



October 21, 2011

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

Office of Health Plan Standards and Compliance Assistance
Employee Benefits Security Administration
U.S. Department of Labor
Room N-5653
200 Constitution Avenue, NW
Washington, DC 20210

Attn: RIN 1210-AB52

Re: Comments on the Proposed Rule Relating to the Summary of Benefits and Coverage and the Uniform Glossary

Dear Sir or Madam,

Northeast Business Group on Health (NEBGH) (formerly New York Business Group on Health) welcomes and appreciates the opportunity to submit for consideration comments relating to the proposed rule regarding the requirement for group health plans and health insurance issuers to provide a summary of benefits and coverage (SBC) and a uniform glossary, as required under section 2715 of the Public Health Service Act as added by the Patient Protection and Affordable Care Act ("Affordable Care Act") (P.L. 111-148). The proposed rule was published by the Centers for Medicare & Medicaid Services ("CMS"), the Employee Benefits Security Administration ("EBSA"), and the Internal Revenue Service ("IRS") – collectively, "the agencies" – in the Federal Register on August 22, 2011.

NEBGH is a network of employers, providers, insurers and other organizations working together to improve the quality and reduce the cost of health care in New York, New Jersey, Connecticut, and Massachusetts. We are an employer-driven not-for-profit coalition representing over one million covered lives associated with more than 150 organizations. Since 1982, NEBGH's mission has been to help large, mid-sized, and small businesses by informing health care decisions, improving the health care delivery system, and controlling costs.

NEBGH has a rich history of strongly supporting efforts aimed at enhancing health care cost and benefit information transparency. Making available clear and understandable cost and benefit



information is central to ensuring that employees are informed health care consumers and respond effectively to marketplace incentives. Equipping consumers with definitive explanations of what their health benefit package covers – and the responsibilities it in turn requires from beneficiaries – reduces confusion in the marketplace, streamlines administrative processes, and encourages employees and their families to be prudent purchasers of health care coverage and services.

For decades, self-insured employers have acknowledged these realities and have not only complied with rigorous information disclosure requirements under the Employee Retirement Income Security Act (ERISA), but have also pioneered innovations in how benefits information is provided and presented to employees. Employers have also led the way in fashioning unique strategies that seek to more fully engage consumers in taking control of their own health care. Techniques such as web-based educational portals, decision support tools, web-based plan comparison tools, on-site benefits education meetings, email messaging, and social media tools are just a sampling of these targeted and innovative methods. These approaches to employee engagement have minimized administrative costs and proven an effective method for reaching and educating employees about their health care coverage.

An Administrative Burden for Employers

Initiatives aimed at enhancing transparency should neither result in duplication nor bring about new and excessive cost burdens for either individual employers or the overall health care system. Ensuring that employees and their families are equipped to make informed decisions about and understand the parameters of their health care coverage is indeed an important undertaking. It is imperative that these objectives, though, be balanced with concerns related to administrative ease, efficiency, workability, costs, and the goal of crafting educational materials that are user-friendly for individuals.

Under the proposed rule, self-insured employers would be required to provide an SBC to each plan participant for each benefit package offered by the employer for which the employee is eligible. This mandate, superimposed on extant benefits information disclosure requirements under ERISA, would be costly and administratively burdensome for many employers as well as duplicative with their current information disclosure and educational efforts. Employers already supply their plan participants with summary plan information in the form of a Summary Plan Description (SPD). This detailed document is distributed during annual open enrollment periods and includes information explaining the benefits covered by the plan, how medical services and benefits are calculated, and how to file a claim or appeal against the plan, among other important information. Moreover, large employers in self-funded arrangements ordinarily offer a variety of health plan iterations to their participants such as in the case of a full-replacement high-deductible health plan strategy. Constructing an SBC for each iteration (which can vary by a variety of elements such as provider network, pharmacy benefit, and cost-sharing requirements, for instance), regardless of how major or minor the variation, would produce confusion among participants while simultaneously administratively complex and burdensome. A requirement to complete and supply both SPDs and



SBCs would be decidedly repetitive and would stray from the twin goals of minimizing confusion and costs (which ordinarily get passed on to the consumer).

