

October 21, 2011

Centers for Medicare and Medicaid Services
Department of Health and Human Services
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Docket ID: CMS-2011-0140

Re: Summary of Benefits and Coverage and the Uniform Glossary, 45 CFR Part 147, CMS-9982-P, RIN 0938-AQ73, Federal Register, Vo. 76, No. 162

Dear Sir/Madam:

The City of New York submits the following comments in response to the Proposed Rule on the Summary of Benefits and Coverage and Uniform Glossary as published in the Federal Register on August 22, 2011.

The proposed rule attempts to expand and improve the information available to consumers shopping for health insurance so they may better understand their health coverage. It sets standards as described in section 2715 of the Patient Protection and Affordable Care Act (“Affordable Care Act”) for how a group health plan and a health insurance issuer provide a summary of benefit and coverage (SBC) explanation that accurately describes the benefits and coverage under the applicable plan or coverage. In addition, the rule provides standard definitions of insurance and medical terms that are used in describing health insurance coverage.

Providing clear and understandable information to consumers faced with the task of selecting a health plan that meets their needs is an important part of the Affordable Care Act. The SBC will educate individuals about the coverage of services that affect various dimensions of their health. Over the past several years, New York City (NYC) has created effective tools and outreach strategies to ensure that all eligible residents are enrolled in the programs for which they qualify through a strong network of City agencies and local community-based organizations.

Many of the comments described below are a reflection of our experience developing and implementing NYC Health Insurance Link (NYC HI Link) including feedback from users. This is a web-based tool (www.nyc.gov/hilink) that allows individuals, sole proprietors and small businesses to compare price and benefit information for plans offered by all health insurance carriers in one convenient location. It also offers tips to lower costs, and educational information on health insurance, including terms, definitions and consumer protections.

Additionally, the experiences of the NYC Department of Health and Mental Hygiene (DOHMH) and MetroPlus Health Plan (MetroPlus) have been instrumental in informing these comments. DOHMH is one of the world’s leading public health agencies in combating the preventable causes of illness and death. Through an evidence-based approach that relies on cutting-edge information technology, sound data, and informed decisions, DOHMH sets the standard for national public health programs. In recent years the agency has undertaken a number of innovative initiatives, including a comprehensive tobacco control program. MetroPlus is a prepaid health services plan that is sponsored by the public New York City Health and Hospitals

Corporation and provides low- or no-cost health insurance to eligible people living in Manhattan, the Bronx, Queens, and Brooklyn. It was rated the number one Medicaid managed care health plan in New York City for five out of the last six years based on indicators chosen by the New York State Department of Health and published in the Consumer's Guide to Medicaid Managed Care in New York City.

Our comments pertain to the content of the SBCs particularly where we feel additional information or elements are necessary. We also highlight the importance of including information regarding tobacco cessation program coverage within the SBC and express our concerns regarding issues of availability and language access. Lastly, we suggest revisions to the Uniform Glossary.

SBC Content

The Affordable Care Act directed federal agencies to consult with the National Association of Insurance Commissioners (NAIC) in the development of the SBCs. As part of their recommendations, NAIC suggested inclusion of four elements beyond those specified in the Affordable Care Act. These four additional elements are:

1. Premiums charged by the issuer or the cost of coverage for self-insured group health plans;
2. An internet address for obtaining a list of network providers;
3. An internet address for obtaining more information about prescription drug coverage; and
4. An internet address where an individual may review and obtain the uniform glossary.

We support the inclusion of these four elements in the SBC because they improve the information available to consumers and allow them to understand in more detail what their personal costs may be. Regarding the first element, the NAIC recommendations provide that, in the case of group health plans, consumers should contact the employer regarding the actual cost of coverage net any employer subsidy. However, as this raises issues regarding the ability of consumers to easily compare coverage and cost information, **we recommend that, to the extent possible, the premium information should reflect the cost to the individual net of employer contributions, or clearly inform the individual that the premiums cost does not reflect employer contribution, or is subject to change for specified reasons as permitted by law.** With regards to the second element, **we recommend the provider network list or database should indicate which providers are accepting new patients.** It also should be regularly updated by the issuer with the date last updated shown to consumers. New York requires that Medicaid plans such as MetroPlus maintain a provider list with this information and update it quarterly. It has been our experience that this timeframe appropriately balances the burden on issuers with the need to provide consumers with up-to-date information.

In the section entitled "Your Grievance and Appeals Rights" of the SBC, consumers are directed to contact their state office of health insurance customer assistance for additional information on the appeals process. In order to minimize the required resources for a publicly-funded consumer assistance service, **we believe it is important to include the issuer/plan's contact information as an initial point of contact, with the state office of customer**

assistance providing a secondary support role. The appeals process most often includes an internal review first, followed by an external appeal if the matter cannot be resolved. Additionally, many denials of coverage are for plan- or patient-specific reasons more readily accessible and understood by the specific issuer. Including the insurer’s contact information would make it easier for complaints from consumers to be handled efficiently and effectively, while simultaneously minimizing the use of limited public resources.

