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Centers for Medicare & Medicaid Services
Department of Health and Human Services
ATTN: CMS-9981-P
P.O. Box 8010
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RE: File Code CMS-9981-P

We are writing on behalf of America's Health Insurance Plans (AHIP) to offer comments in response to the notice of proposed rulemaking ("NPRM") relating to Student Health Insurance Coverage under the Patient Protection and Affordable Care Act (ACA)[1]. The NPRM was published in the *Federal Register* on February 11, 2011 by the Centers for Medicare and Medicaid Services (CMS), Department of Health and Human Services (Department). The NPRM would define "student health insurance coverage" and, pursuant to section 1560 (c) of the ACA, would specify certain Public Health Service Act (PHSA) and ACA requirements as inapplicable to student health insurance coverage.

AHIP is the national association representing approximately 1,300 health insurance plans that provide coverage to more than 200 million Americans. Our members offer a broad range of health insurance products in the commercial marketplace and have demonstrated a strong commitment to participation in public programs.

We commend the Department for noting the important role that student health insurance coverage provides for students attending institutions of higher education, and its willingness to solicit comments on a number of provisions found within the NPRM. AHIP and its members are pleased that this activity is proceeding pursuant to an NPRM rather than an interim final rule, as this process offers the opportunity for consideration of additional information supplied by colleges, consumers, and health plans, as student health insurance coverage is reviewed in light of the provisions of the ACA.

We appreciate the opportunity to comment on the proposed definition of student insurance and on the requirements that the NPRM would specify as inapplicable to student insurance, and for the opportunity to set forth our position that the NPRM should identify additional requirements of the ACA that should not apply to student health insurance coverage.

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[1] Pub. L. No. 111-148, as amended by Pub. Law No. 111-13

Before addressing specific issues raised by the NPRM, we want to stress that the implementation of any of the component pieces of the ACA must ensure that such implementation complies with the provisions of section 1560 of the ACA which states:

> (c) STUDENT HEALTH INSURANCE PLANS.—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.

We strongly support the conclusion reached by the Department, as the NPRM sets forth in section II. B of the preamble, that section 1560 of the ACA means "that if a particular requirements in the Affordable Care Act would, as a practical matter, have the effect of prohibiting an institution of higher education from offering a student health plan otherwise permitted under Federal, State, or Local law, such requirements would be inapplicable pursuant to the rule of construction in section 1560 (c)."

Through application of this rule of construction, the NPRM concludes, under subsection 147.145(b), that certain provisions of the ACA are construed in such manner so as not to apply, or not to fully apply, to student health insurance coverage. Given this conclusion, we believe that the Department should reconsider the NPRM in its entirety to assure that it does not effectively prohibit the offering of a student health plan by an institution of higher education.

Our specific comments and recommendations follow.

I. Student Health Insurance Coverage Definition

AHIP and its members support the clarification found within the NPRM's definition of student health insurance coverage at paragraph 147.145 (a)(1) that student insurance coverage is available only in connection with student enrollment (along with their dependents) in an institution of higher education. We also support the comments found within the preamble of the NPRM noting that the definition could also encompass students on limited breaks between academic terms, those on temporary leaves of absence from their academic institution, and recently graduated students.

This clarification for student health insurance coverage will provide student health insurance plans the ability to provide coverage options to those students on temporary leaves during an academic year and to recent graduates for the balance of the student health insurance coverage

plan's term, thereby supporting the coverage expansion goal of the ACA.

AHIP and its members support the clarification and definition of "student health insurance" with respect to the requirement for enrollment and exceptions for that requirement.

II. Community Rating and Guaranteed Issue and Renewability under the Health Insurance Protection and the ACA

AHIP and its members support the clarifications provided by the NPRM, insofar as the result does not impose the application of PHSA provisions 2741(e)(1) and 2742(b)(5), pertaining to guaranteed availability and guaranteed renewability of health insurance coverage, to student health insurance plans. We would, however, request that the Department reconsider the direct application of ACA section 1560 in this instance, so as to prevent the application of state association insurance law to impose an inconsistent result.

