

Congress of the United States
Washington, DC 20515

December 9, 2011

The Honorable Timothy Geithner
Secretary
U.S. Department of the Treasury
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

The Honorable Hilda Solis
Secretary
U.S. Department of Labor
Office of Health Plan Standards and Compliance Assistance
Employee Benefits Security Administration
200 Constitution Avenue, NW
Washington, DC 20210

The Honorable Kathleen Sebelius
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Secretaries Geithner, Solis, and Sebelius:

You recently received comments from the health insurance industry with regard to the Affordable Care Act's (ACA) requirement that plans provide a summary of benefits and coverage and a uniform glossary.

In their comments, these organizations question the need for the summary of benefits and coverage (SBC). While they raise many particular concerns, they can be summarized as questioning the overall value of the SBC to consumers, asking for elimination of much of the information required on it, and at a minimum asking for delays in the implementation of this new requirement.

We were surprised by the vehemence of the opposition to the SBC by these organizations. The ACA required that the Secretaries work with the National Association of Insurance Commissioners (NAIC) when developing the SBC standards. After hearing their opposition, Rep. Stark wrote to the NAIC to clarify the process that was used by that organization to reach consensus on the SBC standards. Attached please find a response from the NAIC detailing that process which clearly included a diverse group of stakeholders and included the health insurance industry every step of the way.

As you'll see in the attached letter, insurers participated as part of this process at the working group level. As the proposal moved through the NAIC, they had ample

opportunity to raise concerns, make alternative recommendations, or make their opposition known. Yet, the recommendations were agreed to by consensus -- without anyone calling for recorded votes. The NAIC letter states:

The recommendations presented to HHS and DOL were the product of consensus by very diverse stakeholders, within the constraints of the statute. Through the process, all parties (state regulators, statutory working group members, and other interested parties) were provided ample opportunities to improve the recommendations, and did so. The Subgroup attempted to achieve a pragmatic balance between providing the best information for consumers, in a manner that can be practically implemented by insurance companies. Therefore, the feedback of participating stakeholders was critical throughout the process.

We also understand that insurers sponsored two rounds of consumer testing that attested to the value of the SBC. These testing results aligned closely with those of a similar effort conducted by Consumers Union. As these studies found, the comparative information provided by the SBC is very important to consumers who are shopping for coverage. Until this regulation goes into effect, consumers are typically unable to compare side-by-side critical plan features like premiums, benefits, limitations, coverage exceptions and cost-sharing. As reported in the consumer testing studies, consumers using the health plan descriptions available today have a difficult time finding the necessary information to make informed choices.

The SBC is also important to millions of small businesses who choose health plans for their employees, millions of employed Americans who must choose between their own employer-sponsored coverage and that of their spouse, and the workers with employer-sponsored coverage who are offered a choice of two or more plans. Even employees who are not offered a choice of different plans will be able to understand the strengths and limitation of their coverage.

Finally, the SBC will be far more accessible to consumers than the summary plan descriptions they now receive under ERISA, which are often lengthy and incomprehensible. Particularly important to consumers are the coverage examples -- a new feature which testing showed greatly enhanced consumers' ability to gauge the coverage offered by a plan.

We urge you to read the attached letter and remember that this objection is coming very late in the process and that the SBC is a document which testing shows consumers value greatly. Creating a fair marketplace is a fundamental goal of health reform and the SBC is a key component of achieving that.

Sincerely,



Sander M. Levin
Ranking Member
Committee on Ways and Means



George Miller
Ranking Member
Committee on Education and Workforce



Henry Waxman
Ranking Member
Committee on Energy and Commerce



Pete Stark
Ranking Member
Committee on Ways and Means
Health Subcommittee



Frank Pallone
Ranking Member
Committee on Energy and Commerce
Health Subcommittee



Robert E. Andrews
Ranking Member
Committee on Education and Workforce
Health, Employment, Labor and
Pensions Subcommittee

Attachment: NAIC Ltr

November 14, 2011

The Honorable Fortney Pete Stark
U.S. House of Representatives
239 Cannon Building
Washington, DC 20515

Dear Representative Stark:

I write in response to your November 2, 2011, letter regarding proposed regulations requiring consumer information about benefits and coverage, as required by Section 2715 of the Public Health Services Act (PHSA) (as amended by Section 1001(5) of the ACA) and the role of the National Association of Insurance Commissioners (NAIC).

The NAIC is the U.S. standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia, and five U.S. territories. Through the NAIC, state insurance regulators establish standards and best practices, conduct peer review, and coordinate their regulatory oversight. NAIC staff supports these efforts and represents the collective views of state regulators domestically and internationally. NAIC members, together with the central resources of the NAIC, form the national system of state-based insurance regulation in the U.S.

Following are responses to your specific questions:

1) Describe the role of the NAIC in the development of these standards

Section 2715 of the PHSA requires that the Secretaries of HHS and DOL develop standards for a summary of benefits and coverage explanation for applicants, enrollees, and policyholders or certificateholders for individual and group health insurance. In doing so, the law directs the Secretary to consult with the NAIC, along with a working group of key stakeholders.

The NAIC created a Consumer Information (B) Subgroup of state insurance regulators and key stakeholders (known as the Statutory Working Group members) to work on this and other key provisions of the ACA. In June 2010, the Subgroup began its work in drafting a Summary of Benefits and Coverage and a Uniform Glossary to submit as recommendations to HHS and DOL. This work was conducted by numerous conference calls and in-person meetings. The meetings and calls were held in accordance with the NAIC's open meetings policy, and interested parties participated actively throughout the process. All draft documents, meeting and call summaries, and materials were posted on the Subgroup's web page throughout the process.

