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August 20, 2010

The Honorable Kathleen Sebelius  
Secretary  
Department of Health and Human Services  
200 Independence Avenue SW  
Washington, DC 20201

Ms. Nancy-Ann DeParle  
Director  
White House Office of Health Care Reform  
1600 Pennsylvania Avenue NW  
Washington, DC 20500

Dear Secretary Sebelius and Director DeParle:

Recently, the American Council on Education (ACE) sent you the enclosed letter regarding the regulation of student health insurance/benefit program (SHIBPs). ACE and its partner organizations seek to assure continuation of SHIBPs under the Patient Protection and Affordable Care Act (PPACA). The Lookout Mountain Group (LMG)\* supports such action but wishes to express a concern as you deliberate your response.

A central reason for LMG's founding was to address the issue of the significant number of poor quality SHIBPs. These programs do not meet minimum standards outlined in the PPACA, and these same programs have been much criticized for coverage that is "dangerously insufficient." (Refer to the letter to college presidents from the New York State Attorney General at <http://www.nystudenthealth.com/pdfs/Letter%20to%20Schools%2004-06-10.pdf>).

It would not be in the best interests of America's college students for DHHS to approve any request that allowed inadequate SHIBPs to continue unchanged before 2014. Our concern is that approval of the regulatory clarification requested by ACE may do that by applying the existing definitions of "limited duration insurance" found in 42 USC 300gg-91(b)(5) without also requiring minimum coverage requirements between now and 2014.

There are likely a number of options for how you might permit the numerous, excellent SHIBPs to continue while either eliminating the substandard ones or moving them to a path for improvement. One suggestion might be to apply the coverage

The Honorable Kathleen Sebelius  
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requirements applicable for “mini-med” plans between now and 2014 described in your recent regulations entitled *Patient Protection and Affordable Care Act: Preexisting Condition Exclusions, Lifetime and Annual Limits, Rescissions, and Patient Protections* (refer to <http://www.federalregister.gov/articles/2010/06/28/2010-15278/patient-protection-and-affordable-care-act-preexisting-condition-exclusions-lifetime-and-annual>).

In addition, we believe that the request for regulatory clarification on page four of the ACE letter should be more specific by wording point (3) to say, “includes the essential benefits required for group plans that meet, at a minimum, the actuarial standards for the Bronze Plan as defined by in ACA§1302 (d)(1)(A).” (Underlined wording added to original text.)

Thank you for your efforts at improving the quality of student health insurance/benefit programs. We would welcome the opportunity to work with you as you consider alternatives to permit high quality programs to move forward. I can be contacted by telephone at 406-994-5901 or by e-mail at [jimm@montana.edu](mailto:jimm@montana.edu).

Sincerely,



Jim Mitchell  
Spokesperson, Lookout Mountain Group  
Director, Student Health Service  
Montana State University  
(writing as an individual; not representing the university)

Enclosure

\* About the Lookout Mountain Group: The Lookout Mountain Group (LMG) is a non-partisan study group that is not affiliated with any colleges or universities, associations, or other organizations. The members are primarily composed of a diverse group of college health professionals from over 40 campuses. Student representatives, student affairs leaders, and experts in health care reform, employee benefits, and insurance regulatory law are also a part of the LMG.

The LMG first met on the campus of the Colorado School of Mines at the foot of Lookout Mountain in Golden, Colorado, in February, 2009. The LMG produced a report in June of 2009 that reviewed the status of student health programs on college campuses as well as student insurance/benefit programs (SHIBPs) in light of possible health care reform. After passage of the health care reform laws, the group met a second time in April, 2010, on the campus of Northeastern University in Boston and produced a position paper including findings and recommendations related to SHIBPs and the newly passed legislation. More information about the Lookout Mountain Group, including our June 2009 report and May 2010 position paper, may be found at [www.lookoutmountaingroup.net](http://www.lookoutmountaingroup.net).

AMERICAN COUNCIL ON EDUCATION



OFFICE OF THE PRESIDENT

August 12, 2010

The Honorable Kathleen Sebelius  
Secretary  
Department of Health and Human Services  
200 Independence Avenue SW  
Washington, DC 20201

Ms. Nancy-Ann DeParle  
Director  
White House Office of Health Reform  
1600 Pennsylvania Avenue NW  
Washington, DC 20500

Dear Secretary Sebelius and Director DeParle:

On behalf of the American Council on Education and the undersigned higher education associations, I am writing to thank you for your support and to request additional assistance to ensure colleges and universities can continue to provide high-quality, low-cost health coverage to our students. Together, the undersigned associations represent the nation's two- and four-year, public and private colleges and universities, which currently provide health coverage to more than 4.5 million college students nationwide.

