

will have easy access to documents they have received at an earlier date, and forcing them to search for such documents will undermine the goal of easing the comparison of rates and terms of different policies.

p. 20:

Request for comment: Whether the SBC also should disclose the option to receive a paper copy of the uniform glossary upon request.

TBHL Response: All 4 of the proposed additional elements are crucial for consumers to have full information about the policies they are considering, so that they have meaningful comparative information. In addition, the SBC should definitely include the option to receive a paper copy of the glossary upon request, as far from all consumers have Internet access. To omit this requirement would deny important information to some consumers who may be most in need of it.

p. 21-22:

Request for comment: Whether the SBC should include premium or cost information and if so, the extent to which such information should reflect the actual cost to an individual net of any employer contribution, as well as the extent to which the cost information should include costs for different tiers of coverage (for example, self-only, family).

TBHL Response: Full premium information, including net costs after any employer contribution, is essential for consumers to make meaningful comparisons. Omitting such a requirement would impose on consumers the burden of tracking down the employer information, then doing the arithmetic of subtracting it from the premium for each plan offered. This is exactly the sort of burden that these regulations are supposed to lift from consumers.

p. 22-23:

In these proposed regulations, and as described more fully below under section II.C. of this preamble under the heading “Uniform Glossary”, the Departments propose that the NAIC uniform glossary be used to satisfy the requirements of PHS Act 2715(g).

TBHL Response: This example and all language used in “consumer-friendly” descriptions must be simplified to a reading level appropriate to each insurance plan’s current participants. This requires that insurance plans engage in ongoing assessment of the community to determine the reading level of the plan’s participants. (See also our overall comments below on languages other than English.) In the above example, the term “balance-billed” is certainly not an everyday term, as such we would strongly suggest that it will be difficult for many consumers to understand what it means and how it will affect their coverage

p. 27:

Request for comment: Whether additional benefits scenarios would be helpful and, if so, what those examples should be. The Departments also invite comments on the benefits and costs associated with developing multiple coverage examples, as well as how

multiple coverage examples might promote or hinder the ability to understand and compare terms of coverage.

TBHL Response: We believe that more than the three listed examples should be required, as doing so will enable consumers who may have family histories of other illnesses or simply are concerned about coverage of possible injuries to make more meaningful comparisons. One specific example might concern treatment of such serious injury as a broken back or neck (as might occur in a car accident).

p.28:

Request for comment: whether such approaches would provide an efficient and effective method for individuals, plans, and issuers to generate or access the coverage examples and how any such approaches could adequately serve individuals who do not have regular access to the Internet (for example, by disclosing in the SBC the option to obtain paper copies of coverage examples generated by the plan or issuer).

TBHL Response: Again, all rules about information availability should include an option for paper copies to accommodate those consumers without Internet access.

p. 29:

...the statute provides that the SBC is to be presented in a uniform format, utilizing terminology understandable by the average plan enrollee, that does not exceed four pages in length, and does not include print smaller than 12-point font. The proposed regulations, consistent with the NAIC recommendation, interpret the four-page limitation as four double-sided pages.²¹ The Departments' view is that this approach will enable group health plans, participants and beneficiaries, and individuals in the individual insurance market to receive enough information to shop for, compare, and make informed decisions regarding various coverage options that may be available to them.²²

Request for comment: The Department seeks comments on this approach.

TBHL Response: The minimum 12-point font is consistent with principles of health literacy and the maximum of four double-sided pages seems reasonable to allow space for listing all the relevant options and pieces of information.

p. 30-31:

Request for comment: Whether any clarifications are needed with respect to the “readily accessible” standard (for example, whether the requirements for passwords or special software create a sufficient burden that the documents are not “readily accessible”). The Departments also invite comment on whether modifications or adaptations of the SBC are necessary to facilitate or improve electronic disclosure.

TBHL Response: The more extra steps consumers are required to take to access information, the fewer will do so. Surely there are methods available to make this information available without requiring either passwords or special software.

Furthermore, not all computers or wireless devices may be equipped to download special software.

p. 31:

Request for comment: Whether it might be appropriate to allow issuers to fulfill an individual's request in electronic form, unless the individual requests a paper form.

