

AMERICAN COUNCIL ON EDUCATION



OFFICE OF THE PRESIDENT

April 12, 2011

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

RE: CMS-9981-P
Comments on Proposed Rules 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 identified below, I write in response to CMS Release No. 9981-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 (hereinafter the "Affordable Care Act" or ACA) (Pub.L. 111-148) to student health insurance coverage. 76 Fed. Reg. 7767 (proposed February 11, 2011).

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.

In general, we are pleased that CMS has released the proposed regulations which are an effort to provide a framework for colleges and universities so they can continue to offer affordable, high-quality student health plans that comply with the consumer protections created by ACA. The new rules are in part a response to a request from ACE, the American College Health Association and several other organizations for such guidance.

While the proposed rules provide needed guidance, there are specific areas where additional clarification and specificity are needed to ensure that students will have access to affordable, high quality health insurance that meets the core ACA requirements.

I. Definition of Student Health Coverage

The proposed rule defines “student health insurance coverage” as “a type of individual health insurance coverage (as defined in §144.103) that is provided pursuant to a written agreement between an institution of higher education (as defined in the Higher Education Act of 1965) and a health insurance issuer, and provided to students enrolled in that institution of higher education and their dependents.” Id. at 7781. In addition, the definition specifies that insurance coverage would only be available to enrolled students and their dependents and that coverage must be provided without regard to “any health status-related factor.” Id.

While specifying that “student health insurance coverage” is a type of individual health insurance coverage, the proposed definition correctly limits availability of “student health insurance coverage” only to enrolled students and their dependents and excludes from coverage non-students purchasing insurance in the individual insurance market. Failure to limit coverage just to students (and their dependents) would fundamentally alter the nature and purpose of student health insurance coverage and effectively violate the ACA’s statutory provision¹ prohibiting actions that interfere with higher education institutions offering student health insurance.

The definition helpfully provides for the possibility of coverage to individuals “who are on breaks between academic terms, on temporary leaves of absence for medical or other reasons, or have recently graduated or otherwise ceased enrollment” Id. at 7770. It also appropriately leaves to colleges and universities (and their issuers) decisions regarding student status to determine the level of attendance sufficient to trigger insurance coverage eligibility. Id.

However, we do have two points of concern with respect to this definition. First, since student health insurance coverage would only be available to enrolled students and their dependents, the proposed regulation appears to assume that issuers would accordingly rate and price such coverage based solely on the eligible campus population as opposed to the broader population in the individual market of a state. In order to eliminate any ambiguity, we strongly recommend the final regulations clarify that issuers are required to rate and price student health insurance coverage based solely on the

¹ The ACA Sec.1560(c) provides the following rule of construction:

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.

campus population eligible for such coverage. See e.g. ACA Sec. 2701 (premium variation).

Second, in providing that students' dependents would be eligible to purchase coverage, the proposed rule mentions "spouses and children" as categories of possible dependents. *Id.* We recommend the final regulation clarify the definition of "dependents" to permit institutions of higher education the latitude to include domestic partners as eligible dependents under the terms of their plans.

II. Self-funded Student Health Insurance Coverage

The definition of student health insurance coverage contained in the proposed rule is limited to coverage "provided pursuant to a written agreement between an institution of higher education (as defined in the Higher Education Act of 1965) and a health insurance issuer." *Id.* at 7781. Unfortunately, as drafted, the proposed rule fails to provide guidance to institutions of higher education that provide student health insurance coverage on a self-funded basis.

While the proposed rule acknowledges the existence of "a small number of self-funded student health plans,"² it states that since such health plans are "neither health insurance coverage nor group health plans, as those terms are defined in the Public Health Service (PHS) Act, HHS has no authority to regulate them." *Id.* at 7769.

We do not challenge the view of HHS asserted in the rule that it lacks authority to regulate self-funded student health plans. However, we do believe that HHS can and should provide guidance to such plans under authority provided in ACA to the secretary of HHS to designate other types of coverage as "minimum essential health coverage." See IRC SEC. 5000A.

Accordingly, we strongly recommend that the secretary use such authority to specify in the final regulations that self-funded plans which comply with the required elements of "student health insurance coverage" as defined in the regulations to be a form of "minimum essential health coverage." In this way, self-funded plans would receive sufficient guidance to operate under ACA and permit students that purchase compliant self-funded plans to satisfy their ACA requirement to maintain "minimum essential coverage."

² We understand that currently there are approximately 30-40 institutions of higher education that offer self-funded student health insurance plans. While the number of such self-funded plans is relatively small in the larger scheme of the higher education community, they are offered by major public and private institutions such as the University of California, the University of Minnesota, Harvard University, Princeton University, and Yale University. It appears that there is a trend in recent years of institutions switching from insured to self-insured student health plans in part as an effort to control costs while maintaining high-quality comprehensive coverage.

