



ADVANCING FAITH, FAMILY AND FREEDOM

March 2, 2015

Submitted Electronically

Office of Health Plan Standards and Compliance Assistance
Employee Benefits Security Administration
Room N-5653
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Attn: Public Comments in Regard to Summary of Benefits and Coverage and Uniform
Glossary

File Code: RIN 1210-AB69

Dear Sir or Madam,

The Family Research Council (FRC) respectfully submits the following comments on the Proposed Rule regarding the summary of benefits and coverage (SBC) and the uniform glossary for group health plans and health insurance coverage in the group and individual markets under the Patient Protection and Affordable Care Act (ACA) (79 Fed. Reg. 78578, December 30, 2014). Of particular interest to FRC are the proposed changes to the regulations that implement the disclosure requirements under section 2715 of the Public Health Service Act.

The first shortcoming of the proposed rule is that it does not let consumers know in plain language that they are buying abortion coverage. While the changes purport to “help plans and individuals better understand their health coverage,” disclosure of elective abortion coverage must be defined in plain language or else the average consumer will not understand his or her health coverage. The proposed rule allows the abortion coverage to remain hidden and many Americans unwittingly to participate in something to which they have deep conscientious objections. The federal government should never deceive its citizens into acting against their will. In order to help individuals “understand their health coverage,” the SBCs must make clear in every single plan whether and what type of abortion is covered. If a plan covers all abortions, including purely elective abortions, individuals should be able to read plain language that details this information. If a plan covers abortions only for cases of life endangerment or rape and incest, individuals should be able to read plain language that details this information.

The second shortcoming of the proposed rule is that it neglects to address the failure of the current regulations to require “separate payment” of the abortion surcharge, provide transparency about the abortion surcharge, and adequately inform consumers that they are paying a special charge for abortion. Consumers have a right to know in the SBCs of every single plan whether that plan includes an abortion surcharge, and if so how much that surcharge will be, whether and

how it will be itemized, how it will be charged as a separate payment, and how it will be placed in a separate account.

Consumers Have a Right to Know About Elective Abortion Coverage in their Healthcare Plans

According to the Government Accountability Office (GAO) report published in 2014, 1,036 plans cover abortion on demand.¹ In our own research, we have discovered that there is no consistent transparency when it comes to which insurance carriers and plans cover elective abortion. The elective abortion coverage of various insurance carriers is often not revealed on their websites or in their summaries of benefits, leaving consumers without crucial knowledge at the time of enrollment. Further, numerous insurance carriers have provided conflicting information about their abortion coverage or simply did not know their own company's policy on abortion coverage.

FRC urges that the proposed rule that promises to provide transparency to consumers about elective abortion coverage be written in plain language so that the average consumer can understand. Consumers have a right to know at any time before and during enrollment whether the plans they are considering cover elective abortion.

Abortion Coverage Disclosure Language Must Be Specific and Clear

The intent of the current proposed rule is to increase “transparency for consumers shopping for coverage, and to assist issuers with meeting applicable disclosure requirements under section 1303(b)(3)(A) of the Affordable Care Act and its implementing regulations (78583).”²

The current proposed rule would require a Qualified Health Plan (QHP) issuer to disclose on the SBC “whether abortion services are covered or excluded and whether coverage is limited to services for which federal funding is allowed (excepted abortion services). The draft instruction guide for individual health insurance, released concurrently with these proposed rules, indicates that coverage of abortion services must be described in the “services your plan does not cover” or “other covered services” section. We seek comments on this guidance... (78583).”³

FRC believes the language of “services for which federal funding is allowed,” “excepted abortion services,” and “services for which federal funding is not allowed” is confusing to the average consumer. This type of “legalese” keeps the abortion coverage hidden and leads Americans unwittingly to participate in something against which they have deep conscientious objections. FRC urges that the SBCs make clear in every single plan which types of abortions are covered and which types are not. For example, if a plan covers all abortions, the plan should contain plain language, such as: “This plan covers all abortions, including elective abortions.” If

¹ “HEALTH INSURANCE EXCHANGES: Coverage of Non-excepted Abortion Services by Qualified Health Plans,” U.S. Government Accountability Office, September 16, 2014, accessed March 2, 2015, <http://www.gao.gov/products/GAO-14-742R>.

