



March 28, 2016

Submitted electronically via: OIRA_submission@omb.eop.gov

Office of Information and Regulatory Affairs
Attn: OMB Desk Officer for DOL–EBSA
Office of Management and Budget
Room 10235
725 17th Street NW
Washington, DC 20503

Re: OMB Control Number 1210-0147 – Summary of Benefits and Coverage and Uniform Glossary Required Under the Affordable Care Act

Dear Sir or Madam:

The National Business Group on Health is pleased to comment on the Department of Labor’s information collection request regarding revision of the summary of benefits and coverage (SBC) and uniform glossary under the Affordable Care Act.

The National Business Group on Health represents 424 primarily large employers, including 70 of the Fortune 100, who voluntarily provide health benefits and other health programs to over 55 million American employees, retirees, and their families.

The National Business Group on Health supports the Department of Labor’s, the Department of Health and Human Service’s, and the Department of Treasury’s (collectively, the Departments’) efforts to clarify rules for providing the SBC and streamline the SBC template and associated documents. As our members continue to implement the ACA’s SBC and uniform glossary requirements, a primary concern will be minimizing the administrative and cost burdens associated with these requirements. Allowing plan sponsors flexibility to adapt their compliance procedures to existing plan disclosures will reduce these burdens and allow plan sponsors to devote more resources toward maintaining and improving health benefits for their employees.

Our members remain concerned that the current SBC rules, templates, and associated documents do not take into account the communications processes of large, self-insured plans. Therefore, we recommend that final regulations:

- (1) Allow group health plans to incorporate the SBC and uniform glossary into existing plan disclosures required by ERISA;
- (2) Provide flexibility to adapt the SBC and uniform glossary to their specific plan designs and plan language;

- (3) Provide additional flexibility in distributing SBCs electronically; and
- (4) Delay the implementation date for the new SBC template and uniform glossary to the first day of the first plan year beginning 12 months after the issuance of final versions.

We believe that these provisions will minimize confusion for plan participants, reduce administrative and cost burdens, and allow plan sponsors much-needed flexibility in preparing and distributing SBCs and the uniform glossary. We provide further discussion of these recommendations below.

I. SBCs and Current Plan Communications

National Business Group on Health members employ and provide health benefits for employees under a wide variety of work arrangements, including full-time, part-time, seasonal, and temporary. Our members often operate multiple lines of business in multiple locations (sometimes in all 50 states). To accommodate the health care needs of their large and varied employee populations, our members provide a wide variety of health plan options at different cost and coverage levels. Our members also have devoted significant financial, administrative, and staff resources to their health plan communications and disclosures. In efforts to engage and educate participants in health and coverage choices, our members' health plan communications and disclosures are often more extensive and comprehensive than those required by ERISA's minimum disclosure requirements. For example, many of our members, in addition to providing timely summary plan descriptions (SPDs) and summaries of material modification (SMMs), conduct annual health plan information sessions, maintain telephone hotlines where participants can obtain assistance with health plan enrollment, and provide Internet-based tools that allow participants to compare and select their health plan options. The proposed templates for the SBC and uniform glossary duplicate existing communications and can cause confusion for plan participants and beneficiaries. Our members' concerns include the following:

- Unlike health coverage in the individual and small group markets, our members' health plans often make numerous benefit packages with different premium, coinsurance, deductible, and copayment levels available to employees. Cost-sharing levels and coverage options also may vary with employees' compensation. If employers offer consumer-directed health plans with health accounts, the amounts that plan participants pay for services depends on a number of factors, including whether they have met their deductibles and whether they have reached out-of-pocket maximums. Thus, a single group health plan (and a single participant) may have dozens of "benefit package" options. Developing and distributing separate SBCs for each benefit package involves significant financial and administrative costs for our members.
- Our members' group health plan communications are already tailored to the needs of their specific employee and dependent populations. Underlying plan

documents, however, may contain very complex language and are updated on a different schedule from other plan communications—factors that may add to confusion about current plan terms.

