American Council on Education™
Leadership and Advocacy

Office of Government & Public Affairs

December 21, 2012

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Hubert H. Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201

RE: CMS-9972-P
Comments on Health Insurance Market Rules; Rate Review Relating to Student Health Insurance Coverage under the Affordable Care Act

To Whom It May Concern:

On behalf of the American Council on Education (ACE) and the other higher education associations below, I write in response to CMS Release No. 9972-P, in which the Centers for Medicare & Medicaid Services (CMS) of the Department of Health and Human Services (HHS) solicited comments on its proposed rule concerning the application of the Patient Protection and Affordable Care Act (ACA) (Pub.L. 111-148) to Health Insurance Market Rules and Rate Review. 77 Fed. Reg. 227 (proposed November 26, 2012).

Founded in 1918, ACE is a non-profit national education association that represents all sectors of American higher education: community colleges and four-year institutions, private and public universities, and non-profit and for-profit colleges. ACE represents the interests of more than 1,600 campus executives, as well as 200 leaders of higher education-related associations and organizations. Together, ACE member institutions serve 80 percent of today's college students. We thank you for the opportunity to share our views.

There are aspects of the proposed regulations which provide helpful clarification and guidance to the higher education community after the issuance of the final Student Health Insurance Coverage regulations (SHIC). See 77 Fed. Reg. 55 (issued March 21, 2012). However, we are deeply concerned that the proposed regulations would require student health insurance coverage to be rated and priced as part of each state's individual market single risk pool, which we believe will undermine the ability of colleges and universities to continue to offer such SHIC plans.

I. Guaranteed Availability and Guaranteed Renewability

The proposed regulations note that student health insurance coverage has previously been provided with exceptions from the guaranteed availability and guaranteed renewability requirements of the Public Health Service Act (PHSA) for the period up to January 1, 2014. See 77 Fed. Reg. 227 at 70600. HHS based this prior exception on the grounds that the application of these requirements to student health insurance coverage "would have, as a practical matter, the effect of prohibiting an institution of higher education from offering a student health plan[,]" thereby violating the rule of construction in Section 1560(c) of the ACA.[1] Id.

In our letter commenting on the proposed SHIC regulations, dated April 12, 2011, we requested that these exceptions be applied to student health insurance coverage for policy years beginning on or after January 1, 2014. We based this request on the belief that these exclusions are essential to the viability of SHIC plans and consistent with congressional intent in the ACA to preserve the ability of institutions of higher education to continue to offer such plans. Accordingly, we are very pleased that HHS has clarified the final SHIC regulations by extending these exceptions in the proposed regulations in a manner consistent with our request.

II. Inclusion of Student Health Insurance Coverage in Individual Market Single Risk Pool

In an effort to put into effect the Section 1560(c) rule of construction, HHS recognized student health insurance coverage as a unique type of individual health coverage in the final SHIC regulations, subject to exceptions from several of the ACA's provisions related to individual health insurance. However, despite recognizing the uniqueness of this coverage in the final SHIC regulations as well as in the present proposed regulations, HHS has chosen to require that such coverage be rated and priced in an issuer's individual market single risk pool. We believe this is unwarranted and strongly urge that the proposed rule be revised to allow for separate risk pooling and experience rating for such student health insurance coverage based on the eligible campus population of students and their dependents.

The putative reason for the decision to create a single individual market risk pool is a general concern that without grouping all of an insurer's individual market enrollees within such a risk pool, the ACA's key insurance reforms—such as no health status discrimination and limits on the types of traditional underwriting rating factors—could "incentivize issuers to find ways to segment the market into separate risk pools and charge differential premiums based on segmented risk." Id. While this concern may be valid with respect to normal coverage offered by an issuer in the individual market, it does not hold up when applied to student health insurance coverage. The final SHIC regulations mandate such coverage only be available for purchase by students (and their dependents) enrolled at the offering college or university, in effect creating a segmented pool of eligible participants who will be provided the key protections of the ACA's insurance market reforms. Since this coverage is walled

[1] At sec.1560(c), the ACA provides the following:

