



October 20, 2011

Submitted electronically via the Federal Rulemaking portal @ www.regulations.gov

Attention: RIN 1210-AB52
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

Dear Sir or Madam,

Subject: Summary of Benefits and Coverage and the Uniform Glossary (RIN 1210-AB52)

Aon Hewitt appreciates the opportunity to provide comments on the proposed rules for the Summary of Benefits and Coverage (SBC) that were published in the *Federal Register* on August 22, 2011. We will refer collectively to "the Departments" in our comments, reflecting the important roles of the Employee Benefits Security Administration, Department of Labor (DOL); the Internal Revenue Service, Department of the Treasury; and Centers for Medicare & Medicaid Services, Department of Health and Human Services.

Who We Are

Aon Hewitt is the global leader in human resource consulting and outsourcing solutions. We partner with organizations to solve their most complex benefits, talent, and related financial challenges, and improve business performance. Aon Hewitt designs, implements, communicates, and administers a wide range of health care, human capital, retirement, investment management, compensation, and talent management strategies. As a market leader in benefits administration, Aon Hewitt delivers health care and retirement programs to more than 22 million participants and retirees, on behalf of more than 300 organizations worldwide. Aon Hewitt provides administrative services for approximately 270 employers that sponsor self-insured health plans covering nine million employees and retirees.

Comments on Summary of Benefits and Coverage

Following are Aon Hewitt's comments on the proposed rule implementing the SBC. These comments reflect our many years of experience serving large and mid-size employers and their plan participants.

Delay Effective Date

The Patient Protection and Affordable Care Act (Affordable Care Act) requires plan sponsors and insurers to begin distributing SBCs for plan enrollments that occur on or after March 23, 2012. This effective date is fast approaching, and plan sponsors need adequate time to update computer systems as well as administrative processes in order to make SBCs available with the required content, in the appropriate time frame, and with quality. Until there are final regulations, plan sponsors will need to build ad hoc, possibly manual, solutions which must be taken down and reworked later. A delay of the SBC effective date will allow plan sponsors to build a sustainable, systematic approach from the start.

Therefore, Aon Hewitt urges the Departments to delay the effective date of the SBC until open enrollments for the first plan year beginning 12 months after final regulations are issued. Open enrollment is the time that employers introduce new materials, tools, or processes to employees and communicate about these as well as other plan and administrative rules.

We also strongly urge the Departments to announce the delayed effective date immediately so that plan sponsors can focus on developing sustainable and compliant long-term solutions, in lieu of short-term responses.

Clarify Covered Plans

Aon Hewitt suggests that the Departments clarify that SBCs be required only for major medical plans. The statutory elements of the SBC (e.g., deductible amount, cost-sharing provisions, out-of-pocket costs, coverage examples, etc.) reflect the plan design characteristics of a major medical plan. Many of these features are not applicable to health reimbursement arrangements (HRAs), flexible spending accounts (FSAs), wellness programs, and employee assistance programs (EAPs).

Neither the statute nor proposed regulations explain how an SBC should be adapted for non-major medical plans. Moreover, the dollar amount of HRAs and FSAs can be communicated in a straightforward manner without an SBC—in fact, SBCs may be unreliable as a guide to certain non-major medical plans since they will not include critical information such as “use it or lose it” features or an exhaustive list of eligible expenditures. Similarly, wellness programs and EAPs cannot readily be mapped into the SBC format.

Therefore, Aon Hewitt suggests that final regulations clarify that SBCs are required only for major medical plans, and that non-major medical plans such as non-excepted HRAs, FSAs, wellness programs, and EAPs are exempt from SBC requirements.

Promote Electronic Delivery Concurrent With Enrollment

Two trends are driving employees to utilize benefits websites during open enrollment. First, is the array of plan choices available to employees. Most employees in large and mid-sized companies choose from between five and ten health plan options. Aon Hewitt’s experience with large and mid-sized employers shows that participants become overwhelmed by large volumes of plan materials and do not review them. Accordingly, our clients have reduced the volume of printed education material they automatically provide during open enrollment and have moved content **online**, where employees can easily access and search for the information they care about. In 2010, across the Aon Hewitt book of business, 89% of health and welfare plan enrollments occurred online via a secure website.

