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CHURCH ALLIANCE

Acting on Behalf of Church Benefits Programs

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October 21, 2011

BY ELECTRONIC SUBMISSION

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Room 445-G, Hubert H. Humphrey Building
200 Independence Avenue, SW.
Washington, DC 20201

Re: CMS-9982-P and CMS-9982-NC – Notice of Proposed Rulemaking Regarding Summary of Benefits and Coverage and the Uniform Glossary/Templates, Instructions, and Related Materials under the Public Health Service Act

Dear Sir or Madam:

The Church Alliance is pleased to comment on the proposed rule from the Department of Health and Human Services (HHS), the Internal Revenue Service (IRS) and the Department of Labor (DOL) (collectively, "the Agencies") regarding the ***Summary of Benefits and Coverage and the Uniform Glossary*** for group health plans and health insurance coverage in the group and individual market, under the Patient Protection and Affordable Care Act (PPACA). The Agencies specifically requested comments on whether modifications to the proposed rule may be needed for some group health plans.

The Church Alliance represents numerous church group health plans across the United States, and is submitting this comment to explain the unique difficulties that our church health plans will face in producing and providing the Summary of Benefits and Coverage (SBC) in accordance with the proposed rule. This comment is being submitted in response to: 1) the Summary of Benefits and Coverage and the Uniform Glossary notice of proposed rule-making (CMS-9982-P), and 2) the Summary of Benefits and Coverage and Uniform Glossary Templates, Instructions and Related Materials under the Public Health Service Act, and its solicitation of comments (CMS-9982-NC).

Section 2715 of PPACA directed the Secretary of HHS to develop standards for the SBC, in consultation with the National Association of Insurance Commissioners (NAIC), representatives of health insurance-related consumer advocacy organizations, health insurance issuers, health care professionals, patient advocates and other qualified individuals. The NAIC convened a working group to develop the SBC templates and instructions. However, as stated in the overview of the proposed rule, "The SBC templates and related documents were drafted by the NAIC primarily for use by health insurance

issuers." The working group convened by the NAIC unfortunately contained no representatives of church plans. As a result, the proposed rule, templates, instructions and related materials, as written, are problematic for church plans. Due to the numerous difficulties created by the current rule, templates, instructions and related materials, the Church Alliance respectfully requests a delay in the effective date of implementation of the SBC requirement, the opportunity to provide input into the development of SBC standards and instructions that will be applicable to church plans (as has been provided to health insurance issuers), and a reasonable amount of flexibility with respect to the application of the SBC requirements to church plans to reflect their unique needs.

I. The Church Alliance Supports Disclosure of Information on Health Plan Benefits and Coverage to Church Employees

A. Background on the Church Alliance and Church Health Plans

The Church Alliance is an organization composed of the chief executives of thirty-seven church benefit boards, covering mainline and evangelical Protestant denominations, two branches of Judaism, and Catholic schools and institutions. The members of the Church Alliance currently provide affordable and comprehensive health benefits to over one million Americans, serving over 155,000 churches, synagogues, and affiliated organizations.

For over fifty years, national church benefit organizations have offered health benefits through denominational church health plans. Church plans are unique organizations and are defined in various sections of federal law, including Section 414(e) of the Tax Code and Section 3(33) of ERISA. Denominational church health plans generally are self-funded health plans. However, unlike employer self-funded health plans, church health plans are composed of many small employers and, in some instances, individuals (e.g. self-employed clergy). Also, church health plans are available only to church employees and members of the clergy of the particular denomination, and not available to the general public.

Each church denomination has a unique polity (governance structure) established to reflect its theological beliefs. The governance structures of the Church Alliance members range from purely hierarchical churches to independent churches or denominations that are congregational in nature. The governance structure of a denomination often determines how direct the relationship between each church and the denominational plan is, and the amount of control (if any) that may be exercised by the denominational plan sponsor over participating church employers.

