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Executive Director

March 28, 2016

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VIA ELECTRONIC SUBMISSION

Shaun Donovan
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
OIRA_submission@omb.eop.gov

**RE: Proposed Summary of Benefits and Coverage Required
Under the Affordable Care Act**

Dear Director Donovan:

The National Health Law Program (NHeLP) appreciates the opportunity to provide comments in response to HHS' revision of the Summary of Benefits and Coverage (SBC) template. NHeLP advocates, litigates, and educates at the federal and state levels to protect and advance the health rights of low-income and underserved individuals.

The SBC is perhaps the most important document consumers will obtain to allow them to compare, select, and understand their health insurance coverage. Consumer confusion regarding health plan terms—particularly cost-sharing terms—is well documented. If consumers can't understand the coverage offered by a plan, they can't make an informed selection. Our comments below are intended to ensure that the SBC is useful to as many consumers as possible – focusing on key areas of women's health: preventive services, maternity and newborn care, and abortion coverage.

Preventive Services Coverage Information

The current placement of preventive services under the "If you visit a health care provider's office or clinic" row is misleading in

suggesting that preventive services are restricted to a provider's office or clinic. Many preventive services occur outside of a provider's office or clinic – such as breastfeeding support, birth control medications, and mammograms. We recommend that preventive services be listed in a separate row under “Common Medical Events.” Plans should be required to include a web address that has a comprehensive, up-to-date list of all covered preventive services in the last column. Grandfathered plans should have to disclose that not all required preventive services are covered under their plan. We recommend language such as: “Your plan may not include certain preventive coverage the law requires other plans to cover.”

In addition, in the “Limitations and Exceptions” column under additional existing Common Medical Events categories, e.g., “If you need drugs” or “If you have a test,” plans should note that there are preventive services without cost-sharing in these categories.

Finally, the completed sample template should not merely direct patients to ask their provider if a service is preventive – providers do not know whether plans are grandfathered, and it is overly burdensome for consumers to have to inquire about coverage during time they should be using to discuss their health needs with their providers. Consumers should be able to find out the coverage for needed services directly through their plans.

Maternity and Newborn Care Coverage Information

First, we reiterate our support for the inclusion of the term childbirth within the SBC. The American College of Obstetricians and Gynecologists (ACOG) encourages the use of the term “birth” in lieu of “delivery”.¹ In addition, the replacement of the terms “prenatal and postnatal care” with “office visits” under the “if you are pregnant” section will provide clarity to women that the cost-sharing provided in that row is limited to office visits and may not encompass all prenatal and postnatal care. Plans should also note which prenatal services are preventive and covered without cost-sharing.

The Departments should choose coverage examples that are relevant to as wide and diverse a population as possible. Specifically, we urge the Departments to take into account scenarios that illustrate differences in how health insurance coverage varies for different types of care. Typically health plans apply different coverage rules, limits, and cost-sharing for certain types of benefits – hospitalization, outpatient prescription drugs, mental health care, rehab services, etc. Selection of coverage illustrations should show consumers how these coverage differences work under each plan.

While the current SBC form illustrates some cost-sharing principles relating to pregnancy and birth, the two aforementioned sections greatly underestimate what “Peg” and other women would pay. Further, the current SBC does not inform prospective enrollees that, in addition to the costs of birth, there are separate costs for the newborn

¹ American Congress of Obstetricians and Gynecologists, reVITALize Obstetric Care Definitions, <http://www.acog.org/-/media/Departments/Patient-Safety-and-Quality-Improvement/2014reVITALizeObstetricDataDefinitionsV10.pdf> (2014).

child. As such, we recommend clarifying the SBC to inform potential enrollees that the baby also incurs costs, and the coverage example includes care for the baby.

In the maternity-related sections of the coverage example, it is especially important to include clear language explaining that some births can be more expensive, such as more complicated births, including those involving cesarean section or unexpected out-of-network anesthesia services. Otherwise, prospective enrollees may underestimate average maternal-newborn costs for a given plan.

Finally, we continue to encourage the Departments to provide additional explanatory language to the descriptors in the “services you may need” column, including clarification that the office visits are for prenatal and postnatal services, that professional services may include physician or midwife services, and that facility services may include hospital or birth center facilities.

Abortion Coverage Information

The ACA requires Qualified Health Plans to disclose in the SBCs when they provide coverage of abortion. To ensure that enrollees and potential enrollees can determine whether their plan covers or excludes abortion, we recommend that the SBC instructions require all plans to disclose their coverage of abortion care. We recommend amending the SBC template to include abortion in either the “If you are pregnant” row or to include abortion in a separate row, immediately below “If you are pregnant” in the “Common Medical Events” section. Abortion is a common medical procedure, with more than one million U.S. women obtaining an abortion every year.² Moreover, listing abortion under Common Medical Events will enable plans to disclose important limitations and exceptions. Conversely, we feel strongly that it should not be listed at the end of the SBC under “other” services. Enrollees are unlikely to look at that section for abortion coverage. The services listed there are ones that enrollees expect are more discretionary or those that are excluded from coverage, such as acupuncture or chiropractic services, when all other options for pregnancy are explicitly listed in the Common Medical Events section. See attached appendix for examples and instructions.

