

# PUBLIC SUBMISSION

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**Docket:** CMS-2011-0140

Uniform Disclosure to Consumers: Benefit Design, Cost Sharing, & Standards for Definitions

**Comment On:** CMS-2011-0140-0002

Summary of Benefits and Coverage and Uniform Glossary

**Document:** CMS-2011-0140-DRAFT-0121

NY

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## Submitter Information

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## General Comment

Center for Independence of the Disabled, NY (CIDNY) is a cross disability organization serving and advocating on behalf of people with cognitive, sensory, physical and mental impairments. Our goal is to ensure full integration, independence and equal opportunity for all people with disabilities by removing barriers to the social, economic, cultural and civic life of the community. We appreciate the opportunity to comment on the notice of proposed rulemaking (NPRM) on the Summary of Coverage and Benefits Form and Uniform Glossary promulgated under Section 2715 of the Patient Protection and Affordable Care Act (ACA).

We commend the Departments for developing standards for the Summary of Coverage and Benefits Form (SBC) and Uniform Glossary that will make it much easier for consumers to understand and compare the benefits offered by different plans. We endorse the comments submitted by Consumers Union and the National Health Law Program and by Health Care for All New York (HCFANY) on whose steering committee we serve.

We wish to highlight one area that may have been overlooked by the Departments that is of importance to some of the consumers we serve. The Affordable Care Act has really moved the cause of people with disabilities forward, by including disability status in the data collection on disparities, as have the Exchange regulations, which require Exchange notices to be accessible and ensure effective communication for people with disabilities.

Similarly the SBC will not be useful unless all consumers regardless of primary language, disability status, or literacy level are able to understand the information provided which is why we have the following additional comments about literacy and language requirements.

Literacy and language requirements

Section 2715(b) (2) of the Public Health Service Act provides that the summary of benefits and coverage (SBC) should be presented in a “culturally and linguistically appropriate manner.” The Departm

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## **Attachments**

2011-10-21 Summary Benefits and Coverage Form



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**Center for Independence of the Disabled, NY**

October 21, 2011

Secretary Timothy Geithner  
Department of the Treasury  
Secretary Hilda Solis  
Department of Labor  
Secretary Kathleen Sebelius  
Department of Health and Human Services  
Office of Consumer Information and Insurance Oversight  
Department of Health and Human Service  
P.O. Box 8016  
Baltimore, MD 21244-1850

Re: RIN 1210-AB52; CMS-9982-P; REG-140038-10

Dear Secretary Sebelius:

Center for Independence of the Disabled, NY (CIDNY) is a cross disability organization serving and advocating on behalf of people with cognitive, sensory, physical and mental impairments. Our goal is to ensure full integration, independence and equal opportunity for all people with disabilities by removing barriers to the social, economic, cultural and civic life of the community. We appreciate the opportunity to comment on the notice of proposed rulemaking (NPRM) on the Summary of Coverage and Benefits Form and Uniform Glossary promulgated under Section 2715 of the Patient Protection and Affordable Care Act (ACA).

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We wish to highlight one area that may have been overlooked by the Departments that is of importance to some of the consumers we serve. The Affordable Care Act has really moved the cause of people with disabilities forward, by including disability status in the data collection on disparities, as have the Exchange regulations, which require Exchange notices to be accessible and ensure effective communication for people with disabilities. Similarly the SBC will not be useful unless all consumers regardless of primary language, disability status, or literacy level are able to understand the information provided which is why we have the following additional comments about literacy and language requirements.

**Literacy and language requirements**

Section 2715(b) (2) of the Public Health Service Act provides that the summary of benefits and coverage (SBC) should be presented in a "culturally and linguistically appropriate manner." The Departments have attempted to satisfy this statutory mandate by incorporating the rules for providing appeals notices pursuant to section 2719 of the ACA (hereinafter "appeal rules"). The appeal rules provide that, in counties in which at least ten percent of the population residing in the county is literate in only the same non-English language, both translation and interpretation services must be provided upon request.