The preamble to the NPRM sets forth the rationale of the Department in exempting the application of PHSA provisions 2741(e)(1) and 2742(b)(5) to student health insurance plans, which is based on its determination that "[t]he PHS Act and implementing regulations make clear that guaranteed issue and guaranteed renewability requirements are inapplicable to bona fide association plans that, like student health plans, are limited by definition to a defined pool of beneficiaries. This rule proposes to construe student health insurance coverage to be offered through a bona fide association for this purpose." (footnote omitted)

Universities are not associations, and student health coverage is not a benefit obtained as a result of association membership. While the analogy the Department outlines may assist it in determining that guaranteed issue and guaranteed renewability provisions within ACA are not consistent with student health insurance plans, reliance upon association insurance provisions as a legal basis is misplaced, as these provisions often require compliance with organizational and other requirements that are inconsistent with student health plans. This analysis leads to confusion as it mixes differing regulatory approaches, and in addition may establish additional requirements upon student health coverage not envisioned by the ACA in violation of ACA section 1560.

AHIP and its members recommend that the NPRM clarify that construing student health plans to be association plans for purposes of the applicability of community rating, guaranteed issue, and guaranteed renewability is not intended to equate student health plans with association plans or imply that student health plans need to meet other requirements that apply specifically to association plans.

III. Annual Benefit Limits

In considering application of the ACA's prohibition on annual limits, the NPRM provides a transition period for issuers of student health insurance coverage to comply with the annual limits requirements in 45 CFR §147.126. The transition period would be for policy years beginning on or after January 1, 2012 and before September 23, 2012. The imposition of annual limits requirements to student health insurance coverage will have a significant impact on premiums charged for student health coverage, which is typically designed to meet the specific benefit and administrative requirements of a particular college or university. In addition, it is designed to provide coverage for a population that does not share the same characteristics of consumers purchasing in the non-student health insurance market.

The Commonwealth Fund has reported that more than 10 percent of adults aged 19 to 29 (1.6 million lives) were enrolled in college student health insurance plans in 2009. In addition, the Government Accountability Office (GAO) reports in its 2008 report on college student health insurance (GAO -08-389) wide variation in student insurance plan design. This means the cost impact of the proposed benefit limits on coverage offered in the market today will be significant. As the GAO reported, 26 percent of student health insurance plans had a maximum benefit amount on a per-condition, per-lifetime basis of less than $20,000. Further, according to 2010 school year information put out by the CollegeBoard, public four-year colleges charge, on average,$7,600 for tuition and fees, and public two-year colleges charge $2,713 in tuition and fees. The relation of student insurance plan premium to tuition and fees, then, is a critical consideration.

In considering the impact of the ACA annual limits requirements, AHIP had Tom Wildsmith of the Hay Group examine and consider historical (school year 2009 to 2010) information on the distribution of annual benefit limits in student insurance plans, and other information, to estimate the impact of applying the ACA annual benefit limit requirements to student insurance policies. In the sample he examined, which included information on more than one million students covered under student health plans, benefit limits were distributed as follows:

Benefit Limit Range		Percentage (rounded)	
From	**To**	**In Range**	**Cumulative**
Less than or equal to	$50,000	39%	39%
$50,001	$100,000	18%	57%
$100,001	$750,000	30%	87%
$750,001	Or greater	13%	100%

Based on conversations with and historical claims data provided by actuaries of companies in the student health market, Wildsmith concluded that if annual limits were increased to one million

points across a multi-year period. This degree of loss ratio volatility, when combined with the individual insurance MLR requirement for return of premiums when a carrier's loss experience falls below 80 percent, may create sufficient business uncertainty and risk of losses to make it impossible for some carriers to participate in this marketplace.

Unique administrative costs: Student health plans have different administrative requirements than other types of health plans, and these requirements were not contemplated by the National Association of Insurance Commissioners (NAIC) or the Department in recommending and adopting rules under the ACA's MLR requirements. The unique costs associated with student health plans would make it difficult, if not impossible, to offer these plans within the 20 percent premium allocation for administrative costs.

