By electronic mail

February 3, 2015

Ms. Angela Nelson, Chair
Consumer Information (B) Subgroup
National Association of Insurance Commissioners
444 North Capitol Street, NW, Suite 701
Washington, DC  20001

Attention:  Jennifer Cook, Life and Health Counsel

Re:  AHIP Comments to the NAIC on the Proposed SBC and Uniform Glossary Rule

Dear Ms. Nelson:

I am writing to thank you for the inclusive leadership you have demonstrated as Chair of the Consumer Information (B) Subgroup to all members of the Subgroup, not the least of which to me and to AHIP's members, and to provide you and the NAIC leadership with several issues and concerns AHIP has identified with the proposed federal rule on SBCs published on December 30th, 2015.  We believe these issues should also be of significant concern to you, to the NAIC Leadership, and to its member Insurance Commissioners as state insurance regulators of individual and group health insurance and as primary guardians of insurance consumers within the several states.

We have identified three issues related to the applicability date, the length of SBCs and the current format enforcement safe harbor, and the coverage example disclaimer which we believe are issues upon which the NAIC and its members should comment.  These three issues may affect the availability of insured products both within and outside of the marketplaces at year end, may require state approvals within unmanageable time frames, will require carrier implementations within unmanageable time frames, and will result in a new SBC that no longer provides thoughtful language designed by the NAIC to prevent consumers from misunderstanding the purpose of the coverage examples to their financial detriment, and possibly to the detriment of their health.

Finally, we would note that we have identified numerous additional issues with the proposed rule; however, most of those issues more directly affect the clarity of the proposed rule or the relationship of the federal government as a federal regulator of insurance and the health insurance industry as a regulated industry.  We will address those issues in our comment letter to be filed directly with the federal departments.  Having limited the number of our issues outlined within this letter to three in direct response to your request that Subgroup members limit their comments to three or four main points, we would be happy to discuss at your convenience our more complete listing of issues with the proposed rule.

Applicability date:  Under the proposed rule published on December 30, 2014, changes to the current requirements to provide an SBC, notice of modification, and uniform glossary under PHS Act section
2715 and the 2012 final regulations, are proposed to apply for disclosures with respect to participants and beneficiaries who enroll or re-enroll in group health period (including re-enrollees and late enrollees) beginning on the first day of the first open enrollment period that begins on or after September 1, 2015. With respect to disclosures to participants and beneficiaries who enroll in group health coverage, other than through an open enrollment period (including individuals who are newly eligible for coverage and special enrollees), the requirements of these proposed regulations are to apply beginning on the first day of the first plan year that begins on or after September 1, 2015. For disclosures to plans, and to individuals and dependents in the individual market, these requirements are proposed to apply to health insurance issuers beginning on September 1, 2015.

While the applicability dates established under the proposed rule appear to correlate with the applicability dates established under the current SBC final rule, they do not take into account, nor provide sufficient time for carriers to:

- implement the system changes necessary to create and distribute what are essentially new SBC forms;
- obtain the necessary regulatory approvals as required under various state laws;
- obtain state and federal marketplace approvals for use of compliant SBCs during 2015;
- obtain state and federal marketplace approvals to discontinue presently complaint SBC and approved SBCs effective September 1, 2015 for new and renewing business; and,
- to file and obtain state and federal marketplace approvals for new compliant SBCs effective September 1, 2015 for new and renewing business,

all in time to present newly complaint SBCs to the marketplace as early as 90 days prior to a coverage effective date of September 1, 2015 (that is June 1, 2015). Failure to meet these requirements may result in the inability of a carrier to be able to offer compliant coverage after September 1, 2015, or for a carrier to renew coverage with compliant forms after September 1, 2015, notwithstanding a consumer's or group's right to guaranteed issue or renewability of coverage.

The applicability date does not appear to take into account the federal rule making requirements for receiving and processing interested party comments. The proposed rule establishes a comment period until March 2nd, a mere six months before the applicability date, and possibly only ninety days before SBCs must be produced for new and renewing group business. Assuming that the Departments will take some time to consider and decide upon comments received from the public, this time will further reduce the time carriers will have to implement required process and information systems. It will also reduce the time that state, federal and marketplaces will have to review and process carrier filings, processes which are already significantly complicated by the September 1st Applicability Date.

One final concern with the Applicability Date is whether under the proposed rule the date applies to all SBCs produced for late enrollees and for consumer requested SBCs after the Applicability Date for individuals and groups that do not purchase or renew business on or after September 1, 2015. Requiring carriers and self-funded groups to maintain two SBC templates will only further complicate implementation schedules that are subject to significant time constraints. A review of the operational
timeline for amending the production of SBCs (a carrier's operational tasks required for compliance with the proposed rule) and of the state, federal and marketplace to amend their processes and filings timelines clearly indicate that the proposed applicability date must be changed. Given all of these concerns, it becomes readily apparent that a January 1st applicability date aligns best with state, federal and marketplace approval processes.

