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Sargent Shriver National Center on Poverty Law

August 27, 2010

Secretary Timothy Geithner  
US Department of the Treasury

Secretary Hilda Solis  
US Department of Labor

Secretary Kathleen Sebelius  
US Department of Health and Human Services

Re. Requirements for Group Health Plans and Health Insurance Issuers under the Patient Protection and Affordable Care Act Relating to Pre-existing Condition Exclusions, Lifetime and Annual Limits, Rescissions, and Patient Protections; Final Rule and Proposed Rule, *75 Federal Register* 37187 et seq., June 28, 2010.

Dear Secretaries Geithner, Solis, and Sebelius:

Thank you for the opportunity to comment on the above-referenced rules.

The Sargent Shriver National Center on Poverty, founded by Sargent Shriver as part of the 1960's War on Poverty, has worked for over 40 years to end poverty and advance justice and opportunity for all Americans. Expanding access to comprehensive, affordable, quality health care has been an important part of our work for decades, and we rejoiced at passage of the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act earlier this year. The increased access these laws create, the health care improvements they support, and the cost controls they foster will help all Americans lead healthier and more productive lives.

While the Sargent Shriver national Center on Poverty Law advocates nationally on behalf of low-income individuals, families, and communities, we are based in Illinois and have considerable experience with the health care and health insurance landscape here. We know your departments are vitally interested in how these rules will impact people in the various states, so we will reference the Illinois situation occasionally in our comments. That situation is good for children, but not good for everyone else seeking health insurance, particularly those seeking insurance on the individual market.

Specifically, all Illinois children, including children with pre-existing conditions, have had access to health coverage since July 1, 2006. The "All Kids" Health Insurance Program is the nation's first pediatric universal coverage system. Funded by federal Medicaid and CHIPRA funds, matching state funds, other non-matched state funds, and parent paid premiums, All Kids offers free or sliding scale (based on family income) affordably priced health coverage to all uninsured children. While parents and doctors are pleased with the health care children receive through All Kids, the ACA bans on pre-existing condition exclusions for children under 19 will open up additional insurance options for Illinois families.

Additionally, while Illinois has progressed, albeit slowly, in requiring more fair practices and more reasonable coverage offerings from its insurers (all of whom are for-profit companies), our insurance laws and regulations lack many of the important protections that ACA is providing, particularly for those seeking coverage in the individual market. Among other law and regulatory missing pieces, Illinois does not require guaranteed issue, prohibit denials or exclusions for pre-existing conditions, or have significant authority to control rates or rescissions or enforce medical loss ratios. Our insurance commissioner, Department of Insurance Director Michael McRaith, does the very best anyone could given our state's nearly empty regulatory tool box. The ACA provisions governing insurers' practices and protecting patients are very welcome.

We wish to comment on two provisions of the rules—those concerning pre-existing condition exclusions and rescissions. Our specific comments and suggestions are as follows:

The prohibition of pre-existing condition exclusions:

ACA Section 1201 prohibits "a group health plan and a health insurance issuer offering group or individual health insurance coverage" from imposing any pre-existing condition exclusion and substitutes language covering both group and individual coverage in related sections of the Public Health Service Act. However, that this new prohibition applies to both group and individual plans is not absolutely clear in the regulations. We suggest you review the regulations to identify each place where they fail to state that the prohibition applies to both group and individual coverage and amend the regulations to state both group and individual plans, if appropriate. The group and individual plans language seems to be included in the HHS regulations, but not in the DOL or Treasury regulations. It is likely that the individual plans language was not included because those Departments do not deal with individual plans. But we suggest you double check.

The ban on pre-existing conditions, which takes effect for children on September 23, 2010, will be immensely helpful to families nationwide, unless the insurance offered is unaffordable. In states like Illinois, where coverage denials and exclusions due to pre-existing conditions have been allowed, insurers have little experience underwriting for such conditions since they could simply deny coverage entirely or exclude the condition from coverage. We suggest that HHS use its oversight powers regarding medical loss ratios, under ACA Section 1001(5), and premium increases, under ACA section 1003, to assure that rates for children are fair. We also suggest that HHS assist insurers newly required to cover children with pre-existing conditions to do fair underwriting, perhaps by sharing the experience of insurers in those states where state law prohibited denials and exclusions for pre-existing conditions before ACA with insurers new to covering these children. Affordable coverage will help families nationwide and allow some Illinois families to move a child from All kids onto the insurance plan of the rest of the family, which research suggests improves health status for all family members.

Prohibition of rescissions

Illinois insurance companies have a long and sorry history of rescinding health insurance policies, leaving policy holders uninsured and facing huge medical bills and unbearable choices about foregoing life-saving or enhancing treatments. Illinois is addressing this situation by requiring all insurers in the individual and small group markets to use standard applications (drafted by representatives of insurers, insurance agents, providers, and consumers) which contain language instructing applicants about the importance of providing complete information, suggesting the need to obtain information from their own records and from their physicians, and informing people that their policies could be rescinded based on fraud or intentional misrepresentation of material fact. The most recent draft of the Illinois standard application for individual and family coverage is available on the Illinois Department of

Insurance website at [Health Application Working Group draft](#). Illinois insurers will be required to begin using these standard applications on January 1, 2011.

Given Illinois expectations that better application forms will yield more complete and correct information, we suggest that your departments work with representatives of insurers and consumers and draft model, or perhaps mandatory, language for insurers to include in the instructions to applicants on their application forms.

We also suggest that the administration work with insurance agents to assure that the assistance they provide to their customers in filling out applications will protect the applicants from rescissions.

Thank you for your attention.

Very truly yours,

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