Unlike the individual market, student health plan enrollment occurs annually and sometimes two or three times per year. In order to undertake enrollments for institutions of higher education, health plans and their enrollment processes must be customized for each school, with unique brochures and other marketing and enrollment materials. Most institutions of higher education establish special plan features for specific student segments, such as foreign students, graduate students, teaching assistants and athletes which can result in a carrier administering three or more plans for an institution of higher education. As a result, our members often are required to manage multiple plan designs for many schools, requiring customized administrative support of each.

Since many institutions of higher education require coverage as a condition of enrollment, they require their insurer or plan administrator to administer and evaluate student waiver applications, which certify other health insurance coverage. In conducting these evaluations, student health insurance carriers will often develop customized waiver websites, as well as perform periodic audits of waivers for the institutions of higher education. In 2010, one student health carrier processed over 200,000 waivers and audited nearly 50,000 waivers. In addition, its customer service units received over 500,000 phone calls in connection with waivers in 2010, with more than 100,000 coming from individuals who were not enrolled in a student health plan.

If insurers were required to transfer these responsibilities to their institutions of higher education clients, most of those institutions would be unable to absorb these functions, without incurring significant costs. As a result, some could choose to require all students to participate in their student health plan, thereby increasing health insurance costs for students who have coverage from another source. Some colleges may choose to assume these administrative duties, incurring the costs necessary to perform the duties and passing along those costs to students in the form of higher fees or tuitions.

Student health plans also often accept special health center billing practices that do not conform to conventional electronic billing specifications. These ledger-style billing practices utilized by the student health centers are more expensive for our members to service, and when combined

with the highly customized benefit designs, lead to a much higher rate of manual claim processing.

In addition, students often purchase student health coverage to obtain additional insurance protection to supplement parental or work based coverage. In these instances, our members must perform coordination of benefits activities to a student population that is not always attentive to health insurance administrative responsibilities. This often necessitates repeated contacts and mailings to provide to, and obtain from, student insureds necessary information concerning this other insurance, or to ensure that claims are paid in the proper sequence.

Further, because the premiums for student health coverage are lower than those for non-student health insurance, fixed expenses (such as issuance of polices and collection of premium and costs noted above) represent a larger share premiums. This would particularly be the case for a small school, where the expenses must be spread over a smaller premium base, resulting in a relatively higher percentage.

For all of these reasons, the administrative costs of student coverage vary from those in the individual and group insurance markets.

Impact on Universities and Students: The imposition of MLR standards from the non-student market to the student market would have unintended consequences.

- **Increase Uninsured Students.** Today, between 1.5 and three million students enroll in student health plan coverage each year. It is very affordable compared to other options -- typically $1,200 per year versus about $2,460 for individual coverage. Young people already have a very high uninsured rate – according to a 2008 GAO report (GAO-08-389) at least 20 percent of all college students aged 18 through 23 are uninsured. If the most affordable coverage on the market -- student health plans-- is eliminated or reduced in availability, this uninsured rate will increase even further. Parental employer coverage is not an option for many individuals covered by student health plans. Many, if not the majority, of students who rely on student insurance coverage do not represent the traditionally-aged undergraduate student, but rather older students and their families who lack access to family coverage. For those who do have access to parental coverage, such parental coverage often has geographic limitations. For example, a parent may have other coverage with a defined service area that does not include the university's area. And lastly, many schools subsidize student insurance premiums for certain student cohorts.

- **Create Obstacles for Individuals to Enroll in Higher Education.** Many universities and colleges require students to maintain insurance coverage as a condition of enrollment. In addition, foreign students are required to maintain coverage, as a requirement under state department rules for student visas. An

inappropriate MLR requirement could result in student coverage being unavailable in some states or at some schools, which would thwart the ability of some American and foreign students to enroll in higher education at those schools or in those states if those students could not afford the cost of "regular" individual market coverage. This is particularly significant prior to the individual market subsidies in 2014. Foreign students, of course, will not have subsidies even after 2014.

