

Office of Government & Public Affairs

December 21, 2015

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

**RE: CMS-9937-P  
Comments on Notice of Benefit and Payment Parameters for 2017**

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. 9937-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 Benefit and Payment Parameters for 2017. 80 Fed. Reg. 231 (proposed December 2, 2015).

Founded in 1918, ACE is the major coordinating body for all the nation's higher education institutions, representing more than 1,600 college and university presidents and related associations. Together, ACE member institutions serve 80 percent of today's college students. We thank you for the opportunity to share our views.

In general, the proposed regulations provide clarification and helpful flexibility to institutions of higher education in managing their Student Health Insurance Coverage (SHIC), which build on the final SHIC regulations issued by HHS in 2012. See 77 Fed. Reg. 55 (issued March 21, 2012). In particular, we are pleased that the proposed regulations would permit insurance issuers to establish separate risk pools for student health insurance coverage at individual institutions of higher education or multiple risk pools within a single institution based on bona fide school-related classifications. In addition, we strongly support the decision in the proposed regulations to exempt student health insurance coverage from the general actuarial value requirements under section 1302(d) of the ACA and instead merely require SHIC plans to provide a minimum actuarial value of at least 60 percent.

## **I. Inclusion of Student Health Insurance Coverage in Individual Institution Risk Pool**

In the final SHIC regulations, HHS recognized student health insurance coverage as a unique type of individual health coverage only available to enrolled students (and their dependents), subject to exceptions from several of the ACA's provisions related to individual health insurance. In specific, the proposed regulations note that HHS "modified some of its rules as applied to student health insurance coverage, including those related to guaranteed availability, guaranteed renewability, and single risk pool requirements." 80 Fed. Reg. 231 at 75498. HHS granted these exceptions on the grounds that the application of these requirements to student health insurance coverage "would have, as a practical matter, the effect of prohibiting an institution of higher education from offering a student health plan[,] thereby violating the rule of construction in Section 1560(c) of the ACA.<sup>1</sup> See 77 Fed. Reg. 227 at 70600.

The proposed regulations helpfully clarify the exemption from the single risk pool requirement by explicitly specifying that issuers may establish, as of January 1, 2017, "separate risk pools for different institutions of higher education, or multiple risk pools within a single institution, provided they are based on a bona fide school-related classification (for example, graduate students and undergraduate students) and not a health status-related factor as described in § 146.121." 80 Fed. Reg. 231 at 75498.

We are very pleased that the proposed regulations include this important clarification as we share the Department's reasoning that this will "allow rates for student health insurance coverage to reflect the unique characteristics of the student population at the particular institution . . ." *Id.* The proposed regulations also implicitly recognize the unique nature of this coverage which is rated similarly to large, fully insured group products in that coverage is not individually underwritten based on circumstances presented by an individual student or their dependent.

Colleges and universities offer student health insurance coverage in an effort to ensure that all of their students have access to high-quality, affordable coverage which is designed to meet their needs, particularly by providing more robust mental health and substance abuse services. 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. Moreover, in an effort to

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<sup>1</sup> At sec.1560(c), the ACA provides the following:

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.

lower college costs and enhance access, colleges and universities may subsidize the cost of student health insurance coverage for undergraduates through their financial aid packages and for graduate students as part of their funding award packages. The clarification in the proposed regulations will help colleges and universities sustain and enhance this unique model, which is intended for the benefit of students. It will also help advance a key goal of the ACA to ensure the widespread availability of high-quality, affordable health insurance.

However, we are concerned with the requirement in the proposed regulations that SHIC plans, on or after January 1, 2017, “be subject to the single rate setting methodology of the single risk pool in the regulation at § 156.80(d).” *Id.* We worry that this requirement may impose an unnecessary and costly regulatory burden on the rate filing process, limit consumer choices and flexibility for institutions, and inadvertently undermine the critical role that institutions play in crafting SHIC plans to meet the needs of their student populations. As a result, we strongly encourage HHS to assess whether this proposal is appropriate and instead focus on preserving the current role and options for institutions of higher education in the student health insurance coverage market.

## **II. Actuarial Value Requirements for Student Health Insurance Coverage**

We strongly support the provisions in the proposed regulations which would exempt student health insurance coverage from the general actuarial value (AV) requirements under section 1302(d) of the ACA and instead only require SHIC plans to provide a minimum actuarial value of at least 60 percent.

We have long objected to the decision by HHS to apply the ACA’s actuarial value requirements to student health insurance coverage as unnecessary and harmful to students. We believe the decision was unnecessary as a way to ensure consumer protections for students. Schools were already offering very comprehensive ACA compliant SHIC plans, many of which exceeded the gold AV level. In addition, institutions serve as a critical intermediary between students and insurers, in effect negotiating on behalf of students with insurers over the benefits and costs of a SHIC plan to best meet the needs of an institution’s students. Moreover, SHIC plans are part of the array of health insurance coverage options available to students, which include plans offered on the individual market that are already subject to the AV level requirements.

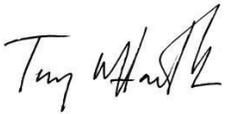
More importantly, the decision to apply the AV value requirements to SHIC plans needlessly forced institutions, which had been offering comprehensive SHIC plans, to reduce their plans’ benefits and services and/or to raise the out-of-pocket expenses paid by students under their plans in order to meet a specific actuarial value metal level. This unfortunate outcome harmed students and ran counter to the goals of the ACA. As a result, we are heartened to see that HHS has revisited its early decision and has decided to change course.

In addition to exempting SHIC plans from the general AV level requirement, we

support the requirement in the proposed rule that SHIC plan issuers obtain an actuarial certification that the plan provides an actuarial value of at least 60 percent. We also support the idea of requiring insurers to provide students with information, through a variety of sources, about the actuarial value of the coverage, the next lowest AV metal level the coverage would satisfy, and any other relevant data about the coverage. Both of these proposals will help ensure that students and their families have sufficient information about the value and benefits offered in a SHIC plan to make informed decisions about a student's health insurance coverage. Our only caveat about both of these requirements is that issuers may find a way to pass their cost onto colleges and universities. As a result, we respectfully request that HHS explore ways to ensure that their cost be assumed by issuers.

Thank you for your attention to these views.

Sincerely,



Terry W. Hartle  
Senior Vice President

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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 Universities  
Association of Governing Boards of Universities and Colleges  
Association of Public and Land-grant Universities  
National Association of College and University Business Officers  
National Association of Independent Colleges and Universities  
National Association of Student Personnel Administration