Second, is the availability of online decision-support **tools** to help employees make benefit choices. Online decision-support tools help employees understand and narrow their choices, perform modeling, and then make the best decision for themselves and their covered family members. We find that the most widely used decision-support tool is an online comparison tool that lets employees compare selected health plan options side-by-side.

Employees are accustomed to reviewing materials online and using online support tools to assist in decision-making. It is common for employees without Internet access to either manage their enrollments by speaking to a call center agent or by requesting paper copies of select materials for review prior to speaking to the call center agent.

Accordingly, Aon Hewitt urges the Departments to allow online posting, as opposed to costly paper delivery, as the standard approach for delivering SBCs to all participants and beneficiaries. Under this approach, SBCs will be located in the same place as other popular online decision-support tools. Consistent with existing safe harbor rules for electronic ERISA notices, participants would be notified by email or paper that the SBCs are posted on a specified website and that paper copies of all SBCs are available upon request.

Eliminate Requirement to Acknowledge Receipt

The proposed model SBC instructions include a requirement to obtain an acknowledgement from an enrollee that he/she received SBCs concurrent with enrollment. Aon Hewitt believes that this nonstatutory requirement is very unusual in the context of ERISA and is likely to cause administrative problems and enrollment delays.

Plan participants are not required to acknowledge receipt of any other plan documents. So this requirement would be more far-reaching than rules for the distribution of summary of plan descriptions (SPDs) or other required notices (e.g., COBRA notices and HIPAA Certificates of Group Health Coverage). Plan sponsors do not have the infrastructure in place to track acknowledgement of plan materials.

Aon Hewitt suggests that the final regulations eliminate any requirement to acknowledge receipt of the SBC by a participant.

Allow Flexibility in Providing the Disclosures

In light of the fact that the model SBC was developed with insured plans in mind, we appreciate the Departments' openness to suggested changes reflecting the large and mid-sized employer group health plan perspective.

Data Elements Only

Current employer approaches already provide the plan design and coverage information in a format that employees value and appreciate. Large and mid-sized employers have a great deal of experience in providing easy-to-understand materials that educate employees about plan benefits and assist them in making health plan enrollment decisions. Employees are accustomed to receiving and using these materials and are familiar with their employer's format, terminology, and branding.

Accordingly, Aon Hewitt suggests that the Departments provide a safe harbor that allows employers that already provide plan comparisons and other decision-support materials to continue with their existing approach (including layout and format), provided they include the statutorily-required information in the enrollment process.

More Flexible Template

Alternatively, we support a safe harbor for a stand-alone SBC disclosure that includes all required data elements in a common order, but allows flexibility in all other matters such as format, terminology, employer branding, font, etc.

Based on our experience we appreciate the standardization of content and format, and so we applaud efforts to promote uniformity in health plan information. However, there is significant rigidity in the proposed template that could make compliance difficult for plan sponsors and expose them to penalties for minor variations. We believe the Departments do not intend to put plan sponsors at risk for minor differences in the appearance or details of SBCs.

Eliminate Premium Cost Information

Large and mid-sized employers take a variety of approaches when determining the portion of the premium cost that they assume and the portion that they pass on to employees. The employer subsidy varies based on a variety of criteria including employment status, work location, length of service, and employee compensation. Therefore, the cost of a particular health plan option can be different for each individual employee.

In contrast, the rest of the proposed content in the SBC is common for any individual that enrolls in a particular health plan option. Including personalized pricing information in the SBC would require it to be a individualized notice for each participant, which, we believe, was not the intent of the drafters of the Affordable Care Act or the proposed template. Further, employees receive personalized pricing information each enrollment either online through a secure benefits website or via a personalized enrollment worksheet. A simpler approach would be for the SBC to remain standard for all enrollees and for the SBC to reference how to access personalized pricing information.

Aon Hewitt suggests that the final SBC regulations exclude the nonstatutory requirement to include premium cost information.

Adopt the DOL's SPD Guidelines on "Culturally and Linguistically Appropriate"

Employers have significant experience interacting with employees who speak languages other than English. They have approaches and processes in place to help individuals understand job requirements, benefits, and other human resource policies. Aon Hewitt suggests that employers be allowed flexibility to leverage their current experience and successes in interacting with these non-English-speaking employees to develop an approach that works well for SBCs.