The church benefits boards served by the members of the Church Alliance are members of the Church Benefits Association (CBA). The CBA actively supports disclosure of information on health plan benefits and coverage to church employees through its Communications, Marketing, and Education Group. Members of this group, who represent many of the church benefit boards, strive to provide church workers with the clearest, most accurate picture of employee benefits, including health plan benefits and coverage.

B. PPACA Does Not Refer to Church Health Plans

PPACA amended many aspects of our nation's health care system, including rules governing the health insurance industry. However, in the turmoil accompanying the passage of PPACA, Congress overlooked church plans and the important role they play in providing health benefits to over one million Americans.

PPACA does not refer to church plans, and the NAIC did not consult with church plans in preparing the SBC templates, instructions and related materials. The proposed rule (CMS-9982-P) mentions church plans only three times, and the three references do not add any clarity for church plans.1 In CMS-9982-NC, church plans are not mentioned at all. The requirements of the proposed rule, templates, instructions and related materials appear to apply to church plans that are group health plans by virtue of their classification as group health plans, but that application is not entirely clear. Further, many of the SBC requirements are problematic for church plans.

II. Effective Communication and Ease of Comparison Must Be Balanced with Minimization of Cost and Duplication for Church Plans

A. The Feasibility of Implementation by March 23, 2012

In CMS-9982-P, the Agencies requested comments "regarding factors that may affect the feasibility of implementation within this time frame [beginning on or after March 23, 2012]." As described above, denominational health plans are composed of many small employers and, in some instances, individuals. In addition, denominations have different levels of control over participating church employers. Thus, some denominations may not mandate participation in the denominational health plan, much less mandate certain information be provided by the church employer. Also, depending on the level of control over the individual church employers and the structure of the denomination, the individual employers and their employees have varying levels of choice for health coverage each year, which adds complexity to the preparation and distribution of the SBC. Therefore, it will be very difficult, if not impossible, for many denominational health plans to obtain the information necessary to produce the SBC in the format shown in the SBC template by March 23, 2012.

Many denominational plans will have no knowledge about cost sharing, and, depending on the polity of the denomination, may not be able to mandate the provision of this information by the employer to the employee. Yet, the denomination that sponsors the plan may be penalized for the failure to provide this information to an employee.

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1 In Section II.E.2 of the proposed rule, the following statement is made: "Generally the enforcement authority under these provisions applies to all non-governmental group health plans, but the Department of Labor does not enforce the requirements of part 7 of ERISA with respect to church plans." Later in that section, the following is stated: "[I] in enforcing PHS Act Section 2715, the Departments of Labor and the Treasury will coordinate to avoid duplication in the case of group health plans that are not church plans…." Finally, in the same section, under subsection B, in discussing penalties for non-compliance, the following statement is made: "Special rules apply for church plans." However, no further explanation is given.

The nationwide reach and decentralization of many of the denominational health plans also will make implementation within the specified time frame very daunting. For example, denominational health plans are not quickly informed when new employees are employed by local church employers and do not know whether these new employees (or existing employees) have beneficiaries who could be entitled to coverage under the denominational plans. Even for denominational health plans that do have records of existing beneficiaries, it is unlikely that the plans will have information about whether any beneficiaries reside at separate addresses from the participants to whom the beneficiaries are related, or will have such records of such beneficiaries' addresses.

Due to the nationwide reach of many denominational health plans, those plans will be mandated to provide SBCs in more than one language, but will not have the information about the addresses of the individual employees and beneficiaries, so will not know the counties in which they reside, and thus will not have the information necessary to know when and if interpretive services and a translation must be provided. Obtaining this information will be especially difficult if implementation is required by March 23, 2012.

The Church Alliance respectfully requests that the Agencies grant employers providing coverage through a self-funded denominational health plan as long a transition period as possible. Churches and church plans face many unique challenges in implementing the provisions of the PPACA. Churches and church plans are exerting their best efforts to implement all the requirements, but given the atypical employment and polity structures of churches and denominations, longer transitions to implement these changes are necessary. Accordingly, the Church Alliance suggests delaying the application of the SBC requirement to church plans until 2014 or later, unless it is instead made optional for such plans.

