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Attn: REG-140038-10

Summary of Benefits and Coverage, and the Uniform Glossary

The Retail Industry Leaders Association (RILA) appreciates the opportunity to provide input on the provisions of the Patient Protection and Affordable Care Act (PPACA) relating to the Summary of Benefits and Coverage (SBC), and the Uniform Glossary. RILA is the trade association of the world's largest and most innovative retail companies. RILA promotes consumer choice and economic freedom through public policy and industry operational excellence. Our members include the largest and fastest growing companies in the retail industry – retailers, product manufacturers, and service suppliers. The retail industry is vital to our nation's economy, representing one of the largest industry sectors in the United States with nearly 15 million jobs.

RILA shares the goals of increasing transparency in the health care delivery system, which should encourage Americans to make more informed decisions and be better consumers of their health care. RILA appreciates the underlying intent of creating an SBC and Uniform Glossary, and supports the effort to increase transparency and consumer understanding of purchasing and utilizing health care services. However, we remain concerned about the larger impact that the numerous reporting requirements under PPACA will have on the retail industry. Growing our

economy and creating jobs is vital to our economic recovery. It is difficult for retailers of all sizes to create jobs and get our economy moving when having to allocate resources to comply with the numerous and redundant PPACA requirements.

In addition, RILA members are among the most innovative companies in all business sectors in the areas of product development, design, delivery, and marketing. This innovativeness also stretches to the materials that their human resources departments create for the benefits guides and enrollment materials provided to their employees, families, and dependents. Benefits guides and enrollment materials are provided in such ways as in interactive web portals and clickable .pdfs. The materials are developed with input directly from employees, and include terms and language unique to individual companies. The uniform SBC template designed by the National Association of Insurance Commissioners (NAIC) is seen as taking a step back from what RILA members already provide to their employees.

Our comments address several issues and questions raised in the proposed regulations. RILA believes that our members, who comply with ERISA reporting regulations and currently provide easy-to-understand benefits guides and enrollment materials to their employees, should not be subject to the SBC and Uniform Glossary requirements. If a full exemption is not granted then efforts should be made in the regulatory process to provide employers with the flexibility to utilize already produced materials that incorporate required SBC content. Employers should be provided with the flexibility to comply with all PPACA reporting requirements in the least costly manner.

Coordination with Existing Plan Disclosure Materials

As noted above, RILA members currently produce benefits guides and enrollment materials that are innovative, interactive, and unique to their workforces' needs. Benefits guides are easy to read and understand. Many of these guides resemble the format and design of the annual Medicare & You guide distributed to Medicare beneficiaries.

While vendors may provide basic plan information that could be used in the guides, RILA members develop their own materials in-house that go above and beyond vendor-provided summaries. RILA members will continue to do so, with or without the PPACA requirements, as the template will not satisfy the breadth and depth of information that employees currently receive. We support verifying that the information required in the template is incorporated into current benefits guides and enrollment materials in lieu of using the exact template.

The proposed regulations make several references to incorporating the SBC into a Summary Plan Description (SPD). The SPD contains important legal information for benefits offered but is not finalized or made available until well after open enrollment. The SPD is not used by RILA members as an enrollment guide. The SPD also does not speak to benefits beyond traditional medical coverage such as employee wellness programs. As such, including the information required in the SBC template in the SPD is not a logical avenue.

Applicability - Effective Date of March 23, 2012

As written in PPACA, the SBC and Uniform Glossary proposed regulations were to be released on March 23, 2011. Five months later and irrespective of the delay in publication, the proposed

regulations were released and written with the enactment date of March 23, 2012. By the time the comment period closes and final regulations are released, employers will have little time to comply by the effective date of March 23, 2012. RILA requests the Departments to consider the time and resources that will go into creating these documents, as well as the fact that businesses cannot begin creating these documents without a final rule.

While we appreciate the intent to provide workers employed in the private sector with uniform documents in a timely and efficient manner, we support changing the effective date to plan years beginning on or after January 1, 2014. RILA member companies create the majority of their health benefits documents in-house. Document preparation and approval within a company, and information gathering from outside vendors, takes a significant amount of time. Given the stringent requirements of the SBC and the significant amount of time these documents take to create, this process will take far greater time than what the proposed rule would allow. The timeline in the proposed regulations is unrealistic.

Content, Appearance and Language

RILA members currently provide their employees, dependents, and families with the majority of the information required in the content of the SBC template in their benefits guides and enrollment materials. These materials are developed in direct consultation with employees and are unique to the culture of the company. The SBC template is not as visually appealing or easy to comprehend. We support satisfying the requirement of disseminating SBC-content and information in materials that are currently produced and distributed by our member companies. This would reduce compliance costs and would enable companies to continue to provide employees with information in a familiar format.

