

HEALTH LAW ALERT

February 13, 2011

HHS Proposes Rule for Student Health Insurance Annual Limits Must be at Least \$100,000; Most Other Affordable Care Act Requirements Will Apply

On Friday, the Department of Health and Human Services' Center for Consumer Information and Insurance Oversight ("CCIIO")¹ published a proposed rule that would clarify that most, but not all, provisions of the Affordable Care Act applicable to insurance in the individual market will also apply to student health insurance coverage. Thus, issuers of student health insurance would be prohibited from imposing a lifetime limit on essential health benefits and would be required to comply with the Affordable Care Act's annual limit rules by September 23, 2012. In the meantime, student health coverage would not be allowed to impose annual limits that are less than \$100,000.

CCIIO requests comments concerning the proposed rule generally and, in particular, the Public Health Service Act provisions that should be waived to ensure that student health insurance coverage will continue to be available. The proposed rule is published at 76 *Federal Register* 7767 (Feb. 11, 2011) and comments must be submitted no later than April 12, 2011.

Student Health Insurance Defined

The preamble explicitly addresses—and rejects—the practice of treating student health insurance as “short-term limited duration” insurance,² which is not subject to many requirements of the Public Health Service Act and the Affordable Care Act. Rather, CCIIO would clarify that student health insurance is a form of individual coverage and is subject to all provisions of federal law that apply to individual coverage, except to the extent specifically exempted by this rule.

¹ The Office of Consumer Information and Insurance Oversight was “disestablished” last month and replaced with the CCIIO, which is within the Centers for Medicare and Medicaid Services. *See* 76 *Federal Register* 4703 (Jan. 26, 2011).

² Short-term limited duration insurance is coverage that “has an expiration date specified in the contract . . . that is less than 12 months after the original effective date.” 42 C.F.R. § 144.103. Issuers of such coverage are not required to comply with Public Health Service Act provisions (including Affordable Care Act insurance reform provisions) affecting the individual insurance market.

To qualify as student health insurance, an issuer would be required to engage in a written agreement with “an institution of higher education,” as defined by Federal law, and offer the coverage solely to students enrolled in the institution and their dependents. The institution of higher education would be allowed to establish its own eligibility guidelines, such as determining whether part-time students are eligible. An issuer of student health insurance would be prohibited from conditioning coverage on any health-status-related factor and would be required to comply with “any additional requirement imposed under State law.”

Affordable Care Act Provisions That Would Not Apply

Guaranteed Availability and Renewability. The proposed rule would waive application of the Affordable Care Act’s guaranteed availability and renewability provisions so an issuer could (a) limit coverage to students enrolled in the sponsoring institution of higher education and (b) terminate coverage once a student is no longer enrolled. The proposed rule would accomplish this by treating coverage offered through the institution of higher education as coverage provided by a bona-fide association. CCIIO stresses that this construction “does not require health insurance issuers offering student health insurance coverage to revise or amend their current business or marketing agreements and practices.”

Lifetime and Annual Limits. Under the Affordable Care Act, issuers in the individual market are prohibited from imposing lifetime limits on essential benefits. This prohibition would apply to student health insurance. Beginning in 2014, insurers in the individual market will be prohibited from imposing annual limits on essential benefits and, prior to 2014, CCIIO rules restrict the level of annual limits allowed.³ Under the proposed rule, student health insurance would be subject to the prohibition on annual limits beginning in 2014 and the restrictions in the CCIIO rules beginning with plan years starting on or after September 23, 2012. For plan years beginning prior to that time, insurers could impose an annual limit of no less than \$100,000 on essential benefits.

The prohibition on annual limits does not apply to grandfathered plans in the individual market. Although CCIIO does not address grandfathered plans in the preamble to the proposed rule, the proposed rule itself would apparently apply the annual limit requirements to grandfathered student health coverage.

Other Provisions. CCIIO does not propose to waive application of any other Affordable Care Act requirements to student health insurance coverage. It does, however, request comments on whether several Affordable Care Act requirements should apply, including the prohibition on cost-sharing for preventive services, choice of health care professional, and the medical loss ratio requirements.

³ For more on these restrictions, [click here](#) (or go to tbixbylaw.com and click on the “Resources” page) and see the 6/28/2010 Alert “Affordable Care Act Rules Issued for Preexisting Conditions, Rescissions” under “**Health Law Alerts.**”

Notice of Compliance

Issuers of student health coverage would be required to furnish to students and their dependents notice that the coverage does not meet all of the Affordable Care Act requirements. The notice requirement “is necessary in order for students and any dependents . . . to understand the value and quality of the coverage that is being offered to them, and not have expectations that all of the requirements under the Affordable Care Act will apply.” The notice would have to be “prominently displayed in clear, conspicuous 14-point bold type on the front of the insurance policy or certificate and any other plan materials.”

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