III. Guaranteed Availability and Guaranteed Renewability

As the proposed regulation states, sections 2741 and 2742 of the Public Health Service Act, as amended by ACA, requires issuers offering insurance in the individual market in a state to offer coverage to eligible individuals and to renew or continue the coverage in force at the option of the individual. Id. at 7771. The proposed rule finds the application of these requirements to student health insurance plans would interfere with the operation of such plans and then excludes these plans from the guaranteed issue and guaranteed renewability requirements under the bona fide association exception provided in the PHS Act. Id.

We strongly support the exclusion of student health insurance coverage from the guaranteed issue and guaranteed renewability requirements of the PHS Act and ACA. Just as with our support for limiting coverage to enrolled students and their dependents, we believe this exclusion is essential to the viability of such plans and consistent with congressional intent in ACA to preserve the ability of institutions of higher education to continue to offer such plans.

IV. Annual and Lifetime Limits

The regulation addresses the removal of annual and lifetime benefit limits on the dollar value of essential health benefits under ACA by proposing a framework for the application of these insurance market reforms to student health insurance plans. The rule seeks to balance ACA's approach to such benefit limits for group health plans and for insurance sold in the individual market, concern about the practice of some issuers providing student health insurance coverage that impose very low annual limits, and the need to avoid imposing new annual and lifetime limit benefit requirements in such a way as to effectively prohibit institutions of higher education from offering student health insurance coverage. Id. at 7772.

Specifically, the rule proposes "a transition period for issuers of student health insurance coverage to comply with the annual limits requirements in 45 CFR 147.126 . . . for policy years beginning before September 23, 2012." During this period, "student health insurance coverage would be required to have an annual limit of no less than \$100,000 on essential benefits for policy years beginning on or after January 1, 2012, but before September 23, 2012[,] and thereafter issuers would have to comply with the annual dollar limit of at least \$2 million until all such limits are removed in 2014. In addition, the regulation would prohibit lifetime limits in student health insurance coverage as of Jan. 1, 2012. Id. See also Id. at 7781.

We recognize the removal of all annual and lifetime limits on student health insurance coverage by 2014 will result in changes in the nature of such coverage, particularly for coverage that has previously included very low limits. We believe HHS has wisely decided to propose a framework that phases in the removal of annual limits. We are hopeful it will provide adequate time for issuers to comply with the new requirements without, as the regulation notes, imposing "undue financial hardship" on

students and their institutions of higher education or causing disruption to the student health insurance market.

While these reforms will undoubtedly enhance the coverage available to students under such plans, we remain cautious about whether they have struck the right balance in protecting one of the most important benefits provided by student health insurance plans—cost security for students. As a result, we strongly recommend the final regulations permit students and their dependents to be eligible for ACA’s premium tax credits to help ensure that they can afford to purchase ACA-compliant student health insurance coverage. See ACA Sec. 1401 (premium assistance credit).

V. Coverage of Preventive Services

As the proposed rule notes, issuers offering group or individual health insurance coverage will now be required to provide specified recommended preventive services without cost-sharing. *Id.* at 7772. The rule provides a definition of a student administrative health fee and clarifies that such fees are not considered impermissible cost-sharing for specified recommended preventive services. *Id.* at 7781.

These administrative fees enable an institution’s student health service to provide critical public health, as well as campus health and safety, services for students and their dependents. In addition, these fees enable a health service to employ prevention strategies related to alcohol and other drug issues, as well as mental health challenges facing college students. In short, institutions of higher education utilize administrative health fees in a variety of ways to ensure that all students—even those without coverage—have access to individual or group prevention programs, making it essential that institutions of higher education be permitted to continue using them under the final regulations. Accordingly, we strongly support the proposed definition of “student administrative health fee” and the exclusion of such fees from the preventive care no cost-sharing requirement.

VI. Choice of Health Care Professional

The proposed rule indicates section 2719A of the PHS Act permits each insured under a group or individual health plan to designate any participating primary care provider who is available as their provider. *Id.* at 7772. However, the regulation acknowledges concerns of colleges and universities that the provisions relating to choice of health care professional could be disruptive to the college health service system and requests comments about the applicability of the primary care provider provisions to student health insurance plans.

For decades, college health centers have operated from a multidisciplinary and collaborative model. With clinicians, mental health professionals, health educators and others using principles of the patient-centered medical home and keenly focused on both adolescent health and academic success in higher education, primary care providers within the network of the institution’s student health center are best suited to provide the

continuum and continuity of care so important to students' success. Basic tenets of this model include coordination of care, whole person orientation and enhanced access. The model effectively addresses same-day access demand and coordination of care and seeks to avoid the more expensive alternative for students, i.e., seeking care at a local emergency room or urgent care clinic.

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.

The myriad support services provided by colleges and universities, which include on-campus primary care, mental health, public health and health promotion, should not be disrupted by the final regulations. We strongly believe access to care and quality of care can best be provided in a manner that effectively manages costs through student health services if institutions of higher education are permitted to proscribe that the choice of primary care provider under their student health insurance coverage can be limited to primary care providers within the student health service system.