A United Way Agency

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We strongly oppose applying the same standards to this rule. The Departments propose to severely limit limited English proficient (LEP) persons' access to arguably the most important document regarding their health insurance to which they will have access, the document that allows them to compare plans, shop for plans, and understand the terms and limitations of the plan in which they enroll. We contend not only that this is unwise, but also that it violates PHSA § 2715, Title VI, the ADA, and Section 1557 of the ACA.

We recommend that the NPRM adopt a combined threshold utilizing the existing DOL Regulations and DOJ/HHS LEP Guidances. We suggest that the threshold should be 500 LEP individuals or five percent of consumers in the plan's service area or workforce, whichever is less. The five percent is utilized in both the DOJ/HHS LEP Guidances as well as recently revised regulations from the Centers for Medicare & Medicaid Services governing marketing by Medicare Part C & D plans. It is also consistent with New York State law. Further, the Departments should ensure that the translation is adequate and not done through machine translation, which does not produce accurate translations. Exchanges, QHPs, and others should use best practices as recognized by the American Translators Association (ATA) for translating documents. The NPRM should adopt a 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.

At CIDNY, which is located in New York City with offices in Manhattan and Queens, we have our brochures translated into Spanish, Korean, and Chinese. We employ people who speak Spanish, Mandarin, Cantonese, Tagalog, and Bengali in addition to people proficient in American Sign Language.

The NPRM should require plans and insurers to inform consumers that the SBC is available in alternative formats for people with low vision or blindness including Braille, large print and audio, and how to access these preferred formats by e-mail, phone or mail.

The NPRM should require plans and insurers to provide taglines in at least 15 languages with the SBC, informing LEP enrollees of how to access language services. The request for 15 languages is based on existing government practice. The Social Security Administration 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. This should be a requirement regardless of whether a translation threshold is met. Taglines must be accompanied by an English SBC so that individuals have a record of communication and may be able to obtain information from advocates or others about its content.

Providing oral information or a tagline is insufficient to meet the requirement of providing enrollees with SBCs. The NPRM should require that, once a consumer has requested materials in another language or format, all subsequent communications with that consumer should be in the non-English language or alternative format.

Finally, we strongly believe that regardless of whether a plan is required to provide

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written translations of SBCs, the Department must ensure that oral interpretation – through competent interpreters, or bilingual staff – to all LEP enrollees and that American Sign Language interpretation is provided to the hearing impaired is provided to all LEP enrollees. The current appeal rules only require plans to provide language services when the thresholds are met. We do not believe this meets the letter or spirit of PHSA § 2715, Title VI, the Americans with Disabilities Act or the nondiscrimination provision of the ACA since this would leave millions of LEP individuals and hearing impaired individuals without any assistance from their plans when trying to understand information about services that are and are not covered and to make an educated decision about which plan in which to enroll.

**Recommendations:** Before the Secretary authorizes the SBC and uniform glossary, HHS should:

- o contract with recognized literacy/plain writing experts to test the proposed SBC and uniform glossary templates for language, structure, and layout
- o focus test the revised forms with the intended audience
- o make appropriate revisions

The rules should require insurers and plans to inform consumers that the SBC is available in alternative formats for people with low vision or blindness including Braille, large print and audio, and how to access these preferred formats by e-mail, phone or mail. All websites must be Section 508 compliant and compatible with assistive products, including screen readers that translate the content of a computer screen into automated audible output and refreshable Braille displays.

The Departments should also require plans to competently translate the SBC into any language which comprises five percent or 500 LEP individuals in the plan's service area or workforce. The NPRM should require plans to:

- provide oral language services – through competent bilingual staff or interpreters– for all LEP individuals with questions about the SBC
- provide taglines in 15 languages with all SBCs
- use HHS-provided translation of the SBC glossary into the top 15 languages

While we are encouraged that some elements of the Proposed Rule will enhance consumer information and understanding, we believe that a number of improvements can be made. If you have questions about these comments, please contact Heidi Siegfried at [hsiegfried@cidny.org](mailto:hsiegfried@cidny.org) or 646.442.4147. Thank you for your consideration of our comments.

Sincerely,

Heidi Siegfried, Esq.  
Health Policy Director