



Regulatory Comments of the
National Restaurant Association

ON: NOTICE OF PROPOSED RULEMAKING: SUMMARY OF BENEFITS AND COVERAGE AND THE UNIFORM GLOSSARY

TO: DEPARTMENT OF TREASURY, INTERNAL REVENUE SERVICE [REG-140038-10]
DEPARTMENT OF LABOR, EMPLOYEE BENEFITS SECURITY ADMINISTRATION [RIN 1210-AB52]
DEPARTMENT OF HEALTH AND HUMAN SERVICES [CMS-9982-P]
DELIVERED VIA FEDERAL E RULEMAKING PORTAL: [HTTP://WWW.REGULATIONS.GOV](http://www.regulations.gov)

BY: ANGELO I. AMADOR, VICE PRESIDENT – LABOR & WORKFORCE POLICY
MICHELLE REINKE NEBLETT, DIRECTOR – LABOR & WORKFORCE POLICY

DATE: OCTOBER 21, 2011

INTRODUCTION

On behalf of the members of the National Restaurants Association, we submit our comments in response to the Notice of Proposed Rulemaking on the Summary of Benefits and Coverage and the Uniform Glossary as established by the Patient Protection and Affordable Care Act (PL 111-148) and the Health and Education Reconciliation Act of 2010 (PL 111-152).

We appreciate the opportunity to share with the U.S. Department of Treasury and the Internal Revenue Service (IRS), U.S. Department of Labor and the Employee Benefits Security Administration, and the U.S. Department of Health and Human Services our perspective on the implementation of the Summary of Benefits and Coverage. Our goal is to provide our employees and their families with clear, useful information about their medical plan options to make informed decisions. While we agree with the intent of the proposed regulation, we are concerned about the timing of the implementation of this rule and the potential confusion that some of the proposals may create for employees.

- We ask that implementation be delayed 18 to 24 months to allow employers to adjust their internal processes and work with their insurer to make the necessary changes needed to comply.¹
- Many large group employers already provide the information required by the Summary of Benefits and Coverage to their employees. Creating a duplicative and costly administrative process that offers little additional value for employees is inefficient.
- Employers and insurers should be allowed more flexibility to make decisions based on the characteristics of their workforce.
- Some proposals within the notice of proposed rulemaking have the unintended consequence of creating more confusion for our employees rather than adding value and providing clearer, more useful information.

Throughout the implementation of this law, we continue to urge the Administration to make the processes, procedures, and communication between the federal government and businesses – both large and small – as simple as possible to assist with compliance. The more complicated a regulation or guidance is the more confusing it is for restaurateurs to comply.

Restaurateurs want to follow the law, but even the most sophisticated operation can be overwhelmed by the complexity of the requirements and/or procedures placed on them as employers. We ask that the Administration considers all of the requirements that impact employers under the law in totality, not in a one-off manner, when promulgating regulations. These Summary of Benefits and Coverage requirements must be considered in the context and continuum of the other requirements the law places on employers.

¹ Throughout these comments we refer to employers and insurers as one to reflect restaurant and food service operations within the industry are both employers with self-funded plans who will issue their own Summary of Benefits and Coverage documents, as well as employer sponsors of fully-insured plans whose insurers will be issuing the documents for the group health plan.

BACKGROUND ON THE U.S. RESTAURANT AND FOOD SERVICE INDUSTRY AND THE CHARACTERISTICS THAT MAKE IT UNIQUE

The National Restaurant Association is the leading business association for the restaurant and food service industry. Our mission is to help our members establish customer loyalty, build rewarding careers, and achieve financial success. The industry is comprised of 960,000 restaurant and food service outlets employing 12.8 million people who serve 130 million guests daily.² Restaurants are job creators – expected to add 1.3 million jobs over the next decade, with employment reaching 14.1 million by 2021. Despite being an industry of predominately small businesses, the restaurant industry is the nation’s second-largest private-sector employer, comprising over nine percent of the U.S. workforce.

The restaurant and food service industry is unique for several reasons. First and foremost, small businesses dominate the industry – with more than seven out of ten eating and drinking establishments being single-unit operators. We also employ a high proportion of part-time, seasonal, and temporary workers. Restaurants are employers of choice, especially for employees looking for flexible work hours.

Our workforce is typically young, with nearly half under the age of 25. We also have a high average workforce turnover rate relative to other industries – 75 percent average turnover rate in 2008 compared to 49 percent for the overall private sector. In addition, the business model of the restaurant industry produces relatively low profit margins of only four to six percent before taxes, with labor costs being one of the most significant line items for a restaurant.

IMPACT OF THE HEALTH CARE LAW ON RESTAURANT AND FOOD SERVICE INDUSTRY JOBS

Entrepreneurs, such as the dynamic and creative people found in the restaurant and food service industry, are accustomed to managing uncertainty and risk in business. They do so by preparing as best as possible for the unknown. Therefore, restaurateurs have already begun asking the necessary questions and preparing for the full implementation of the new law.

Our members are closely following and participating in the regulatory implementation process now, instead of waiting for these requirements to be finalized before they engage. We hope that the comments of the National Restaurant Association will help the Administration consider the different types of businesses and employees subject to this law and how the promulgation of the rules and regulations to implement it will impact all employers as they anticipate how to comply with the Summary of Benefits and Coverage requirements either themselves as self-funded plans or through their insurers for those with fully-insured plans.