B. The Template and Instructions Are Not Appropriate to Accommodate the Design of Church Group Health Plans

In CMS-9982-NC, comments were specifically requested on whether changes to the SBC template may be appropriate to accommodate various types of plan and coverage designs, to provide additional information to individuals, or to improve the efficacy of the disclosures recommended by the NAIC. Comments also were solicited regarding any modifications needed for use by group health plans.

The template and instructions are not appropriate for church group health plans, because the language of the template and instructions are written for insurance products, rather than self- insured church health plans. The language of the template and instructions do not align with the plans themselves, which will result in confusion for church employees, beneficiaries, and church employers.

For example, the template and instructions use terms such as "policy," "insurance company," and "insurer." The template and instructions must be modified for church health plans because these terms are inapplicable to such plans.

As a further illustration of the incompatibility of the template and instructions with church health plans, the template and instructions require the SBC to show the amount of the "premium." However,

church plans do not ordinarily charge premiums. Instead, church plans determine the costs of coverage and then, based on the polity of the denomination with which the church plan is affiliated, contribution rates. In some denominations, the church plan's sponsor has the ability to mandate employer coverage and set contribution rates. In other denominations, the church plan can only control the plan design and administration, but participation remains optional for local church employers; therefore contributions may be more similar to a risk- and experience-based premium. Sometimes contribution rates set by the church plan are blended by an intermediate church body in various ways, to remove any perceived barriers to clergy appointment. In other denominations, church bodies may cross-subsidize participating churches through their contribution structures. In summary, not only is the word "premium" uncommon among church health plans; it also is inappropriate for many church health plans.

The proposed rule appears to allow more flexibility than the template and instructions on the requirement to specify the "premium." The proposed rule states that the following information is to be included in the SBC: "Premiums (or in the case of a self-insured group health plan, cost of coverage)." Thus, the proposed rule appears to allow variation with this aspect of the template and instructions, but it is unclear whether the flexibility of the rule may be utilized, or the template and instructions must be followed.

We respectfully suggest that the Agencies provide church health plans some flexibility in providing information to church employees about the cost of coverage, because of polity-based variations with contribution determinations. Also, in many denominations the local church employer pays part of the contribution, but does not inform the church plan sponsor or administrator about this amount, so contribution information provided in an SBC by a sponsor or administrator could be incorrect.

Such flexibility was contemplated in the "Overview of the Proposed Regulations." In Section II.A.3 of CMS-9982-P, the Agencies state that the NAIC instructions provide "that, in the case of a group health plan, a participant or beneficiary should consult the employer for information regarding the actual cost of coverage net of any employer subsidy." The Agencies then "request comments regarding **whether** the SBC should include premium or cost information and if so, the extent to which such information should reflect the actual cost to an individual net of any employer contribution, as well as the extent to which the cost information should include costs for different tiers of coverage (for example, self-only, family)." Furthermore, the Agencies request comments "on how this information can be provided in a way that allows individuals and plan sponsors to make meaningful comparisons about the cost of their coverage options." Since "premiums" are not charged by a church health plan and the actual cost to an individual net of any employer contribution is generally not available to the sponsor or administrator of the church health plan, we respectfully suggest that an SBC for a church health plan need not include premium or cost information, and that flexibility be granted to allow information about contribution rates and actual costs to be provided separately, when it is impractical for the church health plan to provide that information in the SBC. The goal should be to allow church employees to make meaningful comparisons about the cost of their coverage options by their receipt of accurate information in a timely and efficient manner, rather than mandating the inclusion of possibly inaccurate or misleading "premium" information in the SBC.

