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Labor, Employment & Benefits Alert
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Guidance and Final Regulations Released on Health Care Reform Requirements of Reporting Health Care Coverage Cost and Providing Summary of Benefits and Coverage to Plan Participants

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The federal health care reform law, known as the Patient Protection and Affordable Care Act (“PPACA”), created several new requirements for employers who offer health care coverage to employees. Some of these requirements are being phased in over time. Recently, the government has released guidance on two upcoming requirements: (1) reporting the cost of group health insurance coverage to employees and (2) providing plan participants with a Summary of Benefits and Coverage (“SBC”).

Reporting the cost of group health insurance coverage to employees

The PPACA generally requires employers that provide health care coverage, either through an insured or self-insured plan, to inform employee participants of the cost of the coverage on their annual W-2 Form. The requirement was originally scheduled to be effective for W-2 Forms provided for tax year 2011. The Internal Revenue Service (“IRS”) previously delayed that requirement, making such reporting voluntary for 2011. Despite some hopes in the employer community for a further delay, the IRS has now confirmed that the requirement will be effective for tax year 2012. The instructions for the 2012 W-2 Form will include information about how to report.

The new guidance exempts employers who file fewer than 250 W-2 Forms for the applicable tax year and employers that provide health care coverage through participation in a multiemployer plan. Employers with self-insured plans that are not subject to federal continuation coverage requirements, such as church plans, are exempt from reporting as well.

In calculating the cost of coverage, employers may use different methods for different plans, but the calculation method used for a particular plan must be used for all participants in that plan. Employers may choose to use the applicable COBRA premium as the cost of health care coverage. Employers with insured plans may use the premium charged for the year for the plan selected by the

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employee as the cost of coverage. The cost reported should include both employer and employee shares of the cost.

Summary of Benefits and Coverage

The PPACA requires group health plans to provide participants with a Summary of Benefits and Coverage (“SBC”). The SBC can be no longer than 4 pages (front and back). According to the Department of Labor, the SBC and a new uniform glossary of terms commonly used in health care are intended to give participants a better understanding of their health care coverage. The SBC will contain information on the covered benefits, cost sharing provisions, and coverage limitations, and participants will receive the SBC upon enrollment and at the beginning of every plan year.

This requirement was originally meant to be effective as of March 23, 2012. After releasing proposed regulations and a template for the SBC, however, the Department of Labor, the Department of the Treasury, and the Department of Health and Human Services received many public comments with regard to the difficulty of developing the SBC by the effective date. In November 2011, the agencies released guidance delaying the effective date of the SBC requirement until final regulations could be released.

Public comments on the substance of the SBC included, among other things, requested changes to the glossary to make it more compatible with self-insured plan terminology, the ability to provide the SBC as part of the Summary Plan Description (“SPD”), removal of premium information from the template, greater flexibility in the coverage examples required to be included in the SBC, and removal of a requirement of 60 days advance notice of changes to benefits that affect information in the SBC.

The agencies have now released final regulations which provide that the SBC requirement will be effective for group health plans at the beginning of the next plan year following September 23, 2012. The agencies also made some changes to the template for the SBC and noted that they anticipate making additional changes after the first year of the requirement’s applicability. The final regulations do not require that the SBC be provided to participants as a separate document but offer the choice between providing a separate document or providing the SBC as part of other summary materials such as SPD. The agencies suggest that the SBC could directly follow the table of contents in an SPD. The agencies also removed the requirement to provide premium information.

Under the final regulations, any change in the plan, other than at renewal, that would affect information in SBC will still require that the plan provide participants with a notice of material modifications 60 days in advance of the effective date of the change. One of the required coverage examples was removed, but the other two examples remain. The agencies have provided additional guidance on how to complete the coverage examples, given the parameters of the plan in question.



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Companies with fully-insured plans may look to their insurers to prepare the SBC. Multiemployer plans and self-insured plans, however, face the difficult task of preparing the SBC. While the agencies have provided some relief from the proposed regulations, given the space restraints and other requirements of the SBC, completing the SBC template will remain challenging for many plans, especially plans that are self-insured or partially self-insured.

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If you have any questions or concerns about the material in this Advisory, please contact Katherine A. Hesse, Brian P. Fox or the attorney assigned to your account at (617) 479-5000.

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