Accordingly, we strongly recommend the final regulations clarify that, for purposes of student health insurance coverage, the participating primary care provider can be more narrowly defined as being a provider within the institution's student health service. This clarification is important to enable student health centers to continue their role of triage, primary care, and referral for students who require services that fall outside those provided at the institution's health center.

VII. Affordable Care Act Provisions Effective in 2014

Notwithstanding prior language in the rule excluding student health insurance coverage from guaranteed issue and guaranteed renewability requirements, we are concerned with language in this section of the proposed regulation that creates some ambiguity about whether this important proposed exclusion extends to 2014 and beyond. Specifically, the rule states "HHS does not address in this proposed rule the applicability of PHS Act section 2702 (guaranteed issue) and section 2703 (guaranteed renewability) to student health insurance coverage, both of which are effective in the individual health insurance market for policy years beginning on or after January 1, 2014." Id. at 7773.

Nonetheless, the rule states "HHS believes, however, that the general policy rationales supporting the inapplicability of PHS Act sections 2741 and 2742 to student health insurance coverage in this proposed regulation also would apply with respect to PHS Act sections 2702 and 2703." Id. The rule further states "HHS could address in future regulations whether it would be appropriate to specify that these provisions would be inapplicable to student health insurance coverage provisions through the authority under section 1569(c) of the Affordable Care Act." Id.

In order to resolve any uncertainty and avoid potential turmoil caused by the seemingly contradictory language on this issue in various sections of the proposed rule, we strongly urge HHS to clarify in the final regulation that guaranteed issue and guaranteed renewability requirements do not apply to student health insurance coverage for policy years beginning before, on or after Jan. 1, 2014.

In addition, the rule seeks comments regarding the interaction of student health plans and state exchanges to be created beginning in 2014. We are concerned about ensuring that ACA compliant student health insurance coverage is affordable for students. To address this concern, we recommend that the final regulations create a mechanism which permits eligible students and their dependents to use the ACA's premium tax credits provided through state exchanges to purchase student health insurance coverage offered by institutions of higher education.

VIII. Medical Loss Ratio

The proposed regulation seeks comments on the possible application of Medical Loss Ratio (MLR) provisions of ACA to student health insurance plans. Id. at 7773

We acknowledge the concerns, which the rule indicates were raised by some issuers, that student health insurance plans include some administrative costs that may make application of the MLR provisions of ACA to such plans problematic. Although concerns raised by issuers may now have some legitimacy, the application of various ACA and PSH requirements to student health insurance plans as contained in the proposed regulation may actually help reduce some of the administrative costs for such plans. Specifically, student health insurance plans are likely to become more standardized and less customized as a result of the proposed regulation, thereby undercutting one claim of issuers that an 80 percent MLR would be potentially prohibitive. Id.

We do worry that the application of the MLR provisions of ACA to student health insurance plans may inadvertently result in a loss of diversity in the number of issuers participating in this unique insurance market and a concomitant increase in market concentration among fewer issuers. Such a result could ultimately harm students, their dependents and institutions of higher education by reducing the number of viable student health insurance issuers and limiting the competitive pressures on the remaining issuers over such matters as premiums and services. We believe this is certainly an issue which warrants some examination by HHS.

At the same time, we are deeply concerned about student health insurance issuers using students and their dependents as an excessive source of profit. Like others obtaining insurance in an ACA-reformed individual insurance market, students and their dependents should get the full benefit of ACA-compliant student health insurance coverage for which they pay. To the extent that application of some form of MLR requirements to student health insurance plans would help ensure students and their dependents receive ACA-facilitated consumer benefits, we would support such a requirement.

Accordingly, on this issue, we urge HHS to follow the approach it applied with respect to the so-called “mini-med” plans by seeking the guidance and recommendations of the National Association of Insurance Commissioners to determine whether “student health insurance plans may have unique administrative expenses that warrant developing methodologies that take such expenses in account in calculating the measure of activities to be reported as part of the MLR requirements.” Id.

IX. Notice

The proposed regulation would require issuers of student health insurance coverage to provide to their insured students and dependents a specified notice informing students the policy does not meet all of the requirements of ACA. The rule also provides model language for such a notice. Id. at 7773, 7781.

We do not object to the proposed notice or model language provided the final regulations maintain the burden of such notice belongs solely to the issuers of student health insurance coverage and that institutions of higher education will bear none of the responsibility or cost of providing such notice. In addition, it may be appropriate to sunset this notice requirement once the annual limits of student health insurance coverage become uniform with the rest of the individual market.

X. Conclusion

We respectfully request the Department of Health and Human Services adopt final regulations for student health insurance coverage consistent with our recommendations as set forth above.

We would be pleased to discuss these matters further with the relevant staff at the Department of Health and Humans Services. Thank you for your attention to these views.

Sincerely,



Molly Corbett Broad
President

MCB/ldw

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 Medical Colleges

Association of American Universities

Association of Public and Land-grant Universities

College and University Professional Association for Human Resources

Council of Graduate Schools

National Association of College and University Business Officers