In the alternative, we have recommended changes to the current template and instructions. The proposed instructions for Individual Health Insurance Coverage require plans that cover both excepted and non-excepted abortion services to list “abortion” in the covered services box, but only suggest that plans that exclude all abortion care should list “abortion” in the excluded services box. It further states that plans that cover only excepted abortion care should list “abortion (except in cases of rape, incest, or when the life of the mother is endangered)” in the excluded services box and may also include a cross-reference to another plan document that more fully describes the exceptions. This may be confusing to consumers. Abortion that is covered in cases of pregnancies due to rape or incest, or to save the life of the woman is still a covered service and should be listed as a covered service with limitations. Only plans that exclude all abortions without exceptions should list abortion as an excluded service. The

² Three in 10 women will have an abortion by age of 45. Guttmacher Institute, Induced Abortion in the United States (March 2016), http://www.guttmacher.org/pubs/fb_induced_abortion.html.

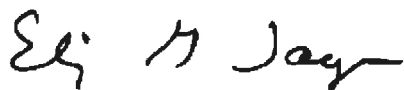
instructions should require plans to disclose their coverage of abortion care clearly and accurately. This includes whether abortion is covered, whether it is totally excluded, any limitations on coverage, and cost-sharing amounts. Additionally, all plans should include a link to their plan documents where consumers can find more information about the coverage details. In addition, the sample template should provide an example of a disclosure to ensure that health plans are aware of the requirement. The current sample template does not include any examples of disclosure of abortion coverage.

Last, we appreciate that the instructions clarified that non-QHP issuers and group health plans *may* choose to indicate whether abortion care is covered, but recommend that the instructions *require* all plans to disclose their coverage.

Conclusion

Thank you for considering our recommendations. If you have any questions about these comments, please contact Mara Youdelman at (202) 289-7661 or Youdelman@healthlaw.org.

Sincerely,



Elizabeth G. Taylor
Executive Director

APPENDIX: Abortion Coverage Information in the SBC

To ensure that enrollees and potential enrollees can determine whether their plan covers or excludes abortion, we recommend that SBC instructions require all plans to disclose their coverage of abortion care. We recommend amending the “Common Medical Events” section to include abortion either in the “If you are pregnant” row or to include abortion in a separate row, immediately below “If you are pregnant.” In addition, the “Services You May Need” column could be changed to state “Services You May Use” or simply “Services.”

Suggested Instructions for Abortion: If a plan covers all abortions this should be indicated and the plans should state “none” in the “Limitations & Exceptions” column. If a plan covers abortion only in certain circumstances, those circumstances should be indicated in the “Limitations & Exceptions” column. For example, if a plan covers abortion in instances when the life of the woman is endangered or the pregnancy is the result of rape or incest, the plan should indicate this by stating in the “Limitations and Exceptions” column, “Coverage excluded except when the life of the woman is endangered or the pregnancy is the result of rape or incest.” If the plan does not cover abortion in any circumstances, it should state “not covered” under both the “Your Cost if You Use an In-network Provider” and “Your Cost if You Use and Out-of-network Provider” columns. In addition, plans that do not cover abortion in any circumstances should state, “Abortion is not covered” in the “Limitations and Exceptions” column. Plans should use accurate and plain language terms when describing the plans’ coverage of abortion services.

Abortion Services Included With Pregnancy

SBC Template

Common Medical Event	Services You May Need	Your Cost If You Use an In-network Provider	Your Cost If You Use an Out-of-network Provider	Limitations & Exceptions
If you are pregnant	Physician/midwife fees (prenatal, labor and birth, postnatal)*			
	Labor/birth center fee*			
	Abortion services			

Abortion Services Included With Pregnancy

SBC with Sample Language

Common Medical Event	Services You May Need	Your Cost If You Use an In-network Provider	Your Cost If You Use an Out-of-network Provider	Limitations & Exceptions
If you are pregnant	Physician/midwife fees (prenatal, labor and birth, postnatal)*			
	Labor/birth center fee*			
	Abortion services	20% coinsurance	40% coinsurance	None
		Covers abortion		
		20% coinsurance	40% coinsurance	Coverage only when [explanation of circumstances]
		Covers abortion only in certain circumstances		
		Does not cover abortion	Not covered	Abortion is not covered

Abortion Services in Separate Row

SBC Template

Common Medical Event	Services You May Need	Your Cost If You Use an In-network Provider	Your Cost If You Use an Out-of-network Provider	Limitations & Exceptions
If you are pregnant	Physician/midwife fees (prenatal, labor and birth, postnatal)*			
	Labor/birth center fee*			
If you have an abortion	Abortion services			

Abortion Services in Separate Row

SBC with Sample Language

Common Medical Event	Services You May Need	Your Cost If You Use an In-network Provider	Your Cost If You Use an Out-of-network Provider	Limitations & Exceptions
If you are pregnant	Physician/midwife fees (prenatal, labor and birth, postnatal)* Labor/birth center fee*			
If you have an abortion	Abortion services	Covers abortion	20% coinsurance	None
		Covers abortion only in certain circumstances	20% coinsurance	Coverage only when [explanation of circumstances]
		Does not cover abortion	Not covered	Abortion is not covered