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October 21, 2011

Submitted Electronically

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The Honorable Timothy Geithner
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The Honorable Kathleen Sebelius
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U.S. Department of Health and Human Services
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-9982-P
P.O. Box 8016
7500 Security Boulevard
Baltimore, MD 21244-1850

Re: CMS-9982-P; Summary of Benefits and Coverage and the Uniform Glossary, Notice of Proposed Rulemaking

Dear Sir or Madam:

The Business Roundtable (BRT) is an association of chief executive officers of leading U.S. companies. Together, our member companies employ more than 12 million individuals and provide health care coverage to over 35 million American workers, retirees and their families. BRT is invested in addressing health care costs that hamper essential economic growth.

BRT appreciates the opportunity to submit comments in response to the Notice of Proposed Rulemaking on the Summary of Benefits and Coverage and the Uniform Glossary, CMS-9982-P (SBC). Business Roundtable members currently provide summary information to their employees regarding their health plan options in the absence of these proposed requirements. Therefore, we are writing to express **strong** opposition to this Proposed Rule because it unduly requires employer-sponsored plans to amend their current practices, solely to incorporate the use of a government-created form. Our members have demonstrated their appreciation for the significant value of educating employees about each health insurance coverage option, and will continue to do so. But the potential costs of complying with the new requirements in this proposed regulation are conservatively estimated to be over \$100 million.

We do not believe that requiring a “one-size-fits-all,” 4-page form for *each* option offered is a reasonable approach to ensuring our employees understand what health plan option is best suited for their needs. As an alternative, we believe that the statute provides broad flexibility for the Secretary to permit a safe harbor so that innovative approaches can be permitted. Allowing employers this flexibility will ensure that employees can continue to carefully review available health care benefit options and make informed enrollment decisions based on their individual needs. Such flexibility is also necessary to ensure that employers are able to meet new expectations set for them under the Affordable Care Act, while continuing to lead on innovations in benefit designs that drive quality, contain costs and are highly valued by our employees.

Therefore, we request that the final rule be modified in the following ways:

1. ***Permit employer-sponsored plans to provide Summary Plan Documents (SPDs) through various innovative approaches.*** A safe harbor should be developed that permits employers to continue using current plan comparisons and other materials. This safe harbor should allow the use of such materials in their present form, including electronic and paper versions, so long as they include all the elements required to support employee decision-making. We need to promote more electronic means to educate consumers. Whether through the web or mobile applications, education is critical to the success of understanding benefits offered by employers.
2. ***Immediately delay the effective date of this requirement until the start of the plan year beginning no more than 18 months after the final rule is promulgated.*** The new law requires health insurers and health plans to begin issuing SBCs no later than March 23, 2012. We have serious concerns that employers are preparing for this deadline, and the requirements of the proposed rule, before the rule itself is final. We ask that the deadline be immediately moved to ensure resources are expended in compliance with the final rule, not the proposed rule. We recommend that the new effective date be the start of the plan year beginning no more than 18 months

after promulgation of the final rule. We also suggest that before these forms go into effect on any segment of the insurance industry, the Department of Health and Human Services (HHS) undertake a demonstration to understand the enormous costs, administrative burdens and time it will take to shift to the use of these governmental forms.

3. ***Additional issues.*** Address additional issues within the proposed rule to permit greater flexibility and ensure the continued offering of innovative employer sponsored health coverage.

Safe Harbor for Employers

We encourage the Agencies to include within the final rule a safe harbor that permits employers to continue using plan comparisons and other materials. This safe harbor should allow the use of such materials in their present form, including electronic and paper versions, so long as they include all the elements required to support employee decision-making.

Business Roundtable members have significant experience in providing enrollment materials to their employees in formats that ensure employees understand their options and enrollment selections. Employees are used to receiving these materials from their employers and are familiar with the format, the information, the terminology and the design. Business Roundtable members continually work to improve communication with their workforce so that employees are making well-informed decisions that best meet their needs. In many cases, our members also offer between five and ten health plan options. Requiring a 4-page government-developed form for each of these plan options will undercut the years of refining and improving employers' communication and enrollment information, aimed specifically at each company's employees and their families.

In addition, most health plan review and enrollment is now done online. The internet-based programs available today provide employees with decision support tools that permit employees to identify whether their physician is in a plan's network, identify whether the drugs they are prescribed are covered and provide other important information that helps them select the plan to meet their current needs.