INSUFFICIENT TIME FOR IMPLEMENTATION AND COMPLIANCE

Growth and success in the restaurant industry means opening more restaurants and in more locations, which in turn means jobs in our communities. The uncertainty of the regulatory process and the many rules that are yet to be clarified and fully defined are worrisome for our members. This includes regulations whose implementation timeline is condensed from what was

² 2011 *Restaurant Industry Forecast*, National Restaurant Association.

originally envisioned by the statute, shortening the time allowed businesses to adjust and implement the changes.

Although it might not seem like there are burdens placed on businesses with this regulation, in fact, due to the Administration's delay in issuing this notice of proposed rulemaking, employers may have to adjust the timing of open enrollment and other administrative tasks involved in the offering of a plan to employees.

The National Restaurant Association urges an 18 to 24 month delay in implementation of the Summary of Benefits and Coverage requirements. This will allow employers more time to comply and, also, allow these requirements to be synced with other employer requirements in the law. We remain concerned that the statute requires a deadline for employers and insurers of March 23, 2012 for compliance with this section of the law. The underlying law required the Administration to develop the standards for the summary of benefits no later than March 23, 2011, but that deadline was missed.

Due to the condensed timeline for implementation, in certain situations employers may be forced to alter the timing of when they shop for coverage, administer open enrollment and begin their plan year. Plan years are carefully considered and adjusted so that open enrollment and other administrative activities do not conflict with the business's busiest time of year. Imposition of the timing of the Summary of Benefits and Coverage requirements may force changes that would add unnecessary burdens and costs to businesses.

Restaurateurs are also very much focused on the employer requirements of the law. As it relates to the Summary of Benefits and Coverage, a statement is required as to whether the plan provides minimum essential coverage and that the share of the total allowed costs of benefits provided under the plan meets the applicable requirements.³ We appreciate the acknowledgement and consideration that the minimum essential coverage content requirement within the Summary of Benefits and Coverage is not relevant until January 1, 2014, when other employer provisions of the law are effective.

The preamble notes and requests feedback concerning employer reporting of minimum essential coverage, specifically, how this requirement relates to other provisions of the law, and how duplication can be minimized. As the preamble notes, the Treasury Department and the IRS intend to request comments on employer information reporting required under section 6056 of the Tax Code as added by section 1514 of the law.

We urge the Administration to consider the minimum essential coverage content requirement in the Summary of Benefits and Coverage when the IRS considers implementation of section 6056 of the Tax Code. The same information reporting is required for multiple uses under the law and should be consolidated for employers.

For these reasons, the compressed timeline is insufficient for compliance by employers, and their insurers, and should be delayed 18 to 24 months.

³ 26 CFR §54.9818-2715 (a)iii(C)(2)(G) Summary of benefits and coverage and uniform glossary, Content, *Federal Register*, August 22, 2011, 52468.

AVOID DUPLICATION THAT OFFERS NO VALUE ADDED TO EMPLOYEES

The information that is required by the Summary of Benefits and Coverage is currently provided by many employers, in their current documents and tools provided to their employees. We are concerned that this requirement would, for them, be a duplication of current work without adding any value for their employees, while adding an additional costs and administrative tracking burden. Requiring additional and redundant coverage explanation materials may also confuse and overwhelm employees rather than provide clearer, more useful information, about their medical plan options to make informed decisions.

FLEXIBILITY FOR EMPLOYERS

The law seems to contemplate employers as a homogenous group; hence, care must be taken to promulgate regulations that do not perpetuate this falsehood. Flexibility in how employers and their insurers are allowed to comply with these rules is critical. For example, many employers provide plan documents to employees in portrait format and not the landscape format suggested in the notice of proposed rulemaking and template samples. Others provide documents online and no longer print materials. One-size-fits-all compliance will not be adequate.

SOME PROPOSALS MAY CREATE MORE CONFUSION FOR PLAN PARTICIPANTS

The National Restaurant Association is concerned that some of the proposals made in this notice of proposed rulemaking may have the unintended consequence of creating more confusion for our employees rather than adding value. We are specifically concerned about the medical scenarios as part of the coverage examples that must be provided to employees.

First, we believe that, to be most helpful to our employees, the medical scenarios selected should be most relevant to the employer's workforce. Employers should have the ability to choose from a longer list of medical scenarios that best fit their workforce and not just from the three scenarios currently proposed. Second, not all of the medical scenarios will be relevant to each employee, creating potential confusion for the employee. Also, employees may assume that this is an actual cost estimator which is not the case. Employers may be faced with potential liability if the costs reflected on the documents do not reflect the employees' experience. The Administration should consider how to minimize the confusion and employer liability that may be created by these forms.

CONCLUSION

In conclusion, the National Restaurant Association urges the Administration to delay implementation of this requirement for 18 to 24 months, so employers and insurers can better plan for compliance well in advance of the effective date. Also, such a delay will give the Administration an opportunity to further coordinate the reporting requirements for employers with other sections of the law that are not in effect until January 1, 2014.

We urge the Administration to minimize duplication of information that is already being provided by some employers, and to allow employers and insurers flexibility in how they comply with the Summary of Benefits and Coverage requirements.

Thank you again for the opportunity to provide our perspective on this Summary of Benefits and Coverage notice of proposed rulemaking.

Sincerely,



Angelo I. Amador, Esq.
Vice President
Labor and Workforce Policy



Michelle Reinke Neblett
Director
Labor and Workforce Policy