

Office of Government & Public Affairs

April 18, 2012

Mr. Steven B. Larsen
Deputy Administrator and Director of the Center for Consumer Information and Insurance Oversight
(CCHIO)
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Hubert H. Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201

RE: Self-Funded Student Health Benefit Plans and Minimum Essential Coverage Under the Affordable Care Act

Dear Mr. Larsen:

On behalf of the American Council on Education (ACE) and the other higher education associations identified below, I write to request clarification in regulatory guidance the Department of Health and Human Services (HHS) may issue regarding how self-funded Student Health Benefit Plans (hereinafter “self-funded SHBPs”) may be recognized as providing Minimum Essential Coverage under the Patient Protection and Affordable Care Act (hereinafter the “Affordable Care Act” or ACA), as codified in Sec. 5000A of the Internal Revenue Code (IRC).

As you know from the comments we submitted in response to the proposed rules for Student Health Insurance Plans (SHIP), we believe it is essential that HHS provide guidance to institutions of higher education that offer coverage under self-funded SHBPs. In particular, these institutions must be able to ensure that students covered under their plans can meet the ACA’s Minimum Essential Coverage requirement. If not, such students may be subject to the tax penalties set forth in the ACA for failure to satisfy this requirement. While the Minimum Essential Coverage requirement does not take effect until calendar year 2014, colleges and universities that offer self-funded SHBPs will 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. In fact, administering self-funded SHBPs is so complex that in order to implement those changes thoroughly and efficiently, institutions will need to have guidance by fall 2012.

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There are more than 30 not-for-profit institutions of higher education offering self-funded SHBPs, covering more than 300,000 students (which represent more than 10 percent of those enrolled in student health insurance programs). 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, Princeton University and Yale University.

It has been the experience of these institutions of higher education that self-funded SHBPs have allowed them to provide their students with comprehensive health insurance coverage while reducing their administrative and risk charges from the normal range of insurance carrier retention charges. The savings often exceeds 10 percent of total plan costs. Many large self-funded SHBPs are able to consistently return over 85 percent of the funds collected from covered students in the form of benefit payments. In many cases, these self-funded SHBPs already satisfy or exceed the requirements for insurer-provided student health coverage set out in the recently issued final regulations:

- Eligibility for health coverage is not conditioned on any health status-related factors;
- Coverage is made available to students and their dependents without precondition as long as they are eligible for the plan;
- Annual limits currently exceed the requirements set out in the recently issued final SHIP regulations, and where lifetime limits currently exist, they are quite high and would be eliminated to comply with the ACA;
- A broad range of preventative services 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.

I have attached benefit description documents from several of these plans for your reference.

In the final SHIP regulations, HHS reiterated that because self-funded SHBPs are “neither health insurance coverage nor group health plans . . . HHS has no authority to regulate them, including extending Affordable Care Act policies to them.” (See 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 SHBPs. Instead, we are merely asking HHS to use authority provided to the Secretary by the ACA to designate other types of coverage as “minimum essential health coverage.” See IRC Sec. 5000A.

Specifically, we urge the Secretary to use that authority to specify that self-funded SHBPs which substantially comply with the required elements of “student health insurance coverage” as defined in the final SHIP regulations are a form of “minimum essential health coverage.” In this way, self-funded SHBPs would receive sufficient guidance to operate under the ACA, and students that purchase compliant self-funded SHBPs would satisfy their ACA requirement to maintain “minimum essential health coverage.”

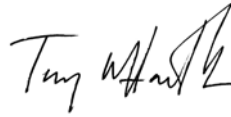
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We would be pleased to discuss these matters further with the relevant staff at HHS. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Terry W. Hartle". The signature is written in a cursive, somewhat stylized font.

Terry W. Hartle
Senior Vice President

TWH/mjm

Enclosures (7)

On behalf of:

American College Health Association

American Council on Education

Association of American Universities

Association of Public and Land-grant Universities