We also believe that the statute provides sufficient flexibility to warrant a safe harbor for employers to provide currently-used materials that support employee decision-making, so long as these materials include all of the required elements. Section 2715 of the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111-148 and 111-152) (collectively the Affordable Care Act or ACA) states that "the Secretary shall develop **standards** for use by a group health plan and a health insurance issuer offering group or individual health insurance coverage, in compiling and providing to applicants, enrollees, and policyholders or certificate holders a summary of benefits and coverage

explanation that accurately describes the benefits and coverage under the applicable plan or coverage.” (Emphasis added.) We believe the use of “standards” does not imply that all parties must provide the same information, through the same form and in the same manner.

In addition, these new requirements should be aligned with existing ERISA Summary Plan Document requirements and should not duplicate or impede those rules. Employers should not be subjected to multiple rules and requirements that may be inconsistent or which divert resources which would otherwise be best spent on health care coverage towards ensuring compliance with multiple rules.

We believe that the ACA gives the Secretary full authority to permit employees who work for large employers to receive “a summary of benefits and coverage explanation that accurately describes the benefits and coverage under the applicable plan or coverage” in the same manner that they are accustomed to, in support of their decision-making, so long as the materials include all the required elements. Such a safe harbor should consider multiple approaches to comply with the statutory requirement, including on-line decision tools, effective written materials that allow employees to compare plan choices, the use of websites to make the required information available or making the information available upon request. All of these options, which are similar to means employers use today should be permitted vehicles for meeting the SBC requirements.

Effective Date

The new law requires health insurers and health plans to begin issuing the SBCs no later than March 23, 2012. We respectfully request that you immediately delay the effective date until a final rule is published.¹ Health plans and plan sponsors need time to meet the requirements

¹ The required rules have not yet been promulgated and thus the Departments’ failure to issue the regulations is contrary to law in violation of the Administrative Procedures Act (APA) 5 U.S.C. 551 et.seq. In fact, the Departments released only a Proposed Rule on August 22, 2011, which itself may be modified through the notice and comment process, leaving employer-sponsored plans awaiting final requirements. This delay by the Departments raises the legal question of whether the proposed regulations themselves would be valid and enforceable, as the Departments have failed to issue them by the deadline specified in the Act. We ask that the Administration delay the enforcement and timing of this regulation to ensure that comments may be read and a final rule is published.

Given that it is the Departments that will enforce the regulations, the Departments should publicly announce that they will delay enforcement to allow plans and issuers adequate time to implement the requirements of the final regulations. This would be a permissible exercise of the Departments’ enforcement discretion under *Heckler v. Chaney*, 470 U.S. 821 (1985). Under *Heckler v. Chaney*, administrative agencies have great ability to exercise enforcement discretion not to enforce particular statutory or regulatory provisions. HHS, for example, has already exercised its enforcement discretion in a number of situations under the Act. HHS’s enforcement discretion was used to provide enforcement grace periods with respect to certain requirements under interim final regulations relating to the internal claims and external review requirements added by the Act. See DOL Technical Releases 2010-02 and 2011-01. As another example, HHS has stated that it will not

and comply with these new rules. Employers will need to update their systems and administrative processes in order to make changes to comply with the final rule. We encourage the effective date of the requirements to instead be the start of the plan year beginning no more than 18 months after the date of publication of the final rule. In fact, we believe that this form should be tested to determine the costs and benefits that it will ultimately provide prior to employers and insurance companies expending any money on changing their systems to accommodate this new form.

Additional Issues

We encourage the Agencies to use common sense industry practices with respect to when dissemination of the SBC is required under the final rule. A majority of enrollees will receive this information during the open enrollment period. We also encourage the Agencies to reevaluate the requirement that plan sponsors obtain an acknowledgement from an enrollee that they have received the SBCs. This acknowledgement of receipt is not required in the statute and is likely to cause administrative difficulties and enrollment delays for employer-sponsored coverage.

In addition, concerns have been raised about the requirement to disclose the total premium. Today, most employers provide information to the employee on the required contribution of the employee. To maintain consistency in what enrollees are accustomed to, we encourage the final rule to eliminate the total premium cost requirement.

