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Volume 34 | Issue 23 | March 18, 2011

HHS Proposes Special Rules for Treatment of Student Health Plans under PPACA

HHS has issued proposed regulations clarifying that student health plans are individual insurance plans, not group plans, and generally are not “short-term limited duration insurance” exempt from PPACA’s consumer protections. However, because PPACA provides that it shall not be construed to prevent the offering of student health plans, HHS proposes providing short-term relief with respect to PPACA’s annual dollar limits and exempting student health plans from PPACA’s guaranteed availability and guaranteed renewability requirements. The proposed regulations, which are applicable for policy years beginning on or after January 1, 2012, do not address what rules currently apply to student health plans.

Background

While most college students have health coverage through employer-sponsored plans, millions of students and their dependents receive health coverage through student health insurance plans offered by colleges and universities. Covered benefits and benefit limits under student health plans vary widely, as do the state insurance rules governing such plans. As a consequence, the premiums paid under such plans also vary dramatically. The vast majority of student health plans are fully insured; however, a few institutions self-fund these plans.

Generally, a health insurance issuer will contract with a college to issue a group or an association “blanket” health insurance policy at a negotiated cost for a defined set of benefits for each student who desires coverage. Although some student health plans are only in effect for the school term, most such policies are either in effect for the full calendar year or have automatic renewability provisions.

The Patient Protection and Affordable Care Act as amended by the Health Care and Education Reconciliation Act of 2010 (together, PPACA) provides in Section 1560(c) that nothing in PPACA “shall be construed to prohibit an institution of higher education ... from offering a student health insurance plan, to the extent such requirement is otherwise permitted under applicable Federal, State, or local law.”

Proposed Regulation

HHS recently issued [proposed regulations](#) under PPACA detailing special rules for the treatment of fully insured student health plans. The proposed regulations would be applicable for policy years beginning on or after January 1, 2012.

General

The proposed regulations do not apply to self-funded student health plans.

BUCK COMMENT. *HHS does not believe it has authority to regulate self-funded student health plans. Even though authority only rests with the states, HHS does request comments on the prevalence, structures, and state regulation of student plans.*

In the case of fully insured plans, HHS takes the position that since student health plans are not employment-based, they are not group health plans under the Public Health Service Act (PHS Act). As a result, they are regulated under the PHS Act as individual plans. The fact that some states regulate student health plans as types of group coverage (e.g., as association “blanket” coverage) does not change their PPACA treatment as individual plans.

HHS also takes the position that fully insured student health plans do not fall under the exception from PPACA for short-term limited duration plans. While student health plans are frequently for fewer than 12 months, they do not meet the portion of the definition of “short-term limited duration plan” dealing with the availability of extensions. Student health insurance policies generally are renewable each year at the option of the student as long as the student remains in school.

The proposed regulations provide that a student health plan (1) can only offer health insurance coverage to enrolled students and their dependents; (2) cannot condition a student or dependent’s eligibility for health insurance coverage on any health status-related factor; and (3) must comply with state law. In addition, health insurance is still considered student health insurance even though it provides coverage to individuals on breaks between academic terms, or on temporary leaves of absence for medical or other reasons, or to those who have recently graduated or otherwise ceased enrollment. There is no minimum threshold for determining student status (e.g., a minimum number of credit hours).

Special Rules and Limitations

PPACA’s individual plan consumer protections generally apply to student health plans. However, because Section 1560(c) of PPACA provides that certain PPACA requirements do not apply if they would “effectively prohibit institutions of higher education from being able to offer these plans,” the proposed regulations provide special rules and limitations for student health plans.

Annual Dollar Limits. PPACA generally prohibits annual limits on the dollar value of essential health benefits but allows “restricted annual limits” up to 2014. The proposed regulations provide some transition relief for student health insurance plans. For policy years beginning before September 23, 2012, student health insurance plans would be allowed to place an annual dollar limit of no less than \$100,000 on essential health benefits. For policy years beginning on or after that date, student health plans must fully comply with PPACA’s annual dollar limit rules, as specified in the June 2010 interim final regulations. (See our July 2, 2010 [For Your Information](#).) The interim final regulations restrict the annual limit to no less than \$2 million for policy years beginning on or after September 23, 2012, and allow no annual limit starting with 2014 plan years.

BUCK COMMENT. *The June 2010 interim regulations provide guidance with respect to whether low-cost “limited benefit” plans (i.e., “mini-med” plans) could apply for a waiver of the annual limits. However, under the proposed regulations, student health plans are not classified as “limited benefit” plans and may not apply for a waiver of the annual dollar limit requirements.*

Guaranteed Availability/Guaranteed Renewability. PPACA requires health insurance issuers that offer coverage in the individual market in a state to offer coverage to certain eligible individuals. PPACA also requires a health insurance issuer that provides individual health insurance coverage to any individual to renew or continue the coverage in force at the option of the individual. Both of these requirements include an exception for coverage that is offered by a “bona fide association.” The proposed regulations provide that PPACA’s guaranteed availability and guaranteed renewability requirements are inapplicable to student health insurance coverage, reasoning that such coverage falls within the bona fide association exception.

Preventive Services and Cost-Sharing. PPACA requires that group health plans and health insurance issuers cover recommended preventative services and prohibits the imposition of cost-sharing with respect to these services. Many colleges and universities charge student health administrative fees to all students, even those not enrolled in a student health plan, to cover the cost of services offered by student health facilities. The proposed regulations define “student health administrative fee” and provide that imposing such a fee does not constitute prohibited cost-sharing.

Notice Requirement. The proposed regulations require health insurance issuers to disclose to students and dependents enrolled in student health plans whether or not their plans meet PPACA’s requirements. The notice must include a brief description of the PPACA requirements that do not apply to student health insurance coverage. The notice must be prominently displayed on the front of the insurance policy or certificate and any other plan materials. The proposed regulations include model language that plan sponsors may use.

Conclusion

HHS requests comments on how PPACA’s provisions, including those not already addressed in the proposed regulations, should apply to student health plans. All comments on the proposed regulations are due by April 12, 2011.

BUCK COMMENT. *HHS notes in the preamble to the proposed regulations that questions have been raised as to the appropriateness of applying PPACA’s choice of provider and medical loss ratio rules to student health plans, as well as how student health fees are applied. While HHS does not address these rules in the proposed regulations, it seeks comments regarding the application of these provisions to student health plans.*

Buck’s consultants are available to help you understand the proposed regulations and to assist you with drafting comments to HHS.

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.