In addition to providing plan participants with an SPD, many employers have devised web-based engagement and educational tools that assist employees and their families in discerning which available plan(s) best fits their health and budget needs. As part of their efforts to present health care coverage information in a manner that is easily understood, employers have also created material that captures an abbreviated, but relevant snapshot of all the available information. Much of this is the same coverage information contained in the proposed SBC. These tools, furthermore, allow employers to fashion educational efforts in creative ways that are specific to the education level and cultural and linguistic preferences of their employee population. Essentially, the coverage information required to be in an SBC overlaps considerably with what employers already furnish to their plan participants through SPDs and web-based educational portals and plan comparison tools.

Employers have clearly invested considerable time, human capital, and monetary resources in tools and techniques aimed at enhancing employees' understanding of and comfort with comparing and choosing health care coverage. Chief to employers' ingenuity and innovation in this arena – technology and systems processes that now underlie much of the development of plan comparison tools for state-based health insurance exchanges under the Affordable Care Act – is the vast flexibility afforded to them by ERISA. Employers strive to provide the tools and information necessary to ensure that their plan participants are empowered to select the health care coverage that is right for them; so doing increases the likelihood that the employee remains healthy, happy, and productive. Maintaining this long-standing flexibility is central to the development of other employee engagement innovations.

The proposed rule contemplates allowing employer-sponsored plans subject to ERISA the ability to provide their participants with the SBC electronically so long as the Department of Labor's electronic disclosure rules are met. **NEBGH applauds and supports the agencies for rightly including this provision in the proposed rule.** Many employers have shifted their health benefits communications to online mediums. This approach is foundational to efforts aimed at not only reigning in spiraling health care costs, but more effectively reaching and engaging employees. Electronic communication has proven a valuable and cost-saving tool in disseminating plan comparison information during annual open enrollment periods and at other times, as necessary.

Recommendation: An Employer Safe Harbor

NEBGH recommends the creation of a safe harbor for employers subject to ERISA that demonstrate good faith efforts to supply their plan participants with materials that are standardized across their employee population and include information sets comparable to those required in an SBC and uniform glossary. So doing would eliminate redundancies and provide employers with much-needed relief with respect to both administrative and cost burdens. The proposed rule estimates that it will cost insurers and third party administrators for self-funded employer health plans an astonishing \$50 million per year over a three year period to develop, update, and furnish the SBC and glossary to



applicants and enrollees. Savings incurred from exempting employers subject to ERISA from these unprecedented and taxing requirements could be wisely reallocated for investments in other activities aimed at health care value creation, such as innovative care delivery models, instead of increased paperwork burdens.

As the nation advances comprehensive strategies to achieve greater value from the proverbial health care dollar, employers need public policy and regulatory oversight solutions that are workable, streamline administration, and focus core resources on mitigating cost increases and transforming the delivery of health care. This particular segment of the Affordable Care Act holds great promise in leading the charge on this front, freeing employers to focus their resources and attention on collaborating with public and private stakeholders to achieve a high-performance health care system.

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Thank you again for providing this opportunity to offer input on the development of regulations related to the summary of benefits and coverage and uniform glossary under section 2715 of the Public Health Service Act as added by the Patient Protection and Affordable Care Act. We hope our comments contribute to the development and refinement of coverage information and cost transparency efforts that result in a visible difference in how patients benefit from the nation's health care delivery system.

Please do not hesitate to contact me or Shawn Nowicki, Director of Health Policy, at 212.252.7440 x227, if you have any further questions or would like to discuss our feedback in greater detail.

Sincerely,



Laurel Pickering, MPH
Executive Director

