



## Association of Federal Health Organizations

P.O. Box 19791, Washington, DC 20036  
Established 1983

October 21, 2011

Centers for Medicare & Medicaid Services  
U.S. Department of Health and Human Services  
Attention: CMS-9982-P  
P.O. Box 8016  
Baltimore, MD 21244-1850

Submitted via the Federal eRulemaking Portal

Dear Sir or Madam:

The Association of Federal Health Organizations ("AFHO") appreciates this opportunity to provide comments on the Notice of Proposed Rulemaking concerning the Summary of Benefits and Coverage ("SBC") and the Uniform Glossary published at 76 Fed. Reg. 54,442 (August 22, 2011). AFHO is a national association of Federal Employees Health Benefits ("FEHB") fee-for-service plan carriers. AFHO's member organizations sponsor FEHB plans that provide health benefits coverage to over three million federal and postal employees and annuitants.<sup>1</sup>

### Implementation

In our view, the agencies should exempt large group health plans, including self-insured health plans and governmental health plans, from the SBC requirements. Generally, large group health plans are defined as those with 100 or more employees. The large group market offers highly customized plans and already provides a multitude of tools to assist purchasers, such as enrollment and renewal materials, summary plan descriptions (or plan brochures in the FEHB context) and human resources and health plan personnel to answer questions. This is particularly true of the FEHB Program which has been successfully holding Open Seasons without pre-existing condition limitations for over 50 years under the U.S. Office of Personnel Management's ("OPM") stewardship.

Alternatively, AFHO asks that the agencies delay the effective date of the final rule well beyond March 23, 2012. As you know, Public Health Service Act § 2715, which was added by the Affordable Care Act ("ACA"), required the agencies to issue the proposed rule by March 23, 2011, and set an implementation date for one year later. HHS took an additional five months to issue the proposed rule, and it will be several more months before a final rule is issued. Therefore, AFHO believes that the March 23, 2012, implementation date is

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<sup>1</sup> AFHO's members include American Foreign Service Protective Association, American Postal Workers Union, Compass Rose Benefits Group, Government Employees Health Association, Mail Handlers Benefit Plan, National Association of Letter Carriers Health Benefit Plan, National Rural Letter Carriers' Association, Panama Canal Area Benefit Plan, Special Agents Mutual Benefit Association, and Associate Members Blue Cross Blue Shield Association and Aetna Life Insurance Co. AFHO members reserve the right to comment individually on this proposed rule.

infeasible, and we ask that the agencies delay the effective date until 18 months following the issuance of the final rule.

### Electronic Distribution of the SBC

The proposed rule (45 C.F.R. § 147.200(a)(4)(C)) states that

An SBC provided by a plan or issuer to a participant or beneficiary may be provided in paper form. Alternatively, for non-Federal governmental plans, the SBC may be provided electronically if the plan conforms to either the substance of the ERISA provisions at 29 CFR 2520.104b-1, or the provisions governing electronic disclosure for individual health insurance issuers set forth in paragraph (a)(4)(iii)(B) of this section.

The final rule should extend this electronic disclosure alternative to all governmental plans, both non-federal governmental plans or federal governmental plans, such as FEHB plans. We note that the electronic disclosure alternative is substantially similar to OPM's 2011 Going Green alternative which cut back on the cost of distributing paper copies of the FEHB plans' contract statements of benefits (or brochures). For more information visit this website -- <http://www.opm.gov/insure/health/gogreen/index.asp> . Alternatively, the agencies should explain that the U.S. Office of Personnel Management as the Congressionally designated FEHBP administrator, holds the authority to extend the electronic disclosure alternative to FEHB plan carriers.

### Explanation of rights to continue coverage

FEHB plans are group health plans. The agencies' SBC creation instructions for group health plans state in pertinent part:

Your Rights to Continue Coverage:

This section must appear. Insurers must include the following items for all policies:

- you or your employer commit fraud or intentional misrepresentations of material fact,
- the insurer stops offering this policy or services in the state
- you move outside the coverage area

Insurers must also include the following for group plans:

- your employer/sponsor changes insurance carrier

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- your employer cancels or non-renews your coverage
- your employment/sponsorship terminates and you are not eligible to continue coverage under COBRA or state law

While we recognize the value of commonality in these communications, these mandated statements would confuse readers of an SBC issued by an FEHB plan. For example, we would find it inappropriate to suggest that the U.S. Government as an employer would commit fraud or intentional misrepresentations or involuntarily cancel or non-renew an employee's coverage. Moreover, continuation coverage under the FEHB Act is available under the federal temporary continuation of coverage law, 5 U.S.C. § 8905a, rather than COBRA or state law. Consequently, some flexibility must be allowed. We suggest that the agencies delegate that authority to OPM for FEHBP purposes.

#### Coverage examples

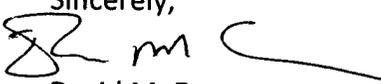
AFHO supports the agencies' approach of treating the coverage examples as tools for comparing coverage rather than cost estimators. Consequently, it is sensible for the coverage examples to use a common, nationally-based cost of care.

#### Uniform glossary

AFHO supports the agencies' approach of noting in the SBC that the uniform glossary available on the internet without providing an option to request a paper copy of the glossary. We would prefer that Plan members utilize the glossary in their OPM approved contract statements of benefits (or brochures).

We also suggest that the heading to the uniform glossary explain that the glossary may include terms that don't apply to your own coverage. For example, many types of plans do not require an individual to select a primary care doctor or provider and plans may offer habilitation services without describing them as such.

Thank you for your consideration of these comments.

Sincerely,  
  
David M. Ermer  
AFHO General Counsel

cc: Board of Directors  
Daniel A. Green, OPM  
Anne Easton, OPM  
Sylvia Pulley, OPM  
William Stuart, OPM