



September 28, 2010

The Honorable Kathleen Sebelius
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20201

RE: Comments on Interim Final Rules Relating to Pre-Existing Condition Insurance Plan Program (OCIIO-9995-IFC)

Dear Secretary Sebelius:

We appreciate the opportunity to comment on the Interim Final Rule released July 30, 2010, regarding the Pre-Existing Condition Insurance Plan Program in the Patient Protection and Affordable Care Act (ACA).

Georgetown University's Center for Children and Families (Georgetown CCF) is an independent, nonpartisan policy and research center whose mission is to expand and improve health coverage for America's children and families. Central to our work is providing research and policy assistance to state administrators and state-based organizations on strategies for covering children and their families in Medicaid and CHIP. We also conduct research and analysis to inform federal and state policymakers about issues impacting children and families in health care reform and to improve Medicaid and CHIP, particularly around streamlining enrollment and renewal systems.

Georgetown CCF believes that the establishment of a pre-existing condition insurance plan program (PCIP) is a positive interim step prior to the implementation of health reform in 2014. As you estimate, as many as 400,000 individuals could gain coverage through these new plans, offering critical health care to a vulnerable population.

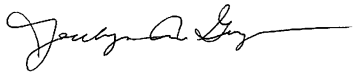
Our comments focus on our concern that the high-risk plans as described in the interim rules are not sufficiently geared toward children with pre-existing conditions. The ACA's requirement (PHS Act Section 2704) that most plans provide coverage to children with pre-existing conditions may help provide coverage to thousands of children. However, under the new rule some children with pre-existing conditions will continue to fall between the cracks and not be able to access the vital health care services that they need. First, with some insurance companies in the individual market limiting enrollment opportunities in child-only plans, or eliminating such plans altogether, it could be difficult for families to even find a plan in their state. Additionally, since the provision does not limit what insurers can charge, a plan that is available (whether a child-only or family plan) could be

prohibitively expensive. The PCIP could provide a valuable fail safe for these families if the following changes are made to the final interim rule.

- **Include Pediatric Benefits in the Required List of Benefits.** The interim final rule does not include pediatric services in the list of required benefits that a PCIP must provide. The preamble to the interim final rule states that the PCIP list “builds off” of the essential health benefits package as defined in the ACA (Section 1302(b)(1)). However, the essential health benefits package specifically includes “pediatric services, including oral and vision care.” We recommend that HHS require that pediatric services be included in the list of required services that must be covered by the PCIPs.
- **Require that the PCIPs provide child-only plans.** The regulations are silent on the type of health plans that the PCIPs must provide. While it is assumed that insurers will offer individual policies, often times these policies are not appropriate for children. First, an individual plan is usually geared to provide services to an adult and may not offer the full scope of child-specific benefits that a child-only plan can provide. Second, adults are more expensive than children and thus the premium costs for an individual plan are usually more costly than those of a child-only plan. In fact, the ACA requires that insurers participating in the exchange in 2014 and beyond offer a child-only plan to ensure that children can still secure appropriate coverage even if their parents are covered through other means or are ineligible for an exchange plan (Section 1302(f)). The PCIPs should be required to provide families with this same type of flexibility and offer child-only plans. Additionally, the premium rates charged for the child-only plans under the pre-existing program should adapt the rules applied to the adult population to the child-only plans. Specifically, premiums for the child-only plans should take into consideration the standard premium rates charged by other health insurers offering child-only coverage (and not individual or family coverage).
- **Include child-specific criteria for meeting the pre-existing condition eligibility requirement.** The ACA stipulates that persons are eligible for the PCIP if they have a pre-existing condition. The interim final rules describe what criteria a PCIP can use to determine whether an individual has a pre-existing condition for this purpose, including a denial of coverage or an exclusion of benefits under a plan due to a person’s health status. While the rules allow PCIPs to develop other criteria, with approval by HHS, we believe that the PCIPs should be explicitly required to establish criteria applicable to children. As mentioned, while families seeking coverage for their children can no longer be denied coverage due to a pre-existing condition, this new rule will not always equate to a family being able to find or purchase coverage. If coverage is not available (because a child-only plan is not offered or an open enrollment period has closed) or is unaffordable, families should still have the option of the PCIP open to them. Thus, the interim rules should be changed to reflect that families applying for coverage in a PCIP for a child (under age 19) will meet the pre-existing condition eligibility requirement by presenting evidence that they were unable to find coverage or that the coverage found is unaffordable (defined as 150 percent of the standard rate).

- **Eliminate the six-month waiting period for children.** The six-month waiting period for enrolling in the PCIP will have particularly negative consequences for children, especially those currently enrolled in child-only plans. The pre-existing provision prohibition in the ACA does not apply to grandfathered individual plans. As such, families with an individual policy could currently have an insurance rider that does not cover a child's pre-existing condition. To take advantage of the benefits provided by the pre-existing prohibition, these families would need to enroll in a new plan, but when doing so could face obstacles in finding a child-only plan or one that is affordable. Although the child is uninsured as it relates to their pre-existing condition, under the interim rules they would not be eligible for the PCIP. Additionally, no child who loses coverage (whether because their parents' employer coverage is no longer offered or they become ineligible for Medicaid or CHIP) should be required to go without coverage for six-months in order to be eligible for the PCIP. The interim rule should eliminate the six-month coverage period for children to ensure that these most vulnerable children receive the care that they need.
- **Specify that the PCIPs must coordinate enrollment with Medicaid/CHIP.** Some of the children entering the PCIP could in fact be eligible for Medicaid and CHIP. Since those programs offer greater benefits at no- to low-cost, it is essential that these children be enrolled in the appropriate program. PCIPs should be required in their enrollment process to ensure that these children are appropriately identified, screened for Medicaid/CHIP, and ultimately enrolled. This policy would be consistent with the Secretary's Connecting Kids to Coverage Challenge to enroll eligible but uninsured children in Medicaid and CHIP.

Together these policies will make the PCIP an important pathway to coverage for uninsured children with high health care needs. We appreciate your consideration of our comments. Please contact us if you have any additional questions at dch28@georgetown.edu or 202-687-7651.



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