Comments are requested on the feasibility of permitting plans and issuers to input plan- or policy-specific information into a central Internet portal, which would use the information to generate the coverage examples for each plan or policy. The examples would then be available on the Internet portal for access by individuals. **We support the phased-in creation of such an Internet portal to generate the required coverage examples as a convenient way for consumers to compare plans in one location.** Eventually creating this type of central portal would improve consumer access to the coverage examples included in the proposed rules, such as managing type II diabetes, and facilitate plan comparisons across insurers. Nevertheless, it is important to underscore the gradual implementation of this option to minimize insurer burden and cost.

Incorporation of Tobacco Cessation Treatment within SBC

Following New York City’s extensive experience and success in lowering the smoking rate, we think it is of paramount importance that tobacco cessation treatment be explicitly mentioned in the SBC. **We recommend including “If you want to quit tobacco use” under the list of common medical events in the sample SBC template.** Since variation exists between private plans in the extent of coverage for tobacco cessation, this would be an excellent opportunity to inform enrollees if a plan covers both counseling *and* over-the-counter and prescription FDA-approved tobacco cessation medications. These are two components of effective tobacco dependence treatment identified by the U.S. Department of Health and Human Services’ *2008 Clinical Practice Guidelines on Treating Tobacco Use and Dependence*.

The large economic impact of tobacco use on employers who offer private health coverage, as well as the health impact on the individual, underscores the tremendous need to increase enrollees’ awareness of health plan coverage of tobacco cessation treatment through the SBC. According to the latest findings from the Centers for Disease Control and Prevention (CDC), tobacco use is still the leading preventable cause of disease, disability, and death in the United States today. Almost one in five adults, or 19.3% of American adults, smokes cigarettes.¹ In addition to causing a myriad of diseases such as heart disease, stroke, and cancer, smoking leads to \$96 billion in annual health care costs², and \$67.5 billion in workplace productivity losses.³ Private insurance pays for almost 50 percent of smoking-related medical costs for people

¹ Centers for Disease Control and Prevention. Adult Smoking in the United States. CDC Vital Signs, September 2011.

² Centers for Disease Control and Prevention. Morbidity and Mortality Weekly Report (MMWR): Current Cigarette Smoking Prevalence Among Working Adults—United States, 20004-2010. September 30, 2011: 60(38): 1305-1309.

³ Rumberger et al. Potential Costs and Benefits of Smoking Cessation: An Overview of the Approach to State Specific Analysis. American Lung Association. 2010. <http://www.lungusa.org/stop-smoking/tobacco-control-advocacy/reports-resources/cessation-economic-benefits/states/united-states.html>

age 19 to 64⁴, indicating the potential medical costs that could be saved by promoting tobacco cessation for those in the private insurance market.

Incorporating coverage of tobacco cessation within the SBC can also aid employers and individuals in selecting a health plan that provides this treatment. Enabling more employers and individuals to choose health plans that cover tobacco cessation treatment has cost-savings implications for employers and the healthcare system. As one of the top three most cost-effective preventive services identified by Partnership for Prevention’s National Commission on Prevention Priorities⁵, a Milliman and American Legacy Foundation report found that employers would save \$210 per year in medical and life insurance claims for each employee who quits smoking. Once the direct cost of smoking cessation programs, lost tax revenue, and lost revenue to retailers and distributors are considered, the provision of smoking cessation treatment could help the United States annually save up to \$275.2 million in direct health care expenditures, and \$436.5 million in workplace productivity losses.⁶

When to provide the SBC

Under the proposed regulations, issuers must provide a paper SBC whenever an individual requests one in-person, over the phone, by mail or by fax. Comments are sought on whether it might be appropriate to allow issuers to fulfill an individual’s request in electronic form unless the individual requests a paper form. **We recommend that issuers in the individual market provide consumers a choice between receiving the SBC electronically or in paper form even if the request is made over the phone or by mail or fax.** Allowing issuers to offer consumers this choice will reduce the printing and mailing costs and burden for insurers.

It also seems prudent that when a paper or copy of the SBC is provided, the consumer should be told that they may obtain a paper copy of the Uniform Glossary. Informing individuals that this glossary is available will help ensure access to this information. **We also recommend that when the SBC is provided online, the terms on the SBC defined in the Uniformed Glossary should be hyperlinked to their definition to help consumers more readily understand the health insurance terms as they review the information.**

Uniformity of Language, Presentation, and Language Access

The instructions to insurers in the proposed rule set strict requirements for language that insurers may use and how the information is presented. For example, insurers are restricted to specific language in the “Why This Matters” section so that individuals and employers will understand the benefits and features of each plan and appreciate the differences from one plan or policy to the next. Our experience implementing NYC Hi Link has shown us that requiring uniformity in language and presentation will make it easier for consumers to understand and

⁴ Partnership for Prevention and Campaign for Tobacco-Free Kids. Investing in a Tobacco-Free Future: How it Benefits your Bottom Line & Community. Funded by United Health Foundation.