Employers generally follow the ERISA SPD guidelines when distributing various plan materials. Employers would welcome the ability to take a similar approach to distributing SBCs. Specifically, Aon Hewitt suggests that plan sponsors be permitted to meet the "culturally and linguistically appropriate manner" requirement for SBCs under guidelines similar to the SPD regulations, rather than the new claims and appeals rules under the Affordable Care Act. That is, in companies where the lesser of 500 employees or 10% of the population are literate only in the same non-English language, SBCs should include a statement offering translation assistance. Possible wording for the statement, translated into the appropriate language, is:

These pages are a summary of the benefits and coverage under an available health plan. If you have difficulty understanding any part of this summary, contact _____, the plan administrator, at his/her office: _____. Office hours are _____. You may also ask for assistance via email _____ or telephone _____.

Aon Hewitt believes that SBCs are more similar to SPDs than claims or appeals information, making the DOL's foreign language guidance more applicable. Like SPDs, SBCs are informational, non-participant-specific disclosures. In contrast, claims and appeals information is personalized and is provided in a potentially contentious situation where an individual's own benefits are at stake. For claims and appeals—but not SBCs—verbatim comprehension may be critically important. Because of the plan-customized detail of SBCs, requiring employers to translate them into multiple languages is a burden that significantly outweighs the value to employees in most cases, especially given that other sources of support exist for the non-English speaking population.

Aon Hewitt suggests that the final regulations allow employers with large non-English reading populations to satisfy the SBC rules by notifying employees that written or oral assistance is available upon request.

Simplify Automatic Delivery Rules

Aon Hewitt appreciates the renewal provisions in the proposed regulations which are intended to reduce unnecessary SBC distribution during open enrollments. We suggest that in final regulations the Departments define renewal to mean any enrollment period during which employees have an opportunity to review the SBC for the health plan coverage they may choose or be assigned to in the upcoming year.

Across the Aon Hewitt book of business, the majority of plan participants (60%) in employer-sponsored group health coverage choose to remain in their current plan for the following year. Accordingly, we believe that providing plan participants with an SBC that reflects the plan design features of the coverage they will have in the new plan year is the most effective and efficient distribution method. Plan participants that wish to make a plan change can access SBCs for all available plan choices online or request paper copies. In our experience, we believe that the vast majority of plan participants would prefer this streamlined approach.

It is also common practice to provide plan enrollment materials only to individuals who have election rights (e.g., eligible employees, qualified beneficiaries, retirees). These individuals are making elections on behalf of themselves and eligible family members and are encouraged to share materials, as appropriate, in order to make optimal family enrollment decisions. Aon Hewitt suggests that the Departments clarify that SBCs are only required for individuals who have independent election rights, to match standard industry practice.

Simplify Coverage Examples

Based on our understanding, Aon Hewitt believes that Congress intended SBCs to function as short plan summaries that individuals can view on a screen or spread out on the kitchen table in order to get a better overview of potential medical plan choices. By requiring SBCs to include numerous coverage examples, the appetite of employees to read through the document, and hence the usability of SBCs as a readable disclosure, would be undercut. In addition, under current approaches, employers typically provide access to information on specific coverages either on the secure website or by phone. The coverage examples that the enrollee can see on a website are likely to be more relevant to the individual's situation, rather than coverage examples for the whole population predetermined by the Departments.

Accordingly, we support replacing predetermined coverage examples with the federal portal mentioned in the preamble to the proposed regulations. Employees can use the portal to generate their own coverage examples based on data provided in the SBC. We do not endorse the alternative idea of employers directly sending plan files to a portal, as that would create a new and complicated administrative procedure. If coverage examples must be included in an SBC, then we suggest they be limited to a maximum of three.

Closing

Again, Aon Hewitt thanks the Departments for the opportunity to provide comments on these proposed rules. We would be glad to provide additional insight on common industry practice based on our many years of benefits administration experience for large and mid-sized employers and millions of their employees.

If you have any questions or comments, please contact us at the telephone numbers or email addresses provided below.

Sincerely,

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