

*Legislative Alert**March 19, 2012*

Health Care Reform: Student Health Insurance Final Regulations Issued



On February 11, 2011, the Department of Health and Human Services (HHS) published proposed regulations addressing the way the Patient Protection and Affordable Care Act (ACA) applies to student health insurance coverage. On March 16, 2012, HHS released final regulations that confirm most of the terms of the proposed regulations, with minor modifications described below. Most of the provisions of the final regulations, including annual limits, preventive services, and notice requirements, are effective for the first policy year beginning on or after July 1, 2012. The final regulation's medical loss ratio requirements are effective beginning on January 1, 2013.

What constitutes student health insurance?

The final regulations confirm that, under the ACA, student health insurance is treated as a type of individual health insurance coverage provided pursuant to a written agreement between an institution of higher education and a health insurance issuer for students enrolled in that institution and possibly their dependents. The definition specifically excludes self-funded student health plans as being beyond the scope of HHS's regulatory authority under the ACA. The final regulations defer to the states to regulate self-funded

student insurance plans. The preamble to the final regulations also confirms that plans sponsored by student associations or high schools are not student health insurance as this term is defined for purposes of the ACA. Also, in order to meet the definition of student health insurance, the coverage cannot condition enrollment on any health status-related factor of a student or dependent. Although many commenters on the proposed regulations urged that student insurance be exempt from the ACA's definition of individual health insurance as "short-term limited duration insurance," that position was rejected except in cases where the coverage could not continue for more than one year. An example of policies that could be short-term, limited-duration insurance that fall outside the scope of the ACA would be policies issued to foreign students studying for a single semester in the United States.

The final regulations exempt student health insurance from complying with the ACA's Guaranteed Renewability and Guaranteed Availability mandates, reasoning that these mandates are incompatible with plans that, by definition, are of a limited duration and restricted to individuals enrolled as students. Flexibility is provided with respect to temporary continuations of coverage upon the loss of student status. An example provides that a 90-day extension would be reasonable to allow a graduating student to transition to other coverage but a 12-month extension would not be consistent with the requirement that eligibility for student health insurance coverage be limited to students and their dependents.

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Limits on essential health benefits

The final regulations confirm that the prohibition on lifetime limits on essential health benefits (ambulatory patient services, emergency services, hospitalization, maternity and newborn care, mental health and substance use disorder services, prescription drugs, rehabilitative services and devices, laboratory services, preventive and wellness services, chronic disease management, pediatric services, including oral and vision care) under the ACA is applicable to student health insurance coverage. With respect to the ACA's restricted annual limits on essential health benefits, the final regulations confirmed the transition relief previously set forth in the proposed regulations, but with minor modifications to phase in those limits. For policy years beginning on or after July 1, 2012, but before September 23, 2012, a health insurance plan may not establish an annual limit on any essential health benefit that is lower than \$100,000. For policy years beginning on or after September 23, 2012, but before January 1, 2014, a health insurance plan may not establish an annual limit on any essential health benefit that is lower than \$500,000. For policy years beginning on or after January 1, 2014, all student health insurance coverage must comply with the prohibition on annual dollar limits under the ACA.

Grandfathering

The final regulations provided no relief with respect to grandfathering. A plan or policy's grandfathered status can determine whether certain of the ACA's market reforms apply, such as the mandate to provide first-dollar coverage of preventive care and the choice of any available primary care provider. Under the final regulations, grandfather status is determined with respect to the coverage in which each student was enrolled on March 23, 2010. Any coverage in which an individual student is newly enrolled after March 23, 2010, is non-grandfathered. Regulations specify five specific policy changes that will result in loss of grandfathered status in the individual market, including raising coinsurance, imposing new annual limits, eliminating benefits, significantly raising co-payments, and significantly raising any fixed-amount cost-sharing. Given these constraints and the requirement that a student have been enrolled in coverage on March 23, 2010, it is unlikely that there will be many remaining grandfathered student health insurance policies.

Preventive care and primary care providers

HHS' final regulations confirmed that the mandate to cover in-network preventive care services without cost sharing applies to student health insurance, but clarified that the student fee for enrollment would not constitute cost sharing or otherwise violate the ACA. The regulations also confirmed

that the ACA's patient protection requiring the choice of any primary care provider accepting new patients applies to student health insurance. In response to comments and concerns about both of these ACA mandates and their relationship to care provided through student health centers, HHS advised that an issuer can arrange for a student health center to serve as its in-network provider where students could receive preventive services without cost-sharing and can designate providers at a student health center as primary care providers and allow students to choose among them as long as there is sufficient capacity.

Notably, contraception is a mandated preventive service. Several religiously-affiliated universities requested an exemption from this aspect of the preventive care coverage mandate. HHS provided a lengthy response in the preamble to the final regulations. HHS confirmed that guidance released on February 10, 2012, establishing a temporary one-year enforcement safe harbor for group health plans of employers with religious objections to covering contraceptive services would also apply to any religiously-affiliated college or university and the issuer of the student health insurance coverage for that college or university. Thus, contraceptive benefits will not have to be provided in student health insurance plans for religiously-affiliated universities until policy years beginning on or after August 1, 2013. HHS noted that the Department's plan to initiate rule-making to require issuers to offer student health insurance plans without contraceptive coverage through such an institution and simultaneously offer contraceptive coverage without cost-sharing directly to the student health insurance plan enrollees.

Medical loss ratio requirements

The proposed regulations had also requested comment on the way the ACA's new medical loss ratio (MLR) requirements (80 percent of premiums in the small and individual markets and 85 percent of premiums in the large group market must be spent on clinical services or activities to improve health care quality) could be adjusted to work in the student health insurance context. The final regulations confirmed that issuers of student health insurance coverage are subject to the individual market reporting and rebate requirements on a calendar year basis, beginning January 1, 2013. In response to concerns by commenters, HHS provided that the experience for student coverage is to be reported separately from other individual market coverage and the final regulations provide for national aggregation of student health insurance coverage. In addition, to phase in the MLR requirements, the final regulations provide the calculation of incurred claims and quality improving activities is to be multiplied by 1.15 in 2013 to account for unique administrative costs in the student

insurance market. Since student health insurance coverage is individual market coverage, rebates will be distributed directly to the student in the same manner as rebates from other individual market coverage.

Notice requirements

Finally, a notice must be distributed to enrollees prior to 2014, when the annual limits requirements become consistent with other individual health insurance coverage limits. The notice, in clear, conspicuous, 14-point bold type, is required on the front of any insurance policy or certificate and in any other plan materials informing students that their student insurance coverage does not meet the ACA's annual dollar limits. The notice must include the dollar amount of the annual limit along with a description of the plan benefits to which the limit applies. The notice must also state that the student may be eligible for coverage as a dependent in a parent's group health plan or under a parent's individual market coverage if the student is under the age of 26. Model language is provided in the final regulations, which are available in full at <http://www.gpo.gov/fdsys/pkg/FR-2012-03-21/pdf/2012-6359.pdf>.

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