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March 23, 2016

Sylvia Burwell
Secretary
Department of Health and Human Services
Attention: CMS-9938-P
Room 445-G
Hubert H. Humphrey Building
200 Independence Avenue, SW
Washington, D.C. 20201

John M. Dalrymle
Deputy Commissioner for Services and Enforcement
Internal Revenue Service
Attention: REG-145878-14
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

Phyllis C. Borzi
Assistant Secretary
Employee Benefits Security Administration
Attention: RIN 1210-AB69
Department of Labor
200 Constitution Avenue, NW
Washington, D.C. 20210

Re: Summary of Benefits and Coverage and Uniform Glossary
80 Fed. Reg. 9861 (February 28, 2016)

Dear Secretary Burwell, Deputy Commissioner Dalrymle, and Assistant Secretary Borzi:

The American Cancer Society Cancer Action Network (ACS CAN) appreciates the opportunity to comment on the revised Summary of Benefits and Coverage (SBC) template and the Uniform Glossary. ACS CAN, the nonprofit, nonpartisan advocacy affiliate of the American Cancer Society, supports evidence-based policy and legislative solutions designed to eliminate cancer as a major health problem. As the nation's leading advocate for public policies that are helping to defeat cancer, ACS CAN ensures that cancer patients, survivors, and their families have a voice in public policy matters at all levels of government.

Overall we were very pleased with the revisions to the SBC template and Uniform Glossary. As the Departments move to finalize these important documents, we offer the following comments:

- As discussed in more detail below, ACS CAN strongly urges the Departments to include an additional high-cost coverage example, specifically the breast cancer coverage example proposed by the Departments in 2011. Significant consumer testing conducted in connection with the promulgation of those regulations demonstrated that the inclusion of a breast cancer example demonstrated to consumers the value of their health insurance coverage.
- We urge the Departments to add reference to a plan's grandfathered status in the SBC template and other accompanying documents, as detailed below.

IMPLEMENTATION TIMELINE

We strongly urge the Departments to require plans to provide the revised SBC, Uniform Glossary and accompanying materials no later than January 1, 2017. While this timeframe may be ambitious, the SBC is a vitally important document that allows consumers to compare, select, and understand their health insurance coverage options. If consumers do not understand the coverage options, they often find themselves in plans that lack the coverage they need.

PROPOSED SBC BLANK TEMPLATE

Minimum Essential Coverage and Minimum Value

We applaud the Departments for including in the SBC template information on whether the plan provides Minimum Essential Coverage (MEC) and whether its share of the total allowed costs of benefits met applicable Minimum Value (MV) requirements. It is important for consumers to be informed whether a plan which they are considering meets the MEC and MV requirements. Under the ACA, individuals must enroll in a plan that provides minimal essential coverage or they face a tax penalty. Consumers need to know that the plan they are considering choosing will provide them with the coverage they expect. They also need to know that they could face a tax penalty if a plan does not provide minimum essential coverage. Employees who are offered an employer-sponsored health plan that does not meet the minimum value requirement may be eligible for subsidies in the marketplace. Conveying this important information to consumers will help them to make informed choices about their health care plan options.

Grandfathered Status

The Affordable Care Act (ACA) requires plans that are "grandfathered" under the law to inform enrollees of their grandfathered status in plan materials. The Departments have not specified which plan materials or documents this disclosure requirement applies to, and this information is not included in the current (2012) SBC template or the proposed template.

ACS CAN urges the Departments to include information about whether a plan is grandfathered in the SBC template. We suggest this information could be listed on page 3 of the SBC template as the last item on the page below "Does this plan meet the Minimum Value Standards?" Placing this information here would put it next to other, similar content. We suggest including the following language in bold print:

> Is this plan grandfathered? [Yes/No]
> If your plan is grandfathered, it does not have to follow certain coverage requirements like free preventive services or the right to choose your doctor. For more information, please visit https://www.healthcare.gov/health-care-law-protections/grandfathered-plans/

We believe that adding these lines of text on this page will provide vital information while not affecting the page limit for the SBC overall.

Consumers often have trouble determining whether or not a plan is grandfathered. Many plan members lose track of their plan documents, and it can be difficult to locate the correct plan documents online. If disclosure of a plan's grandfathered status is included in a long document with dense, legal language, consumers are not likely to understand it or keep it for further reference. These are many of

the reasons why the SBC was created – and why grandfathered status should be part of the shorter, easy to understand document.