We are concerned the application of several provisions under the Patient Protection and Affordable Care Act (ACA), including certain insurance market reforms and the individual mandate, could make it impossible for colleges and universities to continue to offer student health plans. In order to preserve the ability of institutions to provide this affordable coverage under ACA, we would like to work with you to secure the urgently needed regulatory confirmation described in the attached issue paper.

Thank you again for your consideration of our request. We look forward to working with you to clarify these issues through the regulatory process.

If you have any questions or need additional information, please do not hesitate to contact Steven Bloom at (202) 939-9461 or [steven\\_bloom@ace.nche.edu](mailto:steven_bloom@ace.nche.edu).

Sincerely,

A handwritten signature in black ink that reads "Molly C. Broad". The signature is written in a cursive style with a large, prominent initial "M".

Molly Corbett Broad  
President

MCB/ldw

On behalf of:

American Association of Community Colleges  
American Association of State Colleges and Universities  
American College Health Association  
American Council on Education  
Association of American Universities  
Association of Governing Boards of Universities and Colleges  
Association of Jesuit Colleges and Universities  
Association of Public and Land-grant Universities  
Council for Opportunity in Education  
Hispanic Association of Colleges and Universities  
National Association of College & University Business Officers  
National Association of Independent Colleges and Universities  
National Association of Student Financial Aid Administrators

## **ISSUE PAPER ON PRESERVATION OF STUDENT HEALTH PLANS**

### **Background**

Many colleges and universities offer health care coverage to their students. These student health plans (SHPs) are important as they provide coverage when no parental coverage is available, when student coverage is better than available parental coverage or when out-of-network coverage makes parental coverage prohibitively expensive. For the most part, the benefits are tailored to meet the unique needs of students and may include additional benefits such as enhanced mental health coverage or family planning services. Schools voluntarily provide coverage on a guaranteed issue basis to our students, do not vary premiums based on an individual student's health status, and typically do not impose pre-existing condition exclusions.<sup>1</sup> SHPs are particularly important for international and graduate students.

There is considerable diversity in how colleges and universities design their SHPs in order to meet the health needs of their student populations. For example, they may be self-funded coverage provided by the university or fully-insured coverage administered by licensed health insurance companies. Most SHPs are designed to wrap around university health services or academic medical centers in order to provide comprehensive health coverage. For insured SHPs, typically a group or blanket policy is issued to the college or university, and students may be issued an individual certificate. The policies are often issued to students for a limited period, which is generally less than a year. Consequently, these policies have historically been classified as short-term limited duration insurance policies under HIPAA. (See 42 USC 300gg-91(b)(5).)

As colleges and universities concerned about the health coverage of our students, we recognize the importance of the insurance market reforms under the Patient Protection and Affordable Care Act (ACA). In order to maintain the availability of low-cost, high-quality student health plans, we seek regulatory clarification with regard to the application of the insurance market reforms and the individual mandate. Urgent clarification around the application of the market reforms is needed prior to the 2011 contract negotiations, which will take place this fall, in order to avoid unnecessary premium increases.

### **Issue: The Individual Mandate**

Under the new individual mandate, in 2014, individuals will be required to obtain health insurance coverage or pay a tax penalty. (See ACA §1501.) To meet the mandate, individuals must maintain "minimum essential coverage." Unless student health coverage meets the definition of minimum essential coverage, students and their parents would have to obtain coverage elsewhere or pay the tax penalty. This would adversely impact the ability of colleges and universities to continue to provide affordable quality health coverage for those students who are in need of coverage.

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<sup>1</sup> In Massachusetts, however, state law requires that colleges and universities offer a specified level of insurance coverage to all students.

The ACA §1560(c) provides the following rule of construction:

*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.*

This rule of construction expresses congressional intent to preserve the ability of higher education institutions to continue to offer health coverage to their students. While the rule is instructive, in order to preserve SHPs, the Department of Health and Human Services (HHS) must designate SHPs as “minimum essential coverage” under ACA.

The legislation describes types of coverage that will be considered "minimum essential coverage." For example, minimum essential coverage includes employer-sponsored coverage, which is broadly defined to mean group health insurance coverage offered by an employer in the group market, as well as health insurance coverage offered in the individual market. (See IRC §5000A(f)(1), (2).) Short-term limited duration insurance, including many student health plans, does not qualify as either group health insurance coverage or individual health insurance coverage under the existing Public Health Service Act (PHSA) definitions. As a result, a student with comprehensive SHP coverage would not satisfy the minimum essential coverage requirement due to a definitional technicality.

### **Regulatory Clarification**

Under ACA, the secretary of HHS has the authority to designate other types of coverage as minimum essential coverage that will satisfy the individual mandate. (See ACA § 1501(f)