We strongly suggest that the proposed rule be amended to clearly require that the new requirements only apply to documents for the 2017 contract year (for coverage effective on or after January 1, 2017) for all individual and group insurance coverage.

**Eight page limit and the loss of the safe harbor:** Within the proposed rule, the Departments invite comments on whether the modifications maintain critical information while shortening it enough to ensure that SBCs do not extend beyond the statutory page limit and, if not, what other changes should be made to ensure the minimum content, appearance, and language requirements are met while also providing consistency in formatting to allow comparisons for individuals. While AHIP's members have not had sufficient time since the release of the proposed rule to review all of their products against the new proposed SBC template, AHIP has been informed that several of our members have preliminarily determined that Point of Service products, which generally include multiple provider networks within one product, continue to defy the eight page limit and can require as many as nine or ten pages to provide all of the required information. This inability to portray Point of Service products within the statutory eight page limit aligns with the current inability for current SBCs to comply with the eight page limit, a concern that AHIP raised during the early meetings of the NAIC's Consumer Information (B) Subgroup.

Given the statutory and regulatory requirements for SBC, failure to further significantly alter the proposed SBC template to permit carriers and self funded group sponsors to produce compliant, that is no longer than 8 pages in length SBCs that can adequately portray Point of Service and other innovative products including those with medical homes which cannot be done with the proposed SBC template, will require carriers and group sponsors to withdraw current Point of Service plans, and will in all likelihood prevent the introduction of additional innovative products that require the portrayal of multiple provider networks and medical homes, provisions supported by HHS and the ACA.

In order that carriers and self funded group sponsors be permitted to offer Point of Service products along with being encouraged to develop new and innovative coverage products, it is imperative that the proposed SBC template be further redesigned to ensure all approved products can comply with the eight page limit, or in the alternative that the current safe harbor for plans that cannot adequately provide required information within the SBC format and eight page limit be continued.

**Rewriting of the Coverage Example Disclaimer:** The proposed rule significantly rewrites the Coverage Examples Disclaimer language by deleting, in its entirety, the Coverage Examples Questions and Answers page of the SBC template.

During the deliberations for the original SBC template conducted by the NAIC's Consumer Information (B) Subgroup, deliberations, in which staff of CCIIO were active observers and on occasion active participants, the Subgroup members expressed considerable concerns that consumers could easily misunderstand the nature of the coverage examples and mistakenly consider them to be actual cost calculators and that clear disclaimers had to be made an integral part of the Coverage Examples. The
NAIC's Consumer Information (B) Subgroup spent considerable time addressing this issue to minimize the likelihood that consumers would mistakenly believe the coverage examples were actual medical cost calculators so that consumers would make uniformed coverage selection decisions. The NAIC adopted disclaimer language was part of the consumer testing performed on behalf of the NAIC's Consumer Information (B) Subgroup to ensure that consumers not be misled by the Coverage Examples.

Without comment and in the face of the consumer testing that CMS repeatedly cites within the proposed rule, and apparently with the sole concern that CMS attempt to ensure carrier compliance with the eight page rule, the Departments have proposed to delete the very consumer disclosures that the NAIC's Consumer Information (B) Subgroup developed to protect consumers. While the Departments cite that “testing also showed that individuals were able to comprehend that the examples were only illustrative[.]” they neglect to recognize that this understanding was also based upon the comprehensive disclosures contained within the SBC template.

AHIP recommends that the NAIC advocate that the redesigned Coverage Examples page be subjected to new consumer testing in order to determine whether the removal of the Questions and Answers about the Coverage Examples page negatively impacts consumers understanding of the Coverage Examples, their purpose and their utility, and whether the removal of the last page of the current SBC template negatively impacts consumers understanding of the remaining Coverage Examples Disclosure.

AHIP also strongly recommends that the NAIC advocate that any changes to the SBC template proposed by the Departments also be subjected to consumer testing. As was explained to the NAIC's Consumer Information (B) Subgroup by an original member of the Subgroup working for the Federal Trade Commission, consumer testing of this type of government consumer document is part of the protocols for the Commission and AHIP strongly believes that the NAIC should advocate that such testing should regularly be utilized by the Departments when they consider altering the SBC template.

If you have any questions concerning this letter and information, please contact me at (202) 861-1476 or at mmitchell@ahip.org. Thank you.

Sincerely,

Martin L. Mitchell, Jr.