RILA is concerned that condensing information into a template to not exceed 4 pages and using 12-point Times New Roman font will lead to the loss of important information, or the watering-down of information that will lead to confusion. RILA members offer several different plan options, in multiple tiers, to their employees. These businesses provide tier information, and premium and cost-sharing information, to their employees, dependents, and families in already-produced and disseminated benefits guides and enrollment materials. Providing such information in the SBC will be redundant and may cause confusion. For example, an employer with four basic tiers (single, employee/spouse, employee/children, and family) would be required to produce four different SBCs, each with an addendum, for one plan option.

In addition, per the SBC instructions, employees are encouraged to “contact your employer for your share of the premium amount,” and an addendum must be added with the monthly premium. Not all employers pay employees on a strict calendar monthly basis or deduct premiums on a strict calendar monthly basis. The SBC instructions do not reflect the fact that many employers do not operate pay periods on a strict calendar basis. Many employers use pay periods that are weekly, every other week, or bi-monthly, and premiums may be calculated other than on a calendar monthly basis.

RILA members provide coverage options, such as standalone dental and eye plans, outside of the PPACA-defined minimum essential coverage plans. These non-minimum essential coverage plans should be exempt from the SBC and Uniform Glossary requirements. RILA members will

continue to provide easy to comprehend guides and materials about these non-medical plans to their employees.

The proposed regulation refers to the often confusing legalese language in the SPD as a way of not wording the SBC template. We agree that the language in the SPD is not often the most user-friendly. However, the SPD serves a distinct purpose, to which the language correlates. The SBC and Uniform Glossary have distinctively different purposes than the SPD and as such, language should be reflective of this different purpose.

Furthermore, RILA believes that that the regulations should take into consideration the verbiage unique to individual employers, employees, their dependents, and families. RILA members already produce benefits materials that are easy to read and comprehend. Regulations should provide employers with the flexibility to utilize their own terms and language when producing and disseminating materials to employees. Equally important is RILA's support in providing employers with the flexibility to comply with already established federal regulations about the production and dissemination of materials in languages other than English.

Form and Manner

RILA supports the proposal of transmitting the information required under the SBC requirement in an electronic form. Utilizing electronic communications to their fullest will be less costly and burdensome to employers, reduce the overall carbon footprint, and address the unique needs of retailers who workforces spread across multiple states from coast to coast.

The vast majority of retail company employees are located in stores and distribution centers in numerous states across the country, and not within the same building or even the same state as a human resources department. In addition, most retail company employees do not have a company e-mail address and many may not have a personal e-mail address. To deal with the unique situation of communicating with employees in retail stores and distribution centers, RILA members created and utilize password-protected web portals for benefits enrollments and election changes, and other human resources functions. These portals are the most effective and efficient way of communicating with retail employees, and can be accessed through any internet connection, such as in a person's home or at a public library. RILA supports providing employers with flexibility to utilize these portals to disseminate the information about the SBC, Uniform Glossary, and "Why this Matters" requirements.

In addition, providing a paper copy of the information upon demand within a certain number of days may be more difficult for employers, such as retail companies, whose workforce is spread across the country. Currently if they choose to review a paper copy of enrollment documents and forms, retail employees can simply select the print option from the employer's human resources portal. This print option should suffice as the "paper copy" requirement of the SBC. Instructions on how to access and print documents could also be posted on bulletin boards in break rooms or employee common areas.

Uniform Glossary and "Why this Matters"

RILA supports the proposal of allowing employers to satisfy the requirement of providing a Uniform Glossary of benefit and coverage terms by linking to the NAIC's uniform glossary on a

publicly-accessible website such as the Department of Health and Human Services' website. RILA also supports linking "Why this Matters" information to a publicly-accessible website.

We are concerned that the proposed regulations do not recognize the fact that not every employer's plan year is on a January to December calendar basis. For example, the mandatory language used in the "Why this Matters" information regarding a question about a deductible states: "(c)heck your policy to see when the deductible starts over (usually, but not always, January 1st)." This generic answer will cause confusion for employees whose plan years start during various months of a calendar year.

Additionally, this glossary is unlikely to replace the glossaries currently used by RILA members in their plan materials, and RILA members already provide information similar to "Why this Matters" to their employees. We support enabling employers to comply with the requirement of disseminating this information in the least costly manner, through a central, publicly-available website which contains uniform information developed by the NAIC and the Departments.

Notice of Modifications

RILA members have varying plan years and open enrollment periods. More often than not, open enrollment occurs less than 60 days from the beginning of a plan year. Requiring a 60 day advance notice of plan changes would not coordinate with employers' existing plan year and open enrollment periods. In addition, human resources departments rely on vendor information that is often received right before open-enrollment, with not a minute to spare. We remain concerned about being able to comply with this standard in light of last minute changes to options. RILA supports providing employers with the flexibility to comply with the change requirements according to individual businesses' plan years and open enrollment periods.