As described above, we believe that employee education and plan selection are fully supportable through on-line decision-making tools. We encourage you to embrace the technological advances made by employers and plan sponsors, and evaluate alternatives to some of the items in the proposed rule, such as the coverage facts label, to find more innovative approaches to educating employees about their benefits.

Glossary of terms

The Departments' Solicitation for Comments on the Summary of Benefits and Coverage and Uniform Glossary—Templates, Instructions and Related Materials, includes a specific invitation to comment on the applicability of terms or any required changes in the terminology used for certain types of plans, especially information provided in the large group market. In general,

exercise its enforcement authority with respect to certain types of plans that are generally exempt from the health insurance reforms under the Internal Revenue Code and ERISA and as to which HHS identified some possible statutory ambiguities under the PHS Act. *See* Preamble, Interim Final Rules for Group Health Plans and Health Insurance Coverage Relating to Status as a Grandfathered Health Plan Under the Patient Protection and Affordable Care Act, 75 Fed Reg 34,538, 34,539-62 (June 17, 2010). Such a delay would be particularly appropriate given the potential costs of complying with this requirement and the issues that have been raised in these and other comments about the need to develop a safe harbor for other ways to comply with the requirements.

we agree that the glossary of terms as drafted includes many terms, notably the terms “preauthorization” and “grievance,” that are specific to insured health plans and not appropriate for use in the self-insured marketplace. Again, we ask that these types of specific issues be left to employers to find the best way to communicate these terms so that employees understand them. These terms have been used in employer-sponsored benefit coverage materials for many years and we believe that modifying or changing them will only cause confusion among employees.

Coverage Facts Label

We believe that the intent of this provision of the ACA is to give employees and those buying insurance products outside of the employment setting short summary information about the plan benefits and design. We are concerned that the requirements of the coverage facts label are too onerous and do not take into account the intent to provide summary information. By requiring SBCs to include numerous coverage examples, the increased length and detail of the SBC may diminish the willingness of employees to read through the document and in turn the usability of SBCs as a readable disclosure. In addition, under current approaches, employers typically provide access to information on specific coverage options either through a secure website or by phone. The coverage examples that the enrollee can see on a tailored website will be more relevant to the employee’s situation compared to coverage examples for the whole population predetermined by the Departments.

Accordingly, we support replacing predetermined coverage examples with the Federal portal mentioned in the preamble to the proposed regulations. We do not endorse the alternative idea of employers directly sending plan files to a portal, as that would create a new and complicated administrative procedure.

Expatriate Health Plans

We appreciate the acknowledgment in the Preamble to the proposed regulation regarding the unique characteristics of expatriate and international health plans. As relates to Section 2715, coverage information that is particularly important to expatriates (e.g., medical evacuation and repatriation benefits and country-appropriate care) should also be under the proposed safe harbor and even be exempt from the requirements of this provision. The forms are U.S. centric and have no applicability outside of the United States and should be recognized as such and fall under the safe harbor or qualify for an outright exemption. In recognition of those unique characteristics, we urge that expatriate health plans be exempt from all requirements of the Affordable Care Act as was intended under the law.

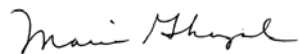
Conclusion

As sponsors of health care coverage for over 35 million Americans, Business Roundtable members are deeply concerned about any new regulation that will *unnecessarily* increase the cost of coverage for our employees and their families. Any new administrative requirement must be implemented as seamlessly and efficiently as possible. We believe this proposed rule, which requires employers to provide each employee with a government-designed, 4-page form on *each* of their plan options, is unworkable and will impose a significant administrative burden and cost on each of our companies.

We believe that there are new and innovative ways, through electronic methods that use web-based and mobile applications, to reach our employees. This rule does not acknowledge these types of efforts and how important they are to fostering greater understanding of benefits and how to handle enrollment.

We encourage you to act quickly to delay the effective date of the proposal, evaluate what information is currently being provided to employees who have employer-sponsored coverage and modify the rule to permit a safe harbor authorizing other approaches to satisfy the substantive requirements for giving summary benefit information to employees. We support the goal of ensuring that enrollees are fully-informed when selecting health care plans that best suit their needs, but we also believe that this goal can be met while maintaining efficiency and supporting innovation.

Sincerely,



Maria Ghazal
Director, Public Policy and Counsel

MG/ce