- **Reduce the viability of strong student health centers.** Student health centers provide students easy access to readily-available and cost-effective care, including primary and preventive care, immunizations, family planning, and mental health services. In addition, campus health centers have increasingly played a critical community health role by helping communities understand and prepare pandemic plans (e.g., H1N1), as well as other common community health issues. While some student health plans supplement or provide wrap-around coverage for services provided at student health centers, other plans provide coverage for student health center services. When coverage is provided for these services, the college or university relies on the reimbursement received under this coverage to help fund their health centers. Health centers also help connect students to appropriate on-campus and off-campus care. Without the reliable revenue stream and administrative services of student health coverage, some schools would be unable to continue to maintain their health centers. This would deny students easy access to efficient and appropriate health care services and run counter to the goal of health care reform to provide and increase access to services.

For all of the above reasons, AHIP and its members propose that the Department determine that the MLR requirements, as adopted by the Department pursuant to the ACA, would, as a practical matter, have the effect of prohibiting an institution of higher education from offering a student health plan and, therefore, that such requirements are inapplicable under the rule of construction in section 1560(c).

V. Choice of Health Care Professional and Preventive Services

The ACA adds a new section 2719A to the PHSA, requiring freedom of choice in the selection of a primary care provider from a health plan's panel of participating primary care providers. Student health insurance coverage is generally designed to complement university health services and, in certain cases, its academic medical center(s). In complementing these services, student health plans are structured to encourage student use of these services and centers. Leveraging these centers is one of the ways that colleges and universities are able to keep the costs of student health insurance coverage low.

As noted earlier, student health centers provide easy and efficient access to health services.

Many students are far from their homes and unfamiliar with the providers in the university area or may lack a means of transportation to access off-campus health services. Student health plans may either coordinate with or provide coverage for student health centers services. In either case, student health centers are critical to student access to services.

Since student health centers focus their medical practices on their student population, they are often better situated to understand and respond to student health care needs in an efficient and cost-effective manner. Their easy accessibility also contributes to their ability to tailor services for their relatively high concentration of student patients. In addition, by focusing on student health care needs, these centers often provide care within a setting that young students, often accessing medical care on their own for the first time, can find more welcoming and supportive than that of a general medical practice.

Requiring access to providers outside a college or university health care setting could result in the unintended consequence of lessening use of those centers and reimbursement for the services they provide. This could threaten their viability, fostering more student health care in a less efficient and more costly setting and raising the cost of student health insurance coverage. Increasing the cost of student coverage could jeopardize the ability of some higher education institutions to offer student health insurance programs and impact students' ability to afford both tuition and health insurance costs and continue their educations.

AHIP and its members believe that colleges and universities should be permitted to continue to have flexibility in integrating and coordinating their health clinics and systems and their student health insurance programs to provide cost-effective, quality primary care services. To that end, we recommend that the Department should determine that PHSA section 2719A does not apply to student health insurance programs.

VI. Student Health Fees

The Department is requesting comments on the applicability of section 2713 of the PHSA, pertaining to the prohibition of cost-sharing for preventive services, to student health insurance coverage and the interaction of the college health fee and the no cost-sharing requirement for preventive services.

AHIP agrees with the Department's conclusion that student health fees are not related to insurance premiums or to cost-sharing provisions of any student health insurance or plan. This type of student health fee is different from premiums – it is charged to all students enrolled at the college or university, regardless of whether the student has student health insurance coverage.

AHIP and its members support the Department's determination that student health fees do not constitute cost-sharing requirements for purposes of the ACA prohibition on cost-sharing for preventive services.

AHIP remains committed to our continued collaboration and dialogue and stands ready to provide information and comments on the NPRM issues pertaining to student health coverage. We appreciate the opportunity to comment on the effort to continue and expand access to coverage.

Sincerely,

Daniel T. Durham
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Policy and Regulatory Affairs