The American Cancer Society operates a specialized Health Insurance Assistance Service (HIAS) which provides cancer patients information about health insurance and access to care. When talking to a cancer patient with employer-sponsored health insurance, HIAS staff often have difficulty helping the patient determine whether their health plan is grandfathered. Patients are sometimes reluctant to ask their Human Resources (HR) departments for this information, for fear of disclosing health information or being viewed as complaining or "rocking the boat."

As the Departments are aware, a grandfathered health plan may not cover preventive services, or certain medical or prescription drug benefits that patients need; include an appeals process for coverage decisions; or cover out-of-network emergency services. If potential enrollees are choosing between multiple plans, they need to know which plans provide the full spectrum of patient protections and coverage requirements that the ACA provides. Current members also will benefit from having this information listed in their SBC, as it is crucial information for a patient attempting to access preventive services or other coverage or plan features not required of grandfathered plans. Adding this information to the SBC will be helpful for cancer patients as well as many other constituents.

Coverage Examples

The statute requires that an SBC contain "coverage facts labels" or "coverage examples." The 2012 final regulations required the SBC to include two coverage examples – having a baby (via normal delivery) and routine maintenance of well-controlled type 2 diabetes. The Departments subsequently have added a third coverage example: a simple foot fracture, including an emergency room visit.

ACS CAN supports the addition of the proposed coverage example demonstrating the health plan's coverage of a condition requiring an emergency department visit. Consumer testing conducted prior to the 2012 SBC final rule showed that consumers recommended the inclusion of an additional coverage example for an emergency department visit for a routine emergency.[1] We urge the Departments to require issuers and health plans to note that not all emergency department care may be delivered by an in-network provider and that the costs for an out-of-network provider may or may not be reimbursed by the plan. Plans also should note whether balance billing may apply. Thus, consumers should be aware that they may incur additional costs related to an emergency department visit.

We continue to strongly urge the Departments to include a fourth coverage example that includes a scenario with very high costs in a given year (as opposed to a life-time chronic disease). ACS CAN urges the inclusion of treatment for a cancer as one of the coverage examples, and recommends the Departments use a breast cancer example as they considered during the initial promulgation of the SBC regulations.[2] The American Cancer Society estimates that over 1.7 million new cancer cases will be

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[1] Kleimann Communications Group, Inc. and Consumers Union, Early Consumer Testing of the Coverage Facts Label: A New Way of Comparing Health Insurance, August 2011, available at https://consumersunion.org/wp-content/uploads/2013/03/CU_CFL_Report_FINAL.pdf.

[2] Department of the Treasury, Department of Labor, and Department of Health and Human Services, Summary of Benefits and Coverage and the Uniform Glossary, 76 Fed. Reg. 52442 (August 22, 2011).

diagnosed in the U.S. this year and over 14 million Americans alive today have a history of cancer.[3] Cancer is the second most common cause of death in the U.S. (second only to heart disease), accounting for nearly 1 of every 4 deaths in the U.S.[4]

Given the prevalence of cancer in the U.S., it is important for the SBC to include a cancer coverage example. ACS CAN specifically recommends that breast cancer be included as one example. As the Departments are aware, the initial SBC proposed rule included a breast cancer coverage example. Breast cancer is one of the most common cancers among American women and it is estimated that 1 in every 8 (approximately 12 percent) of women will develop breast cancer in the course of their lifetime.[5] In addition, including a breast cancer example will demonstrate the breadth of the health plan's or insurer's coverage across multiple settings of care. The original breast cancer coverage example included costs for office visits and procedures, radiology services, laboratory tests, hospital inpatient and outpatient services, chemotherapy, radiation, mental health, and pharmacy services.

Consumer testing conducted prior to the 2012 SBC final rule showed that the inclusion of coverage examples – and particularly the breast cancer coverage example – helped to demonstrate the value of health insurance coverage.[6] Research conducted following the first year the SBC was available also demonstrates the value of inclusion of a high cost scenario.[7]

PROPOSED UNIFORM GLOSSARY

Along with the proposed template SBC, the Departments released a proposed updated Glossary of Health Coverage and Medical Terms. ACS CAN agrees with many of the changes made to this document and is pleased it has been made more consumer friendly.