- Participants and beneficiaries can be confused by receiving numerous SBCs that duplicate information in SPDs and other plan enrollment materials.
- Because of the stringent requirements of ERISA’s current electronic disclosure safe harbor (such as requiring affirmative consent when accessing an electronic information system is not an integral part of a participant’s duties as an employee), many of our members are not able to distribute SBCs electronically to minimize costs of updating and distributing SBCs.

For the reasons described above, the National Business Group on Health recommends:

- (1) Allowing group health plans to incorporate SBCs into SPDs—thereby resulting in a single, comprehensive document that allows participants to compare benefit package options—provided the document satisfies the content and formatting requirements specified in Section 2715 of the Public Health Service Act (PHSA);
- (2) Providing a safe harbor under which plans that already provide tools to compare benefit packages (such as Internet-based comparison tools) will be deemed to have satisfied the requirements of PHSA § 2715, provided the plans comply with the content requirements of PHSA § 2715;
- (3) Allowing group health plans to provide SBCs electronically to *all* plan participants and beneficiaries as long as the method of electronic disclosure is “reasonably calculated to ensure actual receipt of the material by plan participants, beneficiaries and other specified individuals,” 29 C.F.R. § 2520-104b-1(a), and provided plans make paper copies available upon request.

II. Contents of the SBC and Uniform Glossary

In addition to the above concerns involved with integrating SBCs with existing plan communications and disclosures, our members remain concerned that the SBC template and uniform glossary confuse, and in some cases, mislead participants and beneficiaries as to the terms of their health coverage. This result runs contrary to the ACA’s goal of providing a document that “accurately describes the benefits and coverage under the applicable plan.” PHSA § 2715(a). Our members’ concerns include the following:

- Because coverage costs vary widely by geographic area and network, for many participants, the coverage examples do not provide an accurate statement of the costs of having a baby, managing diabetes, or treating a fracture in an emergency room visit. Even if the SBC states that the coverage examples are not a “cost estimator” and that participants should not use these

examples to estimate actual costs, participants may significantly over- or underestimate costs of health services based on these coverage examples.

- As described above, our members' plans often provide numerous benefit package options. Customizing calculations for coverage examples for each benefit package presents a substantial administrative burden for our members.
- Although our members have made good faith efforts to comply with the current SBC page limit, this limit will remain a challenge for our members—particularly with a third coverage example.
- Because our members, as ERISA plan administrators, are required to adhere to plan documents and terms, current SPDs and other plan documents are carefully drafted to provide precise and accurate descriptions of plan rules and benefits. Our members are concerned that the SBC and uniform glossary oversimplify or conflict with plan terms, thereby confusing participants and increasing burdens on the claims and appeals process and litigation risks.

For the reasons described above, the National Business Group on Health recommends:

- (1) Allowing group health plans flexibility to (a) adapt coverage examples to their specific plan designs and cost structures or (b) provide individuals with information necessary to generate coverage examples and reference to a central internet portal to generate coverage examples;
- (2) Allowing flexibility in the length of the SBC, provided plans make a good faith effort to adhere to the statutory page limit;
- (3) Not including a third coverage example; and
- (4) Clarifying that the SBC and uniform glossary are not “plan documents” for ERISA purposes and that plan fiduciaries retain the authority to interpret and apply plan documents.

III. Implementation Date

As discussed above, revising and distributing SBCs will involve significant preparations with our members' health plan communications processes, particularly for annual open enrollment periods. Our members will need time to finalize plan offerings, revise and prepare potentially dozens of SBCs, and distribute the SBCs to participants and beneficiaries. Our members are concerned that the proposed implementation date will not allow adequate time to complete this process for fall 2017 open enrollments. Therefore, we recommend delaying the implementation date to the first day of the first plan year beginning 12 months after the issuance of the final SBC template and uniform glossary.

Thank you for considering our comments and recommendations on the information collection request regarding revision of the SBC and uniform glossary. Please contact me

or Steven Wojcik, the National Business Group on Health's Vice President of Public Policy, at (202) 558-3012 if you would like to discuss our comments in more detail.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian Marcotte". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Brian Marcotte
President