national partnership for women & families
Because actions speak louder than words.

March 28, 2016

Michel Smyth, Departmental Clearance Officer
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: Agency Information Collection Activities; Proposals, Submissions, and Approvals: Summary of Benefits and Coverage and Uniform Glossary Required Under the Affordable Care Act (OMB Control Number 1210-0147)

Dear Mr. Smyth:

The National Partnership for Women & Families represents women across the country who are counting on successful continued implementation of the Affordable Care Act (ACA). We appreciate the opportunity to comment on the proposed Summary of Benefits and Coverage and Uniform Glossary Required Under the Affordable Care Act published on February 26, 2016. The Summary of Benefits and Coverage (SBC) plays a critical role in ensuring that consumers have the tools and information they need to compare health plans accurately on the metrics of benefit design and cost, and we look forward to continuing to work with the Departments of Labor, Health and Human Services, and the Treasury (the Departments) on this issue.

For individual and group health plans, the SBC provides more pre-enrollment information than any other document readily available to consumers. Indeed, one of the fundamental underpinnings of the health insurance marketplace created by the ACA is the ability to compare health plans, and the SBC is the tool that ensures consistent information is available for every qualified health plan (QHP) offered in every state's marketplace. The National Partnership has concerns with some aspects of the SBC and believes the template document could be improved. The following recommendations are meant to increase the value of the SBC, especially for consumers selecting among marketplace plans. While multiple aspects of the SBC play a role in consumers' and women's decisions about their health care, these comments focus on key aspects of women's health – preventive services, pregnancy and maternity care, and abortion coverage.

If you have any questions about our comments, please contact Theresa Chalhoub, Health Policy Counsel, at tchalhoub@nationalpartnership.org or (202) 986-2600.

Sincerely,

Debra L. Ness, President

1875 connecticut avenue, nw ~ suite 650 ~ washington, dc 20009 ~ phone: 202.986.2600 ~ fax: 202.986.2539
email: info@nationalpartnership.org ~ web: www.nationalpartnership.org

Addressing Preventive Services in the "Common Medical Event" Section

Clear information about preventive services is very important to consumers and should be a key feature of the SBC. Unfortunately, the existing SBC template is misleading on this point, because it suggests that preventive services are restricted to a provider's office or clinic. Many preventive services, however, could be obtained outside of a provider's office or clinic – such as breastfeeding support, birth control medications, and mammograms.

We recommend the Departments create a new category under "Common Medical Event" for preventive services. This category can be a single row, and should not add length to the overall template. The final column of a new preventive services row should include a website address that has an up-to-date, comprehensive list of all covered preventive services. The current sample language for this column, which directs individuals to ask their provider if the services they need are preventive and then to check what their plan will pay for, is overly burdensome on both consumers and providers. In addition, providers do not know what each insurer would consider preventive services in instances where a plan may be grandfathered or where an insurer may cover more than what is required.

Because grandfathered plans may not cover all preventive services without cost sharing or may cover preventive services without all the protections required of non-grandfathered plans, the instructions should also direct grandfathered plans to explain that not all required preventive services are covered and include a website address to a description of which preventive services do not require cost sharing. We recommend language such as: "This plan may not include certain preventive services that other plans may be required to cover by law."

"If you are pregnant" and "Peg is Having a Baby" Sections

We have concerns about the current version of the two SBC sections that directly apply to childbearing women. These issues were well discussed and addressed during numerous calls that the National Association of Insurance Commissioners (NAIC) led to improve the SBC. Late in the process, however, the NAIC considered a new late-breaking SBC version rather than the one that the group had primarily worked on. Due to the scope of the contract with the firm that was scheduled to test the new version with consumers, the well-discussed consensus version was not tested. As a result, many issues that had been discussed fell aside and are not addressed in the version that is currently posted for comment. We strongly recommend that the two maternity-related sections be improved in the new SBC, and offer suggestions below for this purpose.

