

**From:** [Blake Woodard](#)  
**To:** [E-OHPSCA2715.EBSA](#)  
**Subject:** Proposed rule re Summary of Benefits and Coverage and the Uniform Glossary  
**Date:** Friday, October 21, 2011 11:43:28 PM

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Note: I tried to submit this comment via [www.regulation.gov](http://www.regulation.gov) on 10/21/2011, but the comment page for this particular proposed rule was defective, so I am submitting it via e-mail. **Please reply to let me know you received it timely.**

Re: Proposed rule re Summary of Benefits and Coverage and the Uniform Glossary

Dear Secretary Sebelius, Ms. Ingram, Ms. Borzi, and Mr. Berwick:

I am a partner in a small firm that provides employee benefit consulting to employers. October and November are our busiest time of the year, with most employers overhauling their benefit plans and conducting employee benefit meetings in the fourth quarter. Every employer wants its meetings completed by early December so as not to interfere with the Christmas holidays and year-end business activities. The process cannot begin until September 1, when health insurers release their proposed renewal rates for most employers, especially small employers.

I routinely work from 8AM to 10PM during the fourth quarter. Yes, it's that magical time of the year but unlike Santa Claus, my busy season doesn't end with a flight around the world in a sleigh, and the beneficiaries of my work (plan participants) aren't always that happy to see me, especially if my bag of toys is really a bag of rate increases and benefit decreases, which increasingly will be the case if the proposed rule is not modified.

The proposed rule is struggling to regulate a law that is unworkable in its timeframes, and the cost burden charts in the proposed rule make it clear that the rule writers do not understand who truly is burdened by the rule. The burdened parties are not the 440 issuers and 750 TPA's. The burdened parties are every employer in America who sponsors a health plan as well as the tens of millions of Americans who depend on their employers to negotiate the best possible set of health benefits and price for them.

Here is a typical time frame for negotiating and implementing a health plan for a small employer with a January 1 plan year:

October 1:	Receive renewal rates from current insurer
October 31:	Receive competing bids from other insurers
November 15:	Decide on new plan for next year
December 1:	Complete design and printing of all forms, benefit summaries, and presentation materials for enrollment meetings
December 2:	Begin enrollment meetings
December 6:	End enrollment meetings
December 13:	Submit all enrollment selections to insurer
January 1:	New plan year begins

Sometime after the plan year, the employer prepares, sometimes with the help of the insurers, its SPDs and delivers them to the employees.

It's a very stressful time for employers, brokers, and insurers, but it's amazing how well the free market has worked for decades to bring a new set of employee benefits to millions of plan participants in time for the new year. In spite of the amazing ability of private employers to work out their benefit set each year, there are no spare days in the process. Employers, brokers, and insurers usually work down to the minute.

The DOL has a long record of acknowledging the time it takes to prepare benefit documents, as it gives employers months after making a benefit change to distribute SPDs and SMMs. Now comes this new provision of PPACA that shows no concept of the struggles employers go through to provide benefits to their employees and wants to change the spin of the earth by rule.

**The proposed rule's timeframes are complicated.** Employers will be struggling to figure out if their plan is an automatic renewal or a written renewal, whether their enrollment meeting handouts constitute a written application or whether they must hand out their SBCs "no later than the first day the participant is eligible to enroll in coverage," an impossible trick to turn since most employers spread their enrollment meetings out over several days, making it impossible to hand out the SBC to every eligible person on the first day of meetings.

**The proposed rule's timeframes are unworkable.** The requirement that an issuer give the employer an SBC 30 days in advance of the effective date of a renewing plan ignores the workings of the health insurance market. Why do renewing plans have stiffer advance notice requirements? The employer might not decide to renew the plan until days before the new plan year. The employer or its broker might have a sudden health or family emergency, or the business could suffer a fire or other catastrophe. You might be the president of a small business facing a 40% rate increase on your health plan. You might negotiate with your current and other insurers for weeks and finally negotiate a 10% rate increase on your current plan with only 10 days until your plan renews. Are you unable to renew because the issuer couldn't give you the SBC 30 days in advance of your plan year? This scenario happens thousands of times a day in America. I have renewed my own company's health plan after the effective date, and I got a better deal for my employees by negotiating longer. Issuers will know that employers are up against the 30-day deadline for issuers to give employers the SBC and will have the upper hand in the free-market rate negotiation process, which in spite of PPACA's MLR requirement will continue to be the most critical component of bringing affordable health insurance to Americans who buy their health insurance at work.

The proposed rule's rigid and complicated advance notice requirements won't work. Employers and insurers already respect the need for an advance notification, which is why employers have been giving employees advance notification of their benefits forever, without the government micromanaging the process. You just can't program every detail in life. People and businesses are not computers, but somehow the free market works most of the time.

Whoever put the various advance notice requirements in PPACA and the proposed rule has never sold, bought, or advised a group health plan. The proposed rule should stick to the contents of the SBC and give great latitude to the employer as to the distribution timeframe to maximize the employer's ability to negotiate the best health plan for its employees.

Regards,

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