March 13, 2012

Secretary Hilda L. Solis
U.S. Department of Labor
200 Constitution Ave., NW
Washington, DC 20210

Secretary Kathleen Sebelius
Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Secretary Timothy Geithner
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Re: Summary of Benefits and Coverage and Uniform Glossary – Templates, Instructions, and Related Materials Under the Public Health Service Act

Dear Secretaries Solis, Sebelius, and Geithner:

AARP believes the final rule on "Summary of Benefits and Coverage and Uniform Glossary – Templates, Instructions, and Related Materials Under the Public Health Service Act" is directionally correct, and we are pleased with many of the provisions in the final rule. However, we believe a few clarifications described below would further strengthen the rule to better protect consumers. We continue to support accountability through transparency of information in areas such as: provider performance on health care quality, efficiency, resource use, cost of care and price to support better consumer decision making. The materials discussed in the final rule are critically important to ensure that consumers selecting coverage will have easily accessible information that is understandable and adequate to inform their choices. We strongly believe providing individuals with a plain language summary of benefits and coverage, as well as a uniform glossary, will help them better understand the available health coverage options and make more informed decisions for themselves and their families.

Effective Date

Section 2715 of the Public Health Service Act (PHS) directs group health plans and health insurance issuers to comply with the Summary of Benefits and Coverage (SBC) requirements beginning on or after March 23, 2012. We recognize some entities may require more time than others to achieve full compliance. We believe the Agencies' decision to require these disclosures to participants and beneficiaries who enroll or re-enroll in health coverage during an open enrollment period on or after September 23, 2012, is reasonable because the SBC will help clarify their coverage options and make the information more accessible and understandable, as was well demonstrated by consumer testing.

Distribution

AARP believes providing these documents electronically to those consumers who have computer access and have consented (as required by regulation) to receive this information electronically will simplify the distribution process and minimize distribution costs. However, for many consumers, electronic access may not be the best nor even an adequate method to receive this information. For this reason, we believe that the agencies should require that, upon request, consumers can receive free paper copies of the SPD and SBC. Consumers receiving information from their employer or plan sponsor should be able to receive the SBC and SPD in the form they prefer (i.e., electronic or hardcopy) without charge, and with no reprisals, regardless of their choice. AARP believes the Agencies should require plans to distribute a hard copy notification to participants and beneficiaries informing them that a hardcopy is available upon request and the various ways (hard mail, email, and phone) they can receive the SBC as well as the SPD.

Notice of Modification

AARP supports the provision in the final rule requiring plans to provide notice of modifications no later than 60 days prior to the date on which such change will become effective. In the case of electronic copies, because of the ease of modifying electronic communication, AARP recommends that plans and issuers be required to provide a complete SPD and SBC with the changes highlighted so consumers can easily identify them.

Limited English Proficiency Access

The SBC and the uniform glossary are the most important documents that individuals will receive to inform their decisions on coverage options. Given the Affordable Care Act's (ACA's) requirement that all persons need to select a plan, it is unreasonable to assume individuals will be able to make informed choices if they cannot understand the materials conveying critical information about benefits, cost, and coverage. The final regulation uses the number of persons in a county who are not proficient in English to determine the threshold for providing the glossary and SBC in other languages to persons who are not

proficient. We believe that the 10% county threshold is inconsistent with the intent of the statute. Instead, we suggest the threshold be 5% of a plan's enrollees. This is consistent with the DOJ/HHS LEP Guidance, as well as recently revised regulations from the Centers for Medicare & Medicaid Services governing marketing by Medicare Part C & D plans. Health plans serve defined populations and should be required to meet the needs of the individuals enrolled in the plan. Therefore, it is a reasonable expectation that materials be written in languages the plan population can understand. Moreover, plans are already following these guidelines for Medicare. Our suggested standard is consistent with other federal requirements and will not require undue effort for the plans.

DOL regulation, 29 CFR § 2520.102-2(c), requires group health plans to provide those participants who are not proficient in English with language access services. The threshold for these services depends on the size of the plan as well as the number and percentage of persons who are proficient in English. Assuming DHHS retains the county as the unit of analysis, even if a particular county does not meet the current threshold requiring language services under the proposed regulation, some workforces may meet the DOL thresholds. At a minimum, to the extent the group health plan's administrator or sponsor is requesting language access services to comply with DOL regulation, 29 CFR § 2520.102-2(c), the final rule should include a provision requiring group health coverage providers to offer translation services in languages that do not meet the requisite NPRM threshold if requested by the plan administrator or sponsor. Moreover, to the extent an administrator or sponsor requests language services for its workforce, even if the workforce does not meet the DOL or interim rule thresholds, we urge that group health coverage providers be required to offer such services.

Regardless of which standard is employed, we note that once a glossary and/or SBC is prepared in a particular language (English, Spanish, Vietnamese, etc.), it should be made available to those who may want copies. Information about the availability of these materials (in hardcopy or electronically) should be posted on the issuer's website. Finally, this final rule raises the legal question of whether an issuer's failure to provide this information to people with Limited English Proficiency would violate federal and state civil rights laws as well as the ACA itself. HHS should clarify that nothing in the ACA rules absolves issuers and group health plans from complying with Title VI of the Civil Rights Act of 1964 prohibitions against discrimination on the basis of race, color, national origin, disability, age, sex, gender identity, or sexual orientation, or §1557 of the ACA, which ensures the provision of competent and comprehensive language services to people with LEP. As the agencies finalize the SBC and uniform glossary, we urge you to be mindful of the need to address the challenge of making the materials available and accessible for LEP individuals—a population that is typically disadvantaged and vulnerable.

Coverage Examples

We recognize the Agencies need to promulgate the regulation in a timely fashion, and we are pleased that under the final regulation the coverage examples will illustrate how benefits provided under the plan or coverage for common benefits scenarios will be applied. The agencies adopted an approach that would implement two examples for the first year – having a baby and managing type II diabetes -- in the SBC. We are pleased that the Agencies intend to add more coverage examples after this first year. When selecting the additional examples, AARP encourages the Agencies to include conditions experienced by a broad swath of the population, including mothers, children, people with chronic conditions (including those with multiple conditions), and older persons. The conditions selected for illustration should be high impact conditions relevant to the populations described. The National Quality Forum recently proposed a list of high impact conditions for Medicare beneficiaries as well as children that would be a helpful resource in selecting the conditions.

Thank you for the opportunity to comment on this important matter. If you have any questions, please feel free to contact Leah Cohen Hirsch on our Government Affairs staff at 202-434-3770.

Sincerely,

David Certner
Legislative Counsel and Legislative Policy Director
Government Affairs