Center on Budget and Policy Priorities

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Department of Health and Human Services
Room 445-G, Hubert Humphrey Building
200 Independence Avenue SW
Washington, DC 20201

Employee Benefits Security Administration
Department of Labor, Room N-5653
200 Constitution Avenue NW
Washington, DC 20210

Internal Revenue Service, Room 5205
Department of Treasury
P.O. Box 7604 Ben Franklin Station
Washington, DC 20044

RE: Summary of Benefits and Coverage and the Uniform Glossary, Notice of proposed rulemaking. File Code CMS-9982-P, RIN 1210-AB52, REG-140038-10

Dear Sir or Madam:

The Center on Budget and Policy Priorities is a nonpartisan research and policy organization based in Washington, D.C. Founded in 1981, the Center conducts research and analysis to inform public debates and policymakers about a range of budget, tax and programmatic issues affecting individuals and families with low or moderate incomes. We appreciate the opportunity to comment on the notice of proposed rulemaking on the Summary of Benefits and Coverage and the Uniform Glossary that are required under section 2715 of the Public Health Services Act, as added by section 1001 of the Affordable Care Act.

Both the Summary of Benefits and Coverage (SBC) form and the Uniform Glossary hold enormous potential to help individuals and families understand their health insurance coverage and compare coverage options, reduce the frustration and difficulty many people have when looking for private coverage today, and contribute to a more efficient and competitive insurance market over time. Our comments focus on several important issues raised by the notice of proposed rulemaking.

- **We support the broad application of these standards to all group and individual plans.** The ACA requires that *all* private health plans and issuers — in the group and individual insurance markets, whether self-insured or not, and whether grandfathered or new — provide the SBC and glossary to enrollees and

those shopping for coverage. Providing the SBC to enrollees of group health plans is especially important because 150 million people, the vast majority of non-elderly, privately insured Americans, are covered by employer-sponsored group plans.[1] The SBC will improve upon information provided to these enrollees today, by simplifying it and making it more consistent and comparable. In 2014, it will provide consumers with critical information such as whether they are enrolled in "minimum essential coverage" and the share of the plan premium an employee must pay for coverage. Applying the information disclosure standards in the NPRM to all private health plans is also important because it will close an important gap for tens of millions of public employees, who are not covered by existing health plan information disclosure requirements.

- **The SBC should be separate from Summary Plan Descriptions required under ERISA.** The proposed rule requests comment on whether the SBC should be incorporated into the Summary Plan Description currently required under the Employee Retirement and Income Security Act (ERISA). This would fail to carry out the disclosure requirements under section 2715 of the ACA, which are intended to improve the information provided to enrollees — including those in employer-sponsored plans — by making it more concise, consistent, and easier to understand. As the proposed rule notes, in a discussion of the "Current Regulatory Framework," Summary Plan Descriptions have increased in size and complexity and often include legalistic language aimed at protecting the employer from litigation, not helping the employee to understand the health plan. While employers should be able to deliver the SBC along with the Summary Plan Description (in the same envelope), the SBC should be a freestanding form and not buried within the larger document.

  One argument made by those in favor of incorporating the SBC into the ERISA Summary Plan Descriptions has been that this would reduce employer costs. We believe the benefits of providing simpler, standardized plan information greatly outweigh any potential increase in employer costs. As the proposed rule notes, clear and consistent plan information disclosure will benefit consumers by helping them make better coverage decisions and more informed health-care purchasing decisions, as well as reduce the time they spend searching for and compiling health insurance information. In addition, it is unlikely that employers would realize significant cost savings as a result of combining the SBC and the Summary Plan Descriptions because the SBC must be distributed to all prospective plan enrollees when they are first hired, during special

[1] 2011 Employer Health Benefits Survey, Kaiser Family Foundation/Health Research & Educational Trust, September 2011.

enrollment opportunities, and during annual open seasons if requested, while ERISA requires a Summary Plan Description to be distributed only for the plan in which an employee actually enrolls. Incorporating the SBC into the SPD would require plan sponsors to distribute the full Summary Plan Description (including the SBC) to a much greater extent than necessary.

- **We support the rule's proposal to require the SBC to be made available within seven days of a request.** We support requiring that if any information in the SBC changes, insurers should be required to issue an amended SBC within the regulation's specified timeframes.

- **The SBC should be provided in paper form unless an enrollee or prospective enrollee explicitly elects to receive the document electronically.** While enrollees or prospective enrollees may want to receive the SBC electronically, and should be able to opt to do so, many people will not be able to receive the SBC this way. Even someone who submits an electronic request for plan information may not be able to receive a response other than on paper, due to lack of a computer or email account, for example. SBCs also should be available on the issuer or plan sponsor's Web site, at Healthcare.gov, and Exchange Web sites.

- **We support the inclusion of premium information in the SBC.** The premium is a crucial (but not the only) consideration for individuals and families trying to understand or assess their coverage options. To the extent possible, the premium information provided in an SBC should approximate the consumer's actual cost and permit comparisons across available plans. In most cases, it should be a simple matter for an employer to provide enrollees and potential enrollees with cost information net of any employer contribution, for both self-only and family coverage. Premium information would be most helpful if provided in both monthly and annual amounts.

- **To ensure access to plan information for people who have Limited English Proficiency (LEP), the proposed rule's language access standards should be strengthened.** Section 2715(b) of the Public Health Service Act requires standards to ensure the SBC "is presented in a culturally and linguistically appropriate manner." We think the proposed rule, which would incorporate the language access standards for providing appeals notices pursuant to section 2719 of the ACA, should be strengthened in order to meet this requirement. In particular, we think both numeric and percentage thresholds should be established to determine when an issuer or group plan must provide a translated SBC. It would be appropriate to set higher thresholds for small employer plans (those with fewer than 100 participants) compared to

larger employer plans, as was done in the July 23, 2010 interim final rules on internal claims and appeals, which were adapted from the Department of Labor's regulations on style and format for Summary Plan Descriptions.[2] In addition, we recommend that HHS consider translating a template SBC and Uniform Glossary into the languages most prevalent among people who are not proficient in English and making the translations available to issuers and group plans.

- **Ensure that the information disclosures to consumers improve over time.** We recommend the Departments establish a feedback mechanism to allow problems to be corrected and improvements to be made to the SBC. The Departments should establish a process for annual review and improvement of the SBC form that includes input from consumer groups. We recommend that periodic consumer testing be conducted. Testing should include people with Limited English Proficiency and hard-to-reach populations and specifically examine whether the required information is being provided in a culturally appropriate manner, in accordance with the law.

Thank you for your consideration. If you have any questions, please contact Sarah Lueck (lueck@cbpp.org) or Edwin Park (park@cbpp.org).

Sincerely,

Sarah Lueck
Senior Policy Analyst

Edwin Park
Vice President for Health Policy

[2] "Interim Final Rules for Group Health Plans and Health Insurance Issuers Relating to Internal Claims and Appeals and External Review Processes Under the Patient Protection and Affordable Care Act," Federal Register, Col. 75, No. 141, July 23, 2010.