If the template is not modified for church health plans, the sponsors of the denominational health plans also will need to consider whether and how to change health plan language. Should the plan language be changed to match the language of the template, even though the template does not coincide with the terminology applicable to such plans under other federal and state law? Should the plan language coincide with the applicable terminology under other federal and state law, but be inconsistent with the template language? To avoid forcing sponsors of denominational health plans to make this difficult decision, the Church Alliance believes it is preferable to change the template so that it is consistent with both federal and state law and with the plan documents for church health plans.

Another problem with use of the template for church health plans is that it references (on page four) the state office of health insurance, but this office is unlikely to have jurisdiction over an issue involving a church plan. Thus, this reference is likely to be more confusing than helpful.

In addition, an example of a more practical issue with the instructions is that most denominational health plans and church employers utilize nonprofit mailing rates to best exercise stewardship of church resources. However, the draft instruction guide for group policies does not clearly allow mailing in that manner. If nonprofit mailing rates may not be used, the SBC requirements will result in large increases in mailing costs for denominational health plans.

The Church Alliance respectfully requests that very flexible SBC requirements be applied to sponsors of church health plans. Otherwise, the SBCs provided to church employees will be confusing, instead of being useful.

C. Flexibility in the Presentation of the SBC Will Help Church Employees to Better Understand and Compare the Benefits and Coverage Offered to Them through Church Health Plans

In CMS-9982-NC, a request was made that comments proposing flexibility "explicitly address the potential positive or negative effects on individuals' ability to effectively compare benefits and coverage among and across individual policies and group health plans." Flexibility in the presentation of the SBC will help church employees to better understand and compare the benefits and coverage offered to them through church health plans because the information in the SBC will be presented in language with which the church employees are familiar. In particular, flexibility in providing information about the "premiums" (contributions) will produce a better understanding for those employees of the true cost to the employees of their benefits, which will assist them in making appropriate decisions with respect to their health coverage.

Flexibility in the scope of information that is presented in the SBC for church employees also will help church employees to better understand the benefits being provided to them. In general, a denominational health plan provides a higher level of benefit than would be provided under a plan that only provides essential health benefits, because the denominational plan has realized that the health of the denomination is related to the health of its workers, and thus, is often more generous in

the level of coverage. If the information in the SBC for denominational health plans must be limited to the information in the template, church employees often will be unable to clearly see that the coverage offered to them through their denominational health plan is a higher level and broader scope of coverage than is provided by a commercial insurance product offering only essential health benefits.

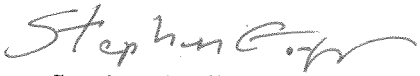
The nationwide reach and decentralization of many of the denominational health plans make compliance with the proposed rule, template and instructions challenging. Strict compliance with the proposed rule, template and instructions will not increase church employees' understanding of the health benefits and coverage offered to them or assist them in comparing such benefits and coverage. The Church Alliance respectfully requests that reasonable relief be afforded to church health plans from those requirements of the proposed rule that create unnecessary costs and duplication for church health plans or unduly burden such plans without increasing the effectiveness of communication and ease of comparison for church employees. In addition, the Church Alliance offers to create a draft alternate template and instructions for church health plans, subject to approval of the Agencies, which will allow church health plans an appropriate level of flexibility, while allowing church employees the ability to better understand and compare the benefits and coverage available to them.

III. Conclusion

Church health plans have played an important role in providing health benefits to clergy and lay employees across the country for over a half-century. However, the fact that the SBC template, instructions and proposed rule do not contemplate church plans creates confusion for denominational health plans, church employees and their employers. The Church Alliance recommends that the Agencies allow flexibility in the presentation of the SBC for denominational health plans, to better allow church employees to compare the benefit of denominational health plans with other types of health coverage. It also recommends that the Agencies provide for a later implementation date to allow the denominational plans time to implement the changes, so the SBC template for church plans will be a useful tool for church employees.

We welcome the opportunity to discuss our suggestions with the Agencies at your convenience. Please feel free to contact the undersigned if you have any questions or wish to discuss this matter further.

Sincerely,



Stephen H. Cooper
Government Affairs Counselor, K&L Gates
On Behalf of the Church Alliance