



Date: September 8, 2015

Subject: Summary of Benefits and Coverage Online Posting of Policy and Certificate of Coverage Documents

Q1. When must individual and group health insurance issuers make individual coverage policy and group certificate of coverage documents, respectively, accessible online under PHS Act section 2715 and final regulations?

A1. Under PHS Act section 2715(b)(3)(i) and the final rules published on June 16, 2015,¹ health insurance issuers must include an Internet web address where the actual individual coverage policy or group certificate of coverage can be reviewed and obtained on the Summary of Benefits and Coverage (SBC).² The final rules apply as follows:

- For disclosures with respect to participants and beneficiaries who enroll or re-enroll in a group health plan through an open enrollment period (including reenrollees and late enrollees), beginning on the first day of the first open enrollment period that begins on or after September 1, 2015;
- For disclosures with respect to participants and beneficiaries who enroll in group health plan coverage other than through an open enrollment period (including individuals who are newly eligible for coverage and special enrollees), beginning on the first day of the first plan year that begins on or after September 1, 2015;
- For disclosures with respect to plans, beginning September 1, 2015; and
- For disclosures with respect to individuals and covered dependents in the individual market, beginning with respect to SBCs issued for coverage that begins on or after January 1, 2016.

It has come to HHS' attention that some issuers have encountered certain difficulties making these documents accessible online by these dates, given that this is the first time for this process. For example, we understand that some issuers have several hundred documents that must be posted in compliance with this requirement for both individual coverage and group coverage. At the same time,

¹ See 80 FR 34292.

² See 45 CFR 147.200(a)(2)(i)(J) and 45 CFR 147.200(g)

these issuers are preparing various materials for Qualified Health Plan certification for 2016 open enrollment in the Marketplaces.

To the extent an issuer is unable to meet this requirement by the applicability dates listed above, HHS³ will not take enforcement action against an issuer that makes the individual coverage policy or group certificate of coverage documents accessible online no later than November 1, 2015. This relief is limited to the requirement to post the individual coverage policy or group certificate of coverage. Issuers must still provide the SBC in accordance with the timeframes set forth in the final rules. Issuers must provide on the SBC the web address where the documents will be available by November 1, 2015, and must include language on the web page indicating the documents will be accessible on November 1, 2015.

We clarify that under the applicability date provisions in the final rule, with respect to individual market coverage, the requirements apply with respect to SBCs issued for coverage beginning on or after Jan. 1, 2016, therefore issuers are not expected to make an internet web address to access the individual coverage policy documents available for coverage that begins before Jan. 1, 2016. We further clarify that if a group health insurance issuer is required, in accordance with the June 12, 2015 SBC final rule, to provide the internet web address on the SBC before October 31, 2015, HHS will not take enforcement action against that issuer if it provides an internet web address for group certificate of coverage documents no later than November 1, 2015. Beginning on November 1, 2015, as stated above, all group and individual health insurance issuers are expected to provide an internet web address for the group certificate of coverage or individual policy documents, respectively, by the date which the SBC is otherwise required under the final rules.⁴

As stated in the preamble to the June 16, 2015 final rules, an issuer required to provide an internet web address is permitted to satisfy this requirement with respect to plan sponsors that are shopping for coverage by posting a sample group certificate of coverage for each applicable product. After the actual certificate of coverage is executed, it must be easily available to plan sponsors and participants and beneficiaries via an internet web address.⁵

This relief is only applicable with respect to the requirement to make individual coverage policy and group certificate of coverage documents accessible online, and does not apply to any other requirements of the June 16, 2015 final rules.

³The Departments of Labor and the Treasury have been consulted with respect to this enforcement relief. Because the requirement for which this enforcement relief is applicable only applies to health insurance issuers, this relief can only be granted by HHS, therefore these FAQs are only being issued by HHS.

⁴ See 45 CFR 147.200(a)(1)(i), (ii) and (iv).

⁵ See 80 FR 34298.

Q2. In the preamble to the June 16, 2015 final rules, the Departments of HHS, Labor, and the Treasury provided enforcement relief for coverage that is no longer being offered for purchase (closed blocks of business) provided that certain conditions are met.^{6,7} Closed blocks of business that satisfy the conditions are not required to provide an SBC. Are health insurance issuers required to provide an internet web address for individual coverage policy or group certificate of coverage documents with respect to closed blocks of business that do not satisfy the closed blocks safe harbor criteria?

A2. Closed blocks of business that do not meet the conditions for enforcement relief must continue to comply with the SBC requirements, including providing the SBC to plan sponsors and individuals at the required timeframes in the SBC final rules. HHS recognizes a concern that consumers shopping for coverage might access the individual coverage policy or group certificate of coverage documents for a closed block of business in which they are not eligible to enroll; this could lead to consumer confusion and frustration. Therefore, HHS will not take enforcement action against an issuer of a closed block of business that does not satisfy the safe harbor criteria that limits access to the individual coverage policy or group certificate of coverage documents to plan sponsors that have already purchased and individuals who are currently enrolled in the coverage.

⁶ See 80 FR 34301.

⁷ The conditions for the closed block of business safe harbor are: (1) The insurance product is no longer being actively marketed; (2) the health insurance issuer stopped actively marketing the product prior to September 23, 2012, when the requirement to provide an SBC was first applicable to health insurance issuers; and (3) the health insurance issuer has never provided an SBC with respect to such product.