⁵ Partnership for Prevention. Rankings of Preventative Services for the US Population. 2011. Available at: <http://www.prevent.org/National-Commission-on-Prevention-Priorities/Rankings-of-Preventive-Services-for-the-US-Population.aspx>

⁶ American Lung Association. Smoking Cessation: The Economic Benefits. The United States Facts. Available at: <http://www.lungusa.org/stop-smoking/tobacco-control-advocacy/reports-resources/cessation-economic-benefits/states/united-states.html>

compare plans while offering transparency in the information insurers must provide to consumers. This will enhance the ability of consumers to make well-informed decisions.

The proposed SBC rule states that the determination of whether a health plan must provide interpretation services and written translations depends on whether 10% of the population within that county is literate only in the same non-English language. Therefore, for the purposes of New York City, only Spanish-speaking residents of the Bronx, Manhattan, and Queens would definitely be entitled to these services.

In order to more equitably serve the entire population of a city or metropolitan region, instead of the 10% formula being applied on a county by county basis, there should also be a provision that requires the use of citywide or multi-county American Community Survey (ACS) data if the plans/ issuers provides policies in more than one county in a specific metropolitan area or city. Under this standard, using the 2009 ACS data for all of New York City to look at persons who spoke a language other than English at home, 11.6% of those who reported speaking English 'less than very well' are City residents who speak Spanish/Spanish Creole at home.⁷ Utilizing this more expansive standard, the plan would be required to provide interpretation services and translated notices for Spanish-speaking residents in Staten Island and Brooklyn in addition to the other counties listed above.

Under the current 10% county standard, ACS data show that roughly 25% of the population may not benefit from the materials described in the rule either because they live in a borough/county in which the health plan need not provide the materials in a language other than English or because they read a language other than Spanish.⁸ **We therefore recommend that regulators encourage issuers in the individual and small group markets⁹ to conduct a language needs assessment similar to the one proposed in the HHS guidance pursuant to EO 13166 (as described in Federal Register / Vol. 68, No. 153 / Friday, August 8, 2003 / Notices p 47314) to determine what language-related services it may wish to provide above and beyond the minimum requirements of this rule.** This assessment includes the use of census data as well as other resources such as information from the state and local governments, and school systems.

Uniform Glossary

There are several terms used on the SBC that may be unfamiliar to many consumers. **We recommend including definitions for the following additional terms in the Uniform Glossary:**

- EPO
- HMO
- POS

⁷ Unpublished New York City Human Resources Administration Office of Refugee and Immigrant Affairs analysis of the 2009 American Community Survey.

⁸ Unpublished New York City Human Resources Administration Office of Refugee and Immigrant Affairs analysis of the 2009 American Community Survey.

⁹ We are focusing on these markets because we think this type of language access suggestion is more appropriate and reasonable for plans being marketed and sold to individuals and small employers than for plans sold to large employers or self-funded plans where the assessment obligation may fall on the employer rather than the insurer.

- PPO
- Generic drug
- Preferred brand drug
- Non-preferred brand drug
- Private duty nursing

There are also several definitions in the Uniform Glossary rule that we recommend revising. Our recommended additions are included in bold and our recommended deletions are indicated by a strikethrough:

- Allowed Amount: Maximum amount ~~on which payment is based~~ **your health insurance or plan will pay** for covered health care services. This may be called “eligible expense,” “payment allowance” or “negotiated rate.” If your provider charges more than the allowed amount, you may have to play the difference. (See Balance Billing)
- Balance Billing: When a provider bills you for the difference between the provider’s charge and **your health insurance or plan’s** allowed amount. For example, if the provider’s charge is \$100 and the allowed amount is \$70, the provider may bill you for the remaining \$30. A preferred provider may *not* balance bill you.
- Non-Preferred Provider: A provider who doesn’t have a contract with your health insurer or plan to provide services to you. You’ll pay more to see a non-preferred provider. ~~Check your policy to see if you can go to all providers who have contracted with your health insurance or plan, or if your health insurance or plan has a “tiered” network and you must pay extra to see some providers.~~

Thank you for your consideration of our recommendations. We hope they are useful as you finalize the Summary of Benefits and Coverage and Uniform Glossary rules, guidance and templates. In our experience, providing consumers and small businesses with easily comparable information about their health insurance options will greatly enhance their ability to make informed choices and help them find a plan that best fits their healthcare needs and budgets.

Sincerely,

Ian Hartman-O’Connell
 NYC Office of the Mayor