Coverage Facts Label/Examples (Benefits Scenario)

RILA members operate in multiple states, and employ millions of workers across the country from coast to coast, and in various urban, suburban and rural settings. With such wide cost variables from coverage market to coverage market, it will be extremely difficult to develop standard coverage examples that could apply to these multi-state operating companies. We are concerned that this information will generally not be useful to employees and potentially be misleading about actual costs. RILA supports the idea of allowing employers to satisfy this requirement by linking to an on-line, publicly accessible, central database of coverage examples that are developed by the Departments instead of individual employers.

Failure to Provide/Penalties/Appeals

RILA shares the goal of providing employees, dependents, and families with all the tools needed to make informed health care decisions. As such, RILA members take great care in developing benefits guides and enrollment materials, in direct consultation with employees, so that these materials will be user-friendly, easy to understand, and be utilized to their fullest extent.

As noted previously, RILA members utilize password-protected, internet-based portals to communicate with, and disseminate information to, their workforces which are located in thousands of retail stores and distribution centers throughout the country. The portals, or electronic systems currently utilized by employees to obtain benefits information and enrollment

materials, make elections, and perform other human resources department tasks, should also be used to track receipt of information required under these proposed regulations. An employer's portal or website could be coded to require an employ to click a box verifying receipt of the information upon log-in.

We remain concerned that an additional document which does not resemble a company's materials, may cause confusion, or be disregarded, or tossed aside by the employee. While employers may have the ability to develop systems to track the electronic transition and possibly verify receipt electronically, employers cannot force their employees to read the document and internalize the information. RILA supports developing flexible regulations that provide employers with the safeguards to disseminate this information while not being held responsible for how an employee chooses to use the information. Should an employee claim he or she did not receive the information and a penalty be assessed upon the employer, an appeals process should be developed and implemented for the employer to contest such claims.

Expatriate Coverage

RILA believes that companies employing American citizens working outside of the United States, or expatriates, should be exempt from the requirements of the SBC and Uniform Glossary. RILA supports Section 45 CFR Part 147 which specifies that the proposed regulations are limited to: "offering health insurance coverage within the United States" and believes this principle should be applied across all aspects of PPACA. However, the proposed regulations request comments on whether any special rules are necessary to accommodate expatriate plans, specifically referencing the medical loss ratio (MLR) provisions published in HHS's interim final rule.

RILA supports exempting employers from providing an SBC and Uniform Glossary to expatriates, as well as other provisions in PPACA. While RILA members strive to provide suitable coverage for employees outside the U.S., we believe such requirements are simply not feasible or possible to comply with. We ask the Departments to please consider how companies would be able to compare health coverage in China or India with that in the U.S., for example, with different cost structures and laws written within their own healthcare systems. Certifying these calculations and information would be incredibly burdensome to employers and would likely yield inaccurate results. RILA respectfully requests the Departments' to exempt expatriate health plans from all aspects of PPACA given the extreme complexities of comparing U.S. domestic health products to foreign health systems, and recognize the significant burden these regulations would have on businesses.

Economic Impact, Costs and Staffing Assumptions

The proposed regulations make multiple assumptions about how great an impact and regulatory burden the SBC and Uniform Glossary requirements will have on employers. RILA strongly believes these assumptions disregard the fact that this is just one of numerous new requirements and mandates employers now have to comply with – costs which will continue to mount as each new regulation is developed and released.

The Departments are very presumptuous to assume that employers will use a third-party administrator to produce and disseminate these documents. RILA members take pride in

producing their own benefits guides and enrollment materials in-house, in direct consultation with their employees. Even if employers choose to utilize the services of a third-party administrator, it will be done at a financial cost of which could be significant. Each dollar spent on unnecessary or ineffective communications to employees is one less dollar available to spend on truly effective communications designed to increase employee understanding of plans. It also means that less money is available to spend on wellness and other beneficial health-improvement programs.

While RILA supports utilizing electronic communications to the fullest extent, in order to be more streamlined and ecologically conscious while complying with various reporting requirements, these electronic communications will likely be associated with significant IT costs to the employer. Employers of all sizes use numerous IT systems in various sectors of their business. It is not as simple to reprogram a system – both in terms of time and financial resources – as the Departments may assume. Each RILA member may have well over a dozen integrated/interrelated systems required to run payroll, HRIS, and benefits processes.

Conclusion

RILA strongly supports the goal of increasing consumer awareness about health care utilization and bringing transparency to all aspects of the delivery system. This goal can be and should be achieved through utilizing currently produced and disseminated materials. RILA members take pride in their ability to offer their employees, dependents, and families with clear and concise information about their benefits packages and health care coverage in innovative ways.

As with other aspects of PPACA, employers should not be grouped into a one-size-fits-all approach to the health reform implementation. We strongly urge you to provide employers with the most flexibility possible in order to comply with PPACA requirements in the least costly manner. Above all, RILA member companies and employers of all sizes are striving to create jobs and grow the economy. However, this is increasingly difficult to do as regulatory burdens on employers increase.

Please direct questions or requests for further information about this comment letter to Christine Pollack, Vice President of Government Affairs, with the Retail Industry Leaders Association (RILA) at Christine.pollack@rila.org or 703-600-2021.