During the development of the recommendations, the NAIC benefitted from the results of consumer testing. The Summary of Benefits and Coverage (without Coverage Examples) and the Uniform Glossary underwent two separate rounds of consumer testing, one sponsored by Consumers Union and the other sponsored by America's Health Insurance Plans (AHIP). The Coverage Examples later underwent two additional rounds of consumer testing, one sponsored by Consumers Union and the other sponsored by AHIP. In addition, AHIP assisted the Subgroup in conducting a test of the Summary of Benefits and Coverage by asking a group of insurers to complete the forms. The Coverage Examples also underwent a literacy review by United Healthcare's consumer literacy consultants. The results of the consumer testing showed that the Uniform Glossary, Summary of Benefits and Coverage, including the Coverage Labels, provided important and valuable information to consumers.

Based on the results of the consumer testing, the insurer testing of the forms, and the consumer literacy review, the Subgroup was able to further refine and improve the documents.

On December 17, 2010, the NAIC submitted initial recommendations for a Summary of Benefits and Coverage (SBC) and a Uniform Glossary. This included instructions to assist insurers in completing the SBC. Since the Subgroup had not yet completed work on a Coverage Examples section for the SBC at the time, the recommendations did not yet include this section. On June 30, 2011, the NAIC submitted the completed Coverage Examples to HHS and DOL. Then on July 27, 2011, the NAIC re-submitted the Summary of Benefits and Coverage (SBC), revised to include the Coverage Examples, as well as updated instructions to insurers to assist in completing the SBC and a template to assist insurers in completing the Coverage Examples.

2) Provide an accounting of the makeup of the working group that helped develop these standards

Section 2715 directs the Secretary to consult with the NAIC, along with a working group “composed of representatives of health insurance-related consumer advocacy organizations, health insurance issuers, health care professionals, patient advocates including those representing individuals with limited English proficiency, and other qualified individuals”.

To fulfill this requirement, the NAIC created the Consumer Information (B) Subgroup, co-chaired by Oregon Administrator Teresa Miller and then-Maine Superintendent Mila Kofman*. The Subgroup solicited interest from interested parties representing outside organizations and experts in the areas identified in the statute. The Consumer Information (B) Subgroup included Statutory Working Group members from each area identified in the statute, as well as other experts in areas not specifically mentioned, to assist state regulators in the drafting of proposed standards and to meet the statutory requirement.

The states that served on the Consumer Information (B) Subgroup are: California, Delaware, Florida, Indiana, Kansas, Louisiana, Maine, Maryland, Missouri, Nevada, Oklahoma, Oregon, South Carolina, South Dakota, Vermont, Virginia, Washington, West Virginia and Wisconsin. In addition, other state regulators participated actively throughout the process.

The members of the appointed Statutory Working Group are listed below. In addition, other interested parties participated actively throughout the process.

Naomi Senkeeto, American Diabetes Association*
Laurel Stine, Bazelon Center for Mental Health Law
Kim Calder, National MS Society
Sally McCarty, National Hemophilia Foundation*
Bonnie Burns, California Health Advocates
Brenda Cude, University of Georgia
Sabrina Corlette, Georgetown University Health Policy Institute
Deanna Jang / Paulo Pontemayor, Asian & Pacific Island American Health Forum
Jennifer Ngandu, National Council of La Raza
Amy Hasselkus, American Speech Language Hearing Association
Elizabeth Schumacher, American Medical Association
Jim GraVette, PacificSource Health Plans*
Joy Higa, United Healthcare
Randy Meg Kammer / Tracey Moore, Blue Cross Blue Shield of Florida
Richard Dropski, Neighborhood Health Plan
Michael Wroblewski, Federal Trade Commission*

* This individual left the Subgroup during the process.

Alan Spielman, URAC
Janet Trautwein, National Association of Health Underwriters

3) Detail whether the standards were agreed to by consensus or there were recorded votes, and if so providing the votes

The final documents developed by the Subgroup were agreed to by consensus and there were no recorded votes. Once adopted by the Subgroup, the recommendations were also adopted by the Subgroup's parent committee at the NAIC, the Health Insurance and Managed Care (B) Committee. The December 2010 recommendations received final NAIC approval by the NAIC Executive Committee / Plenary. In the interest of time, the June 2011 and July 2011 recommendations received final NAIC approval by the NAIC's Government Relations Leadership Council.

The recommendations presented to HHS and DOL were the product of consensus by very diverse stakeholders, within the constraints of the statute. Throughout the process, all parties (state regulators, statutory working group members, and other interested parties) were provided ample opportunities to improve the recommendations, and did so. The Subgroup attempted to achieve a pragmatic balance between providing the best information for consumers, in a manner that can be practically implemented by insurance companies. Therefore, the feedback of participating stakeholders was critical throughout the process.

However, the Subgroup did limit discussion on topics that were considered to be outside the scope of its charge of developing standards for consumer information and more appropriately the purview of HHS and DOL. These topics included legal interpretations of statutory language, the scope of the applicability of the requirements, implementation timelines and interaction of these requirements with other federal laws. The Subgroup also did not entertain discussion of the wisdom of whether or not the requirements in the law should be enforced.

I hope this answers your questions. Please let me know if we can be of further assistance.

Sincerely,



Susan E. Voss
NAIC President
Iowa Insurance Commissioner