

Office of Government & Public Affairs

March 18, 2013

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

RE: CMS-9958-P
Comments on Exchange Functions: Eligibility for Exemptions; Miscellaneous Minimum Essential Coverage Regarding Self-Funded Student Health Insurance Plans 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. 9958-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 Miscellaneous Minimum Essential Coverage. 78 Fed. Reg. 22 (proposed February 1, 2013).

Founded in 1918, ACE is a nonprofit national 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 advocates on behalf 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.

We appreciate the guidance offered in the proposed regulations which clarifies that self-funded student health coverage offered by institutions of higher education will be designated as “minimum essential coverage” (MEC) under the ACA.

- **Self-funded Student Health Coverage and Minimum Essential Coverage**

We have long sought guidance from HHS for institutions of higher education that offer health coverage under self-funded student health plans. We requested such guidance to ensure that students

covered under these plans would be able to meet the ACA's requirement to maintain minimum essential coverage.¹ If not, such students would be subject to the tax penalties set forth in the ACA for failure to satisfy this requirement. While the MEC requirement does not take effect until calendar year 2014, colleges and universities that offer self-funded student health coverage need guidance well before then as they would have to make any necessary modifications to their plans for the 2013-14 academic year, which begins in August 2013.

There are more than 30 not-for-profit institutions of higher education offering self-funded student health coverage with approximately 300,000 students enrolled in such plans. This represents approximately 20 percent of those enrolled in student health insurance plans. Among these colleges and universities are major public and private institutions such as the University of California (all 11 campuses), the University of Minnesota (all five campuses), University of Wisconsin-Madison, Harvard University (MA), Princeton University (NJ) and Yale University (CT).

It has been the experience of these institutions that self-funded student health coverage has allowed them to provide their students with comprehensive health coverage while reducing their administrative and risk charges from the normal range of insurance carrier retention charges. The savings often exceed 10 percent of total plan costs. Many large self-funded student health plans are able to consistently return more than 85 percent of the funds collected from covered students in the form of benefit payments. In many cases, these self-funded student health plans satisfy or exceed the requirements for insurer-provided student health coverage set out in the final Student Health Insurance Coverage (SHIC) regulations,² including:

- Students and their eligible dependents are guaranteed the opportunity to enroll, regardless of any pre-existing conditions or any other factors beyond their student status;
- Where annual limits currently exist, they are quite high, and many limits are likely to be eliminated voluntarily to conform with the ACA requirements;
- A broad range of preventative services, including pharmacy benefits, are already offered with limited or no cost-sharing; and
- Fees are set without concern for profit margin and are intended to cover the costs of providing care and maintaining quality, as well as related administrative costs.

In the final SHIC regulations, HHS reiterated that because self-funded student health coverage plans are “neither health insurance coverage nor group health plans . . . HHS has no authority to regulate them, including extending Affordable Care Act policies to them.” 77 Fed. Reg. 16455 (March 21, 2012)). As we stated in our comments to the proposed student health insurance coverage regulations, we do not challenge the Department's conclusion that it lacks authority under the ACA and related statutes to “regulate” self-funded student health coverage plans. Instead, we believed that HHS could address our concerns regarding such plans by exercising authority provided to the Secretary under the ACA to designate other types of coverage as “minimum essential health coverage.”³

¹ 26 U.S.C.A. § 5000A(a).

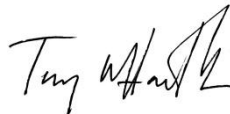
² Student Health Insurance Coverage, 45 C.F.R. §§ 144, 147 and 158 (2012).

³ 26 U.S.C.A. § 5000A(f).

Accordingly, we are grateful that the Secretary has chosen to exercise that authority in the proposed regulations by designating self-funded student health coverage offered by institutions of higher education as minimum essential coverage for purposes of section 5000A(f)(1)(E) of the Code. The Secretary's action ensures that students who purchase coverage under such plans will satisfy the MEC requirements of the Act.

Thank you for your attention to these views.

Sincerely,

A handwritten signature in black ink, appearing to read "Terry W. Hartle". The signature is written in a cursive, slightly slanted style.

Terry W. Hartle
Senior Vice President

TWH/ldw

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