NEYHART, ANDERSON, FLYNN & GROSBOLL
A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW
369 PINE STREET, SUITE 800
SAN FRANCISCO, CA 94104-3323

(415) 677-9440
FAX (415) 677-9445

William J. Flynn
Richard K. Grosboll
Benjamin k. lunch
Lois H. Chang
Wan Yan Ling

Of Counsel
MARK H. LIPTON

Stanley H. Neyhart
(1918-1996)

Frank J. Reilly
(1940-1991

Maxine Auerbach
(1940-1995)

Joseph Freitas
(1939-2006)

DATE: March 16, 2015

TO: Board of Trustees, UA Local 467 Health and Welfare Plan

FROM: Richard K. Grosboll and Lois H. Chang, Trust Counsel

RE: **New Proposed Rules on Summary of Benefits & Coverage Requirement**

INTRODUCTION

Recently the Department of Health and Human Services (HHS) and Department of Labor (DOL) issued proposed regulations amending the previously released 2012 Summary of Benefits and Coverage ("SBC") disclosure requirements, including changes to the template SBC, instructions, sample language, guide for coverage examples, and the uniform glossary. As a reminder the Patient Protection and Affordable Care Act ("ACA") requires Group Health Plans and Insurers for plans to provide SBCs to participants and beneficiaries with respect to each benefit package offered by the Plan for which the participants and beneficiaries are eligible for. **We provide the following for informative purposes. No action is necessary yet given that final rules have not been released.**

EFFECTIVE DATES

The Proposed rules provide for two different effective dates:

- **Open Enrollment Period Beginning on or after Sept. 1, 2015.** For disclosures to participants and beneficiaries who enroll or re-enroll through open enrollment period.
- **Plan Year Beginning on or after Sept. 1, 2015.** For disclosures to participants and beneficiaries who enroll other than through open enrollment, which includes newly eligible individuals and special enrollees.

PROPOSED SBC CHANGES

The Proposed rules make the following changes and clarifications:

- **Timely Distribution of SBC.** SBC is timely provided if it is sent within ***7 business days*** (even if not received until after that period).
- **Not Required to Provide SBC Again (If No Changes).** If SBC is provided before an application for coverage is filed, no requirement to provide another SBC upon receipt of the application, provided there has been no change to the information required to be in the SBC. If there is any change, an updated SBC must be distributed no later than 7 business days following receipt of the application.
- **Terms of Coverage Not Finalized.** If Plan is negotiating coverage terms, unless an updated SPD is requested, the Plan or Insurer is not required to provide an updated SBC (until the first day of coverage reflecting the final coverage terms).
- **SBC Upon Request.** Prior to submitting an application for health coverage (for those shopping for coverage) ***and*** upon request for an SBC or summary information about health coverage (for those who do not specifically ask for SBC but ask for summary with respect to health coverage) SBC must be distributed no later than 7 business days following receipt of request.

- **Special Rules to Prevent Duplication.** Two additional provisions are added to prevent unnecessary duplication:

1. ***Contracting with Third Party/Insurer to Provide SBC* (SUCH AS THIS PLAN).** Plan can contract with Third Party/Insurer to assume responsibility of providing SBC. However, Plan has ultimate responsibility to monitor compliance and correct any non-compliance it becomes aware of.
2. ***Plans with Multiple Insurers.*** For Group Health Plans that offer multiple insurance products through separate Insurers, the Plan is responsible for providing the SBCs or may contract with one of the Insurers to provide the SBCs. Absent a contract, the Insurer has no obligation to provide information of benefits it does not insure. Under an extended enforcement safe harbor, the Plan may either (1) consolidate its multiple benefit options into a single SBC *or* (2) provide multiple SBCs for each benefit option and a cover letter or notation on the SBCs that the Plan provides multiple benefit options.

- **Minimum Essential Coverage (MEC) & Minimum Value (MV) Language.** Under prior guidance, Plans & Insurers were permitted to provide a separate cover letter indicating that its offers MEC & MV (60% actuarial value). The proposed rules clarify that MEC & MV information must be included in the SBC.
- **Abortion Coverage (N/A TO THIS PLAN).** Qualified Health Plan Insurers (offered in the Exchange) will be required to disclose on the SBC whether abortion services are covered or excluded *and* whether abortion coverage is limited to services for which federal funding is allowed.
- **Premium Information (OPTIONAL).** No requirement to include premium information in the SBC. If a Plan or Insurer wishes to include such information, it should be added at the end of the SBC.
- **Internet Website to obtain Group Certificate of Coverage (APPLICABLE TO INSURER ONLY).** Only insurers will be required to include an internet web address for Participants and Plan Sponsors to obtain a copy of the group certificate of coverage or individual coverage policy (if applicable). The Departments are inviting comments on whether self-insured plans should also be required to post plan documents on the internet.
- **Updated Coverage Examples.** A third new coverage example is added ("***simple foot fracture***" with emergency room visit), in addition to the two existing coverage examples ("having a baby" and "type 2 diabetes"). The "cost of care" example for the two existing coverage examples have also been increased from "$7,540" to "$14,150" (for having a baby) and from "$5,400" to "$6,100" (for managing type 2 diabetes).
- **New Individual Responsibility Section.** The Instructions to the new SBC templates require Group Health Plans to include a section about whether coverage under the plan satisfies the individual responsibility requirement and meets the MV standard.
- **New SBC Templates.** The updated SBC templates make the following changes: reduces the pages from 8 pages (or four double-sided pages) to ***5 pages*** (or two and a half double-sided pages), removes reference to annual limits for EHB and preexisting condition exclusions, removes "glossary" information on the bottom of each page and moves it to the top of the box in page one, removes bullet points (for copayment, coinsurance, allowed amount and contract providers) on page 2, adds new third coverage example "simple fracture" on page 5, removes the "Question and Answers about the Coverage Examples", and the Instructions to the SBC clarify that the SBC is not permitted to substitute a cross-reference to the SPD for any content element of the SBC but, the Plan is allowed to add to that information a reference to the SPD in order to supplement). The updated template can be found at http://www.dol.gov/ebsa/pdf/sbctemplateproposed.pdf.

PENALTY REMINDERS

The Plan and Insurer can face a fine of up to $1,000 for each willful failure to provide an SBC to each participant.

NEXT STEPS

After the final rules are released, we recommend the Plan Administrator should verify with Kaiser regarding updating its 2016 SBC for the Plan's medical benefits.

Cc: Pam Barrett, Fund Manager