

Addendum: Comments/Responses Related to Cost and Burden Estimates

The Departments received many comments stating that the preliminary cost analysis underestimated the one-time start-up costs as well as maintenance costs. For example, one commenter did a survey of its members (hereinafter “regulated community survey”), wherein 36 member companies responded to questions regarding implementation and maintenance costs. The commenter extrapolated the survey results to all enrollees with coverage in the United States. Accordingly, the commenter projected that one-time implementation costs would be \$188 million and maintenance costs would be \$194 million per year. The commenter stated that a significant cost driver was the proposed March 23, 2012 deadline to switch from current benefit descriptions to the new uniform SBCs. Accordingly, the commenter estimated that there could be a savings of 23 percent with an 18-month extension of the implementation timeline. The commenter also stated that additional factors affecting costs were, among other things, the proposed regulations’ requirement to provide premium information; the number and complexity of coverage examples; the renewal process and timeframe to provide SBCs; the number of variations of SBCs to be delivered to each applicant or enrollee; paper delivery of SBCs to most group enrollees; and insufficient flexibility in the SBC template. The Departments have taken steps in the final regulations to ease administrative burden related to most of these factors.

Because the regulated community survey, as well other commenters’ cost estimates, did not provide specific, detailed cost information, it is difficult for the Department to acquire more than a general understanding of the differences between the Departments’ cost estimates and the commenters’ cost estimates. Accordingly, the Departments continue to believe that there is considerable uncertainty arising from general data limitations and the degree to which and the degree to which economies of scale are achievable.

Even if the Departments assumed that the regulated community survey, or other commenters’ cost estimates, accurately projected the proposed regulations’ costs, it would be necessary for the Departments to discount those projected costs to account for policy changes in these final regulations. Particularly, these final regulations now provide for phased implementation, omit premium or cost of coverage information on SBCs, provide for only one coverage example, and provide for more facile electronic disclosures prior to enrollment in coverage.

Because the SBC disclosures are closely related to disclosures that issuers and TPAs provide today as a part of their normal operations (e.g., covered benefits and cost sharing), the Departments estimate that the incremental costs of compiling and providing such readily available information in the final, standardized format is estimated to be modest.¹ The regulated community has taken exception to this assumption, and it has stated in written comments, and

¹ For example, issuers in the individual and small group markets already report some of the SBC information to HHS for display in the plan finder on the HealthCare.gov website. Issuers have been reporting data to HHS since May 2010 and have refreshed that data on a quarterly basis. These reporting entities have demonstrated that they have the capacity to report information on plan benefit design. See <http://finder.healthcare.gov/>. Further, ERISA-covered plans already report some of the SBC information in summary plan descriptions (SPDs).

discussions with the Departments, that information will need to be pulled from multiple sources. However, an opposite conclusion appears to have been reached by a November 2011 survey related to the regulated community's preparedness for SBCs. Particularly, the survey noted that existing communications practices and technology would allow affected entities to be in compliance even by the original March 23, 2012 deadline.² The results of this survey are also consistent with comments indicating that timely compliance is feasible.

In the proposed regulations, the Departments estimated that each issuer/TPA would need 3 hours to produce, and 1 hour to review, SBCs (not including CEs) for all products. Some commenters thought this time burden was an underestimate. However, these commenters did not provide data that could allow the Departments to adjust their estimates. Accordingly, in these final regulations, the Departments are retaining their original estimates. The Departments also continue to assume that the 3 hours needed to produce SBCs would be equally divided between IT professionals and benefits/sales professionals. The Departments also continue to assume that the 1 hour needed to review SBCs would be equally divided between financial managers for benefits/sales professionals and attorneys.

With respect to the individual market, issuers are responsible for generating, reviewing, updating, and distributing SBCs. With respect to employer-sponsored coverage, the Departments assume that fully-insured plans will rely on health insurance issuers, and self-insured plans will rely on TPAs, to perform these functions. Some commenters stated that some employers internally prepare plan materials and do not rely on TPAs. While the Departments acknowledge that some plans may internally prepare the SBC disclosures, the Departments do not have sufficient data to develop separate estimates for such plans. Therefore, the Departments continue to make this simplifying assumption because most plans appear to rely on issuers and TPAs for the purpose of administrative duties such as enrollment and claims processing.³ Thus, the Departments have used health insurance issuers and TPAs as the units of analysis for the purposes of estimating administrative costs in this regulatory impact analysis.

² See December 13, 2011 news release for HighRoads Pulse Study, available at <http://newsroom.highroads.com/hr-compliance-connection/highroads-study-shows-employers-will-not-eliminate-benefits-coverage-due-to-health-care-reform>. Among other things, the study's author noted, "SBCs have not caused a great concern among organizations...This is partly a reflection of current communications practices—many employers are already providing a level of communication close to that required by the SBC regulations—and partly a reflection of HR departments embracing technology. By using automation to leverage existing data, they are better able to respond to required changes. That will enable timely compliance once the new deadline is determined."

³ See, for example, the Department of Labor's March 2011 report to Congress on self-insured health plans, available at <http://www.dol.gov/ebsa/pdf/ACAReportToCongress032811.pdf>.