> Nothing in this title (or an amendment made by this title) shall be construed to prohibit an institution of higher education (as such term is defined for purposes of the Higher Education Act of 1965) from offering a student health insurance plan, to the extent that such requirement is otherwise permitted under applicable Federal, State or local law.

off from purchase by anyone else in the individual market, there is no risk that issuers would use this limited pool as a means to create high risk and low risk enrollees in the larger individual insurance market. In addition, this coverage is rated similarly to large, fully insured group products in that coverage is not individually underwritten based on circumstances presented by an individual student or their dependent. Any student who enrolls is covered and none of the problematic factors of traditional underwriting determine the rate the student (or dependent) will be charged for the coverage. Moreover, the coverage benefits of such insurance—such as essential health benefits, preventative care without cost sharing, removal of lifetime and annual dollar coverage limits—is dictated by the final SHIC regulations.

Colleges and universities offer student health insurance coverage in an effort to ensure that all of their students have access to high-quality, affordable coverage which is designed to meet their needs, particularly more robust mental health and substance abuse services. Student health insurance plans work in partnership with the campus college health service to coordinate the overall delivery of health care services to students. Costs are kept lower than traditional health plans through effective referral coordination and care management by the college health service.

We are deeply concerned that the inclusion of student health insurance coverage in the broader individual market single risk pool will undermine this model as a result of the inevitable increased premiums, creating an additional burden on students, many of whom are already struggling to manage the cost of college. While inclusion in the single risk pool of the estimated 1.2 to 1.5 million students currently enrolled in such coverage will have only a modest impact on the rating and pricing of insurance in the individual market, the impact on the student health insurance market will be profound and very disruptive. Though all students would be disadvantaged by an increase in SHIC premiums, graduate and professional students would be particularly hard hit. Many of them will have aged out of alternatives such as dependent coverage under their parents' plans or even the minimal coverage offered by high-deductible catastrophic plans. We are also uncertain whether students, regardless of their age, who are domiciled in another state, may be able to participate in the state exchange where their institution is located. Finally, it is not clear that income-eligible students will be able to utilize the ACA's premium tax credits provided through state exchanges to purchase student health insurance coverage. In effect, students and their dependents will be subjected to the burdens of this single risk pool approach through increased premiums, making the purchase of the most appropriate coverage very difficult, without having access to one of the individual market's key benefits—the premium tax credit subsidies that could help them manage the increased coverage costs.

Moreover, the proposed single risk pool requirement comes at a time of deep financial challenges for the higher education community. As a result of the Great Recession, state support for public higher education is at a 20-year low. For public institutions, which enroll 80 percent of all students, declining state support is the single largest factor in driving up college costs. Private and public institutions experienced historic declines in the value of their endowments during the height of the recession from which they have not completely recovered. Simultaneously, the economic crisis has caused great stress on family budgets, leading to increased demand for financial aid. Historically, many colleges and universities have subsidized the cost of student health insurance coverage for undergraduates through their financial aid packages, and for graduate students as part of their funding award packages. Faced with rising budget challenges, it will be increasingly difficult for many colleges and universities to help their students manage increased SHIC premiums. As a result, in a choice between paying their primary costs of attendance and rising SHIC premiums, many students may be priced out of the health insurance market, leaving more students uninsured. That would be an outcome directly contrary to the goal of the Affordable Care Act. In addition, as more students drop student health insurance coverage, schools may struggle to maintain such coverage for the remaining students, which would "have, as a practical matter, the effect of prohibiting an institution of higher education from offering a student health plan . . . ," in violation of the section 1560(c) rule of construction. Id.

For all of these reasons, we strongly believe that the decision to include student health insurance coverage in an insurers' individual market single risk pool is unjustified and unwarranted. We urge HHS to revise the proposed regulations to permit separate risk pooling and experience rating for student health insurance coverage based on the eligible campus population of students and their dependents.

Thank you for your attention to these views.

Sincerely,

Terry W. Hartle
Senior Vice President

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On behalf of:
American Association of Community Colleges
American Association of State Colleges and Universities
American College Health Association
American Council on Education
Association of American Universities
Association of Public and Land-grant Universities
National Association of College and University Business Officers
National Association of Independent Colleges and Universities