutory amount, especially if the required fields are properly completed and exceed the limited space in the templates.

Therefore, Infinisource respectfully requests that the SBC templates be simplified and condensed.

- 3. Provide a standard translation services notice instead of requiring translation of the complete SBC into a non-English language.** The Departments have requested comments on what it means to provide the SBC in a culturally and linguistically appropriate manner. The regulations suggest that plans would be required to provide full non-English translations if the participant resides in certain counties where non-English languages are prevalent. This places a significant burden on employers, especially those in the South, Southwest and West parts of the country. Currently, the only language the templates are written in is English, and the Departments have not indicated that they will provide full translations in Spanish, Chinese, Tagalog and Navajo.

Therefore, Infinisource respectfully requests that a better solution would be simply to require a one-paragraph notice – in the non-English language – that indicates where translation services are available, perhaps even by phone.

- 4. Make the Glossary of Coverage and Medical Terms more understandable.** This four-page document contains a large number of terms. Some of the terms are rarely used (e.g., durable medical equipment, habilitation services, skilled nursing care). Other terms would be well-known by the vast majority of participants (e.g., hospitalization, plan, premium). Some terms are not fully defined. For example, the definition of deductible does not take into account that many plans pay for pre-deductible coverage via co-payments. It would seem to make more sense to maintain a single document at a central web site (e.g., www.healthcare.gov) and simply refer SBC recipients to that web site.

Therefore, Infinisource respectfully requests that the Glossary be simplified, condensed and provided via a web site that is maintained by a government entity (e.g., CMS).

- 5. Allow employers the option of providing the SBC in the summary plan description (SPD) or other enrollment materials.** Nothing in the ACA prohibits a group health plan from providing the SBC in the SPD, and nothing requires it. Group health plans should have the flexibility of including the SBC as a part of the SPD as long as there is a prominent notice on the SPD's cover page or table of contents.

Because the timing of the SPD and SBC differ, group health plans should have the flexibility of sending updated SBCs to participants without the need for sending the full SPD. Group health plans should also have the flexibility of including the SBC with other plan enrollment materials.

Therefore, Infinisource respectfully requests that employers have maximum flexibility in integrating the SBC with the SPD and other enrollment materials.

- 6. Provide maximum flexibility related to delivery of the SBC.** The ACA is silent on how the SBC can be delivered. In the preamble, the departments estimate that at least 38 percent of all SBCs would be sent electronically. The rules for electronic delivery should be clarified for SBCs, and employers should have flexibility in providing this document electronically (e.g., e-mail transmissions, internal web site postings). In addition, group health plans should be able to satisfy the delivery requirement by providing a single SBC to the employee rather than having to mail a copy to each family member that participates in the group health plan. These delivery rules should clarify what documentation would be required to show proof of delivery.

Therefore, Infinisource respectfully requests that employers have maximum flexibility in delivering the SBC to participants.

- 7. Do not require that the SBC include information related to premiums.** While the ACA does require certain cost-sharing information (e.g., deductible, coinsurance and

co-payments), it does not explicitly require the SBC to include information related to the employer's or employee's share of premiums. Employees will already have access to this information via other enrollment materials, possibly even a Summary of Material Modifications (SMM) or insurance certificate/benefits summary. Requiring this information in the SBC as well – especially a break-down of employer and employee share for multiple coverage levels – will simply add to the complexity and length of the SBC.

Therefore, Infinisource respectfully requests that the SBCs should not require premium information.

- 8. Delay the effective date of the Final Rule.** The ACA required that SBC regulations were to be issued no later than March 23, 2011. Under this framework, Legislative intent appears to be that group health plans would have one year in which to comply with this requirement. These regulations were issued – in proposed format – on August 22, 2011. These regulations sought comments on a number of issues that must be resolved before group health plans can realistically provide coherent SBCs.

Therefore, Infinisource respectfully requests that the effective date for providing SBCs should be delayed until one year after the departments issue final rules.

We want to thank the departments for this opportunity to comment on the NPRM. If you have any questions or concerns, please feel free to contact me or Connie Gilcrest, our Research and Compliance Specialist, who assisted with these comments, at 800-300-3838 or via e-mail at rclass@infinisource.net or cgilcrest@infinisource.net.

Thank you for your consideration.

Respectfully Submitted,



Rich Glass, JD
Chief Compliance Officer
Infinisource, Inc.

Via Federal eRulemaking Portal (www.regulations.gov)