² “Summary of Benefits and Coverage and Uniform Glossary, Proposed Rules” 79 Federal Register 249, December 30, 2014, accessed March 2, 2015, <http://www.gpo.gov/fdsys/pkg/FR-2014-12-30/pdf/2014-30243.pdf>.

³ Ibid.

a plan covers only abortions in cases where continuing a pregnancy would physically endanger the life the pregnant woman, or in cases of rape or incest, the plan should contain plain language, such as: “This plan covers abortions only where continuing a pregnancy would physically endanger the life of the pregnant woman, or in cases of rape or incest.”

Transparency Must Extend to the Abortion Surcharge

The proposed rule does not extend the transparency to the abortion surcharge. The proposed rule was published well after the 2014 GAO report revealed that not one of the insurance issuers interviewed collected the abortion surcharge separately. Not one sent a separate bill for this premium. Not one clearly itemized the special abortion charge on customer bills. Officials from one issuer vaguely told them “that their bills indicate that there is a \$1 charge ‘for coverage of services for which member subsidies may not be used.’”⁴

As expressed in FRC’s public comments from December 2014⁵, neither that proposed rule (nor the current one) comply with Affordable Care Act’s (ACA) provision requiring an actual “separate payment”; it does not comply with the requirement for separate itemization of the abortion surcharge; and it does not offer guidance on how the abortion surcharge should be kept separate from federal funds.

Section 1303(b)(2)(B) of the ACA, as implemented in §156.280(e)(2)(i), requires that each issuer collect a “*separate payment*” of at least \$1 per month for abortion, per enrollee of a plan that covers elective abortion. The former and current rules do not address or require that information about the abortion surcharge be disclosed, that the abortion surcharge be itemized, or how it must be allocated into a separate account from federal funds. This allows issuers to hide any abortion surcharge from consumers. This loophole relieves issuers of any accountability toward consumers’ informed consent about paying a secret abortion surcharge, many of whom would have a deep conscientious objection to it.

The proposed rule does not address the lack of transparency about the abortion surcharge, clearly established by the GAO report, but further protects its secrecy.

Conclusion

While the proposed rule takes a step in the right direction by trying to create transparency about elective abortion coverage in ACA health plans, it must do so with very clear, plain and precise language that the average consumer can understand. The language must refer to the types of abortion a healthcare plan does or does not include (abortion on demand vs. abortion in cases of life, rape, or incest), and those abortions must *not* be defined in terms of federal funding.

The proposed rule is incomplete on transparency because it does not require transparency on the abortion surcharge. For complete transparency, SBCs must disclose information about the abortion surcharge for every single plan that requires it, disclose how it will be itemized, how it

⁴ “HEALTH INSURANCE EXCHANGES.”

⁵ “FRC Comment on December 2014 Proposed Rule Regarding the Payment of the Abortion Surcharge,” Family Research Council, December 22, 2014, accessed March 2, 2015, <http://downloads.frc.org/EF/EF15C01.pdf>.

will be charged as a separate payment and how it will be allocated into a separate account from federal funds. Disclosure of the abortion surcharge in the SBCs must be included and be mandatory.

Consumers have a right to transparent and easy-to-understand information about abortion coverage in the SBCs of every health plan, including information about the abortion surcharge (when applicable). Transparency on abortion coverage and the abortion surcharge will give consumers the knowledge they are entitled to in order to make an informed choice when they are looking for ACA health plans that align with their values. Information regarding abortion coverage or the abortion surcharge associated with various plans must not be withheld from consumers. Further, consumers should not pay an abortion surcharge without their knowledge or against their conscientious objection.

Respectfully Submitted,

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