ACS CAN urges the Departments to add "Grandfathered Health Plan" as an item in this glossary. This is an important term for enrollees and plan members to understand. As discussed above we have urged the Departments to include information about grandfathered status in the template SBC, and including the term in the glossary is a necessary parallel step. However, even if the Departments do not finalize an SBC template that includes reference to grandfathered status, ACS CAN still encourages the Departments to add this term to the glossary.

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[3] American Cancer Society, Cancer Facts & Figures 2016, available at http://www.cancer.org/research/cancerfactsstatistics/cancerfactsfigures2016/index.

[4] Id.

[5] American Cancer Society, Breast Cancer, available at http://www.cancer.org/acs/groups/cid/documents/webcontent/003090-pdf.pdf.

[6] Kleimann Communications Group, Inc. and Consumers Union, Early Consumer Testing of the Coverage Facts Label: A New Way of Comparing Health Insurance, August 2011, available at https://consumersunion.org/wp-content/uploads/2013/03/CU_CFL_Report_FINAL.pdf.

[7] L Quincy, *Early Experience With a New Consumer Benefit: The Summary of Benefits and Coverage*, Consumers Union, February 27, 2013, available at https://consumersunion.org/wp-content/uploads/2013/03/Early_Experience_Report.pdf.

HHS has already created a definition for Grandfathered Health Plan in its online glossary at https://www.healthcare.gov/glossary/grandfathered-health-plan/. We encourage the Departments to use this same definition in the uniform glossary.

PROPOSED INSTRUCTION GUIDE FOR INDIVIDUAL AND GROUP HEALTH INSURANCE COVERAGE
On page 14, Section IV of each of the respective Proposed Instruction Guides, the Departments include a list of services that plans must place in either the "Services Your Plan Generally Does Not Cover" box or the "Other Covered Services" box. Plans must not deviate from the provided list for the "Other Covered Services" box. However, plans are required to include additional items in the "Services Your Plan Generally Does Not Cover" box if the plan requires the patient to pay 100 percent of the costs for an in-network service.

ACS CAN urges the Departments to add "Clinical Trials" to this list of services. While the ACA requires this coverage, grandfathered plans are still allowed to exclude it. Knowing whether her plan or potential plan covers clinical trials is very important information for cancer patients, as well as other patients with a diagnosis of a serious or life-threatening illness. In many cases, clinical trials represent the only way for patients to receive the newest treatment for their condition. Additionally, medical science and all patients benefit from making it easy to enter clinical trials when appropriate.

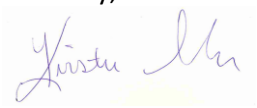
ACS CAN also urges the Departments to add "Preventive Services" to the list included on page 14. Again, while the ACA requires coverage of preventive services, grandfathered plans still are allowed to exclude and/or limit coverage of preventive services. Including preventive services on this list will better inform individuals of the extent to which their plans cover these vitally important services. We are concerned that absent this notification, individuals may erroneously assume their plan covers all preventive services.

As the Departments are aware, the term "preventive services" includes many different services, such as cancer screenings, tobacco cessation treatments and counseling regarding behaviors like nutrition and exercise. The ACA defines preventive services to include services recommended with an "A" or "B" rating by the U.S. Preventive Services Task Force, immunizations recommended by the Advisory Committee on Immunization Practices, etc. Simply referencing "preventive services" is not sufficient to inform patients about what is covered. If a plan covers each preventive service indicated in Section 2713 of the ACA, we would recommend the Departments require the plan to list "preventive services" in the "Other Covered Services" box (and not detail each service – the assumption would be they are all covered). If there are preventive services according to this definition the plan excludes from coverage, the plan should be required to list the specific services in the "Services Your Plan Generally Does Not Cover" box. This will provide enrollees and patients with adequate information to plan for their care while not making these lists unreasonably long.

Conclusion
On behalf of the American Cancer Society Cancer Action Network we thank you for the opportunity to comment on the proposed changes to the template Summary of Benefits and Coverage and accompanying documents. If you have any questions, please feel free to contact me or have your staff

contact Anna Schwamlein Howard, Policy Principal, Access and Quality of Care at Anna.Howard@cancer.org or 202-585-3261.

Sincerely,



Kirsten Sloan
Senior Policy Director
American Cancer Society Cancer Action Network