



August 10, 2010

Office of Consumer Information and Insurance Oversight
U.S. Department of Health and Human Services
Attention: OCIO-9994-IFC
P.O. Box 8016
Baltimore, MD 21244-1850

RE: File code OCIO-9994-IFC, Interim Final Regulation on pre-existing condition exclusions for children under age 19

To Whom It May Concern:

On behalf of Blue Cross Blue Shield of Michigan (BCBSM), I thank you for the opportunity to comment on the Patient Protection and Affordable Coverage Act of 2010 (PPACA) interim final regulation which requires health insurance issuers to provide coverage for children who have pre-existing medical conditions. I am sorry to say that we are disappointed with your recent announcement that issuers in the individual market may restrict enrollment of children to specific open enrollment periods—without ensuring that all insurance issuers are treated equally and fairly in the implementation of PPACA, which is a tenet of the law.

On June 28, 2010, the U.S. Department of Health and Human Services (HHS) published interim final regulations prohibiting insurance issuers in both the group and individual markets from imposing pre-existing condition exclusions on children under age 19 for the first plan year beginning on or after September 23, 2010. This appeared to require continual guarantee issue of policies—a strong consumer protection principle. For Michigan and some other states, this regulation would have instituted true competition and a level playing field that would have positively impacted the market for many families. Currently, the only insurance issuer that guarantee issues policies for all comers in Michigan is Blue Cross Blue Shield of Michigan (BCBSM).

One month later, on July 27, 2010, HHS released a Frequently Asked Questions document announcing that issuers in the individual market may determine the number and length of open enrollment periods for children under age 19. HHS also noted that if a state requires continuous open enrollment or requires issuers to maintain an open enrollment period of a particular length or open enrollment periods of a particular frequency, then the State requirement will apply. This is of concern to us because one key intent of the PPACA insurance market reforms is to create a more level, balanced playing field among health plans to foster

competition and choice, and to limit adverse selection, or “cherry picking.”--which will help stabilize prices for consumers and create more affordable coverage options.

BCBSM has acted as the model that Congress established in PPACA, particularly by offering continual guarantee issue and community rating so that consumers are protected. It is clear that Congress intended to create a competitive and level playing field so that consumers are protected. In fact, Section 1252 of PPACA deals with rating reforms applying uniformly to all health insurance issuers and group health plans.

The purpose of Section 1252 is to ensure that all health insurance issuers are regulated equally to promote competition and more affordable coverage. Equal regulation means that all carriers are subject to the same rules.

We understand that Section 1252 was placed in a section that applies in 2014, but the intent of the level playing cannot be understated; a key tenet of PPACA was to establish a system that is affordable and not gamed, and that requires a truly level playing field and rigorous competition.

If some states require one or more health insurance issuers to offer continuous open enrollment as a matter of state law, under Section 1252, all insurance issuers in such states should be required to offer continuous open enrollment to achieve the uniform regulation intended by this section. This is a principle of PPACA and should be applied by HHS in a systematic manner. If it is not applied this way, PPACA runs the risk of not achieving what it has set out to do.

I thank you for your consideration of this important aspect of PPACA and the pre-existing coverage for children regulation. I hope you reconsider the open enrollment provision in the interim final regulation as you finalize it, and I trust your office will closely review all other guidance put forth to ensure it complies with the principles of truly equal regulation of insurance issuers.

If you would like to discuss this matter further or need any additional information, please do not hesitate to contact me at 517-282-1695.

Sincerely,

A handwritten signature in cursive script that reads "Lynda Rossi".

Lynda Rossi, Vice President
Social Mission, Public Affairs and Office of the President