TBHL Response: It is generally unwise to rely on consumers to notice each box that they have to check, so it would facilitate information access to those without Internet access to leave the regulation as mandating paper form unless the consumer specifies otherwise.

p. 31-32:

To ensure actual receipt of an SBC provided in electronic form, these proposed regulations would set forth certain safeguards for electronic disclosure in the individual market.

Request for comment: Whether these or other safeguards are appropriate.

TBHL Response: All of these requirements are appropriate and necessary to ensure the broadest access to information.

p. 33-34:

Request for comment: Whether and how to provide written translations of the SBC in these non-English languages.

TBHL Response: A lot of our agency's health education work is done with people who only speak a language other than English. Thus, it is essential that plans and issuers be required to provide written translations of the SBC in non-English languages. However, the 10% standard is far too high. It would exclude many of our clients who are part of large populations in certain communities (but less than 10% of the county's population) that do not speak English. They would be left stranded when making vital decisions on insurance plans. Both research and experience by our agency has found that such exclusion will make it impossible these consumers' ability to exercise informed choices. A more appropriate standard would be 5% of population, or 500 individuals served, whichever is lower.

p. 36-37:

Request for comment: The Departments invite comments on the uniform glossary, including the content of the definitions and whether there are additional terms that are important to include in the uniform glossary so that individuals and employers may understand and compare the terms of coverage and the extent of medical benefits (or exceptions to those benefits)

TBHL Response: All of the listed additional terms would be extremely important to define and include, as definitions vary by insurer. Again, all such definitions should

be provided at a reading level appropriate to each insurance plan's current participants. This requires performing needs assessments to ascertain the reading level of the plan's participants. (See also our overall comments below on languages other than English).

Overall comments on absence of requirements for translations into languages other than English:

Current federal rules on translation requirements for insurance consumers with limited English proficiency (LEP) are inadequate to ensure that consumers will be able to use the plain language summaries as they are intended. Specifically:

- **Language assistance, including written or oral translation of the summaries, is only required when 10 percent of a county's population has limited English proficiency.** Very few counties meet the 10 percent threshold, and only six counties meet the threshold for any language other than Spanish. People who live in counties that do not meet the threshold are not entitled to any language assistance, even explanation of plans over the phone.

The Bronx Health Link strongly believes that a plan must track data on its LEP enrollees and provide translated summaries when the following thresholds are met for plan enrollees:

We recommend that the Departments adopt a combined threshold utilizing the existing Department of Labor regulations and Department of Justice/HHS LEP Guidances. We suggest that the threshold should be 500 LEP individuals or 5% of a plan's enrollees, whichever is less.

As some plans may undertake specific marketing and outreach activities to particular ethnic/cultural/language groups, we also recommend that the Departments adopt a secondary requirement to provide language services to any language group to which the plan specifically markets. This must be in addition to the basic thresholds. This standard would recognize that a plan could not conduct marketing and outreach to enroll LEP members and then fail to provide assistance when those members need additional information.

- **If a county meets the threshold, summaries must include a tagline in the relevant language saying that oral assistance and a written version is available on request.** We are concerned that oral translation might be considered an adequate replacement for written translation. To ensure that consumers with limited English proficiency can thoroughly understand and compare insurance plans, insurers should always provide written translations of the summaries.

The Bronx Health Link also strongly believes that the Departments should require plans and insurers to provide taglines in at least 15 languages in all notices, informing LEP

enrollees of how to access language services. The request for 15 languages is based on existing government practice. The Social Security Administration, through its Multilanguage Gateway <<http://www.ssa.gov/multilanguage/>>, translates many of its documents into 15 languages and CMS recently announced plans to translate Medicare forms, including notices, into 15 languages in addition to Spanish <<http://www.cms.gov/EOInfo/Downloads/AnnualLanguageAccessAssessmentOutcomeReport.pdf>>.

- **Consumers may need to request translation services for each plan summary.**

Because the proposed rule does not require plans to collect data on enrollees' language needs, consumers may need to request translations each time a summary is issued. This will likely make it hard for consumers to complete their applications, renew coverage, or change their plans in a timely manner.

- **The regulation does not address the requirement to provide these summaries in a culturally appropriate manner.** Each plan should perform a needs assessment to determine the needs of its participants so as to determine the most culturally appropriate method for preparing and disseminating information on its summaries of benefits and coverage.