While the current SBC form illustrates principles of cost sharing, the "If you are pregnant" and "Peg is Having a Baby" sections greatly underestimate what Peg and other women would pay. Our comments (including all proportions reported below) rely in part on the Truven Health Analytics 2013 report, *The Cost of Having a Baby in the United States*, which includes nationally adjusted data on average commercial payments for vaginal birth.

The posted file entitled "Proposed Coverage Examples Narrative – Maternity Scenario" clarifies that Peg "gives birth to a healthy child" and "mother and child are released on the second hospital day." Unfortunately, the current SBC does not inform prospective enrollees that the newborn incurs costs, which are generally substantial. In the Truven analysis,

newborn payments add an additional 46% to maternal payments in commercially covered vaginal births.

Both the "If you are pregnant" and "Peg is Having a Baby" sections of the SBC template currently use five lines to describe key associated services. In both areas, we strongly encourage the Departments to use these lines to list the five most costly services, which account in the Truven analysis for 89% of all payments made for women and newborns in commercially covered vaginal births. These services, and recommended copy for the five lines, are:

Woman's professional fees [calculated in coverage example for prenatal through postpartum care]
Woman's facility fee
Woman's anesthesia fee
Baby's professional fee
Baby's facility fee

We also recommend better clarification of this specific scenario immediately below the words "Peg is Having a Baby" using the following words for the description of this coverage example:

(in-network prenatal through postpartum and newborn care, with uncomplicated vaginal hospital birth)

Relative to the maternity coverage example description in the currently posted version, this proposed language would:

- Clarify that this is about a situation without complications (which could cost much more)
- Clarify that this is a vaginal birth (cesarean births cost much more)
- Use the shorter plain-language word "birth" versus medical jargon "delivery"
- Clarify that maternity care and this coverage example are inclusive of postpartum care (it is important to communicate to women that postpartum care is part of maternity care)
- Clarify that the baby incurs costs and the coverage example includes the baby's care
- Avoid the non-standard use of hyphens in "prenatal" and "postpartum"
- Retain "in-network" due to the potential for out-of-network cost sharing

The current SBC template reference to an anesthesia "visit" is confusing, as the principle anesthesia care that childbearing women receive at this time is anesthesia services during labor. The file entitled "Proposed Guide for Coverage Examples Calculations – Maternity Scenario" does not appear to direct issuers to include in-labor anesthesia services, which the great majority of women do receive. We strongly encourage you to include labor anesthesia services in the example, and to adjust the Guide for Coverage Examples Calculations to include labor anesthesia services, newborn facility fee and newborn professional fees.

It is especially important to include the above cost items and information in the maternity-related sections as this coverage example will still underestimate average maternal-newborn costs for a given plan because:

- One birth in three is by cesarean, and total maternal-newborn payments when the birth is cesarean are about 50% higher than when it is vaginal
- Many births are coded as complicated and are more costly
- With a ten-month duration, most maternity episodes span two plan years, and many women will incur two deductibles
- Many women unexpectedly have out-of-network anesthesia services and higher bills

Finally, we note that none of the three coverage examples is an "event," and it would be clearer to delete the three occurrences of that word in the template coverage examples.

We encourage you to address these concerns in the new version and would be happy to support this process.

Information about Abortion Services

We appreciate the Departments' intent to align the SBC templates and instructions with the abortion coverage provisions outlined in the final rule issued on June 16, 2015. The final rule made clear that QHPs must disclose whether abortion services are covered or excluded, and whether such coverage is limited to "excepted abortion services" (life-endangerment, rape, and incest). While we appreciate that the SBC templates and instructions reinforce this requirement and that QHP issuers have clear instruction as to how they should disclose abortion coverage information in the SBC, abortion coverage information should be listed in the Common Medical Event section – not the Excluded Services and Other Covered Services section. Abortion is a legal, pregnancy-related medical service and should be reflected as such in the SBC. Moreover, the SBC should facilitate informed consumer decision-making and enrollment. Consumers must be able to discern easily whether a plan covers abortion services, associated cost sharing amounts, and if there are any limitations on coverage.

