

August 11, 2010

Jim Mayhew
Office of Consumer Information and Insurance Oversight
Department of Health and Human Services
Hubert H. Humphrey Building, Room 445-G
200 Independence Avenue, SW
Washington, DC 20201

Attention: OCIO-9991-IFC

Dear Mr. Mayhew:

The undersigned organizations representing child health advocates, pediatricians, hospitals and other health providers congratulate you on the promulgation of successive regulations to implement the reforms established in the Affordable Care Act (PL 111-148 as modified by PL 111-152). In particular, we congratulate the Departments of Treasury, Health and Human Services and Labor (the Departments) on striking a balance between continuity of coverage and enhanced consumer protection in promulgating the Interim Final Rules for Group Health Plans and Health Insurance Coverage Relating to Status as a Grandfathered Health Plan Under the Patient Protection and Affordable Care Act (the "Regulation" [found at 75 Fed Reg 34538-34570]). Nevertheless, we urge you to consider modifying the Regulation so that any negative impact on children can be ameliorated.

We focus on the needs of children in this comment in four areas: the need for every child to have access to clinically appropriate preventive care and for families to work with the pediatrician of their choice, the need to protect children and youth with special health care needs (CYSHCN) through the Regulation, whether changes in plan structure and provider networks or family coverage should create a loss of grandfather status, and what enforcement and monitoring mechanisms should be in place to meet the full potential of these reforms for children. In each case, we recognize the balancing that the Departments undertook, but would urge that these decisions be re-examined to benefit children, and that diminutions in coverage lead to a loss of grandfather status.

Every child needs preventive services, which are the hallmark of pediatric care. We applaud the promulgation of the Interim Final Regulation at 75 Fed Reg 41726-41760 which establishes that non-grandfathered plans are required to provide coverage for all Bright Futures services. We also fully support the Interim Final Regulations found at 75 Fed Reg 37188-37241 which will make it easier for families to access the doctors of their choice.

However, the implementation of the grandfather rule means that millions of children currently covered by private insurance will be denied the benefits offered by these new provisions, leaving many children without access to the full panoply of clinically-appropriate services and the ability to choose a pediatrician. Children and youth with special health care needs live in one in five U.S. households and comprise 14% of all U.S. children. We are especially concerned about these protections not being applied to these high risk children and youth. While it is laudable to ensure that families can continue insurance coverage for their children by keeping the growth in their insurance cost low, covering prevention for children, including those with special needs, is comparatively inexpensive. Indeed, many employers have discovered the value of prevention and see the need to support services like the immunization system in the United States that clearly have a strong return on investment in human and economic terms.

Thus, we would urge the Departments to implement tighter restrictions on what changes a plan can make before it loses grandfather status so that more children will be further protected from decreases in the quality or affordability of their existing coverage under the Regulation. At a minimum, we also recommend that the following changes trigger a loss in grandfather status:

- Restrictive changes to family coverage, including dropping coverage for a spouse or child or increasing costs beyond the limits outlined in the interim final rule.
- Negative changes in prescription drug formularies that would adversely affect beneficiaries, including removal of a drug from the formulary that is medically necessary for treatment of a child's condition, the addition of prior authorization or quantity limits, and/or moving a drug to a higher cost sharing tier.
- Changes in plan structure that would negatively alter coverage arrangements, including a switch from an insured to a self-insured product, which could severely impact coverage for CYSHCN.
- Changes to a provider network of primary care clinicians and subspecialists that would adversely affect access to care. In many instances, CYSHCN may receive services from a limited panel of subspecialty clinicians and thus, a reduction in this panel could be financially devastating to a family that may live in a rural or other area that lacks a sufficient provider base for specialty care.

In addition, we respectfully request that the Regulation provide for continuity of providers in the event a plan loses its grandfathered status. We are concerned that, in the absence of such a requirement, a plan may alter its panel of providers as a result of losing its grandfathered status.

Finally, we ask that you give strong consideration to the enforcement of the grandfather provisions. The notice to families outlined in the interim final rule is a good first step, but it relies heavily on individuals to monitor the practices of their employers and insurers. We encourage the Departments to work closely with states to develop monitoring and enforcement mechanisms to verify effective implementation of the grandfather rules.

Thank you very much for your attention to the views of our organizations and the needs of children in your consideration of the Regulation.

Sincerely,

Academic Pediatric Association
American Academy of Pediatrics
American Pediatric Society
American Thoracic Society
Association of Maternal and Child Health Programs
Association of Medical School Pediatric Department Chairs
Beckett Family Consulting
Child Welfare League of America
Children's Defense Fund
Children's Dental Health Project
Children's Health Fund
The Children's Partnership
Easter Seals
Families USA
Family Voices
First Focus
Georgetown Center for Children and Families
March of Dimes
The National Alliance to Advance Adolescent Health
National Association of Children's Hospitals
Society for Adolescent Health and Medicine
Society for Pediatric Research
Voices for America's Children
ZERO TO THREE