The primary goal of the SBC is to ensure that every enrollee has simple-to-understand information about health insurance coverage options so that he or she can make a well-informed choice when selecting a health plan. This must include clear information about the scope of abortion coverage. However, the SBC instructions make arbitrary distinctions between plans that exclude all abortion services, plans that cover "non-excepted abortion services" (abortion services beyond the specific instances of life-endangerment, rape, and incest), and plans that only cover excepted abortion services. It is very possible that a QHP may cover excepted abortion services in addition to one or two additional dire circumstances, such as to protect a woman's health or where there is evidence of fetal impairment. Under the proposed instructions, however, this plan would simply note in its SBC that it covers abortion services, leading consumers to falsely believe that the plan offers coverage of abortion without restriction. Likewise, there may be a plan that offers abortion coverage only when a woman's life is at risk, which accounts for only one out of the three excepted abortion services. These are not hypothetical situations: three states restrict QHP coverage of abortion to specific instances beyond life-endangerment, rape, and incest; another seven restrict QHP coverage of abortion to life-endangerment.[1]

In line with the underlying purpose of the SBC to ensure that consumers have unambiguous, baseline information about their coverage, we strongly urge the Departments to clarify the instructions so that issuers must clearly articulate the scope of abortion coverage offered through their QHPs. A QHP that covers abortion in the instances of life-endangerment, rape, incest, fetal impairment, and risk to a woman's health should list out those specific coverage limitations. Similarly, a QHP should not be allowed to use ambiguous language like "medically necessary" when describing abortion coverage; instead, a QHP should spell out those conditions that must be met for insurance coverage. Moreover, if abortion coverage information remains in the Excluded Services and Other Covered Services section of the SBC, the Departments should make it mandatory for a QHP to cross-reference to another plan document that more fully describes the coverage, as the Excluded Services and Other Covered Services section does not provide space to detail cost sharing information.

Finally, while we appreciate that the SBC instructions encourage non-QHP issuers to indicate whether abortion services are covered, we urge the Departments to amend the instructions so that all plans required to issue an SBC disclose whether or not abortion services are covered, in line with our comments above. The SBC is intended to enable consumers to make accurate comparisons across plans in order to choose the plan that best meets their needs. A consumer comparing a QHP to a non-QHP could be easily misled if only the QHP includes abortion coverage information in its SBC and the non-QHP offers no such information. The final rule, although explicitly requiring QHP issuers to disclose abortion services, does not preclude the same disclosure requirements for other issuers. Extending the same disclosure requirements to all plans' SBCs will help ensure that consumers shopping for coverage outside of the Marketplace also have access to the comprehensive information they need to select a health plan that best meets their needs.

Applicability Date

We urge an applicability date for the updated SBC template that is as soon as practicable. While the Departments have stated that plans will only be required to use the new SBC template for plan or policy years beginning on or after April 1, 2017, we hope to see a new SBC template used as soon as possible, so that improvements captured in it can be utilized by the public sooner rather than later.

Thank you for this opportunity to submit recommendations on strengthening the SBC. We look forward to continuing to work with the Departments to ensure consumers have accurate and complete information about their health coverage. For any issues that cannot be addressed at this time, we also encourage the Departments to create a process to regularly assess and refine the SBC to ensure that it provides clear, meaningful, accurate and actionable information. If you have any questions about our comments and recommendations, please contact Theresa Chalhoub, Health Policy Counsel, at tchalhoub@nationalpartnership.org or (202) 986-2600.

[1] Guttmacher Institute, *Restricting Insurance Coverage of Abortion* (Mar. 1, 2016), http://www.guttmacher.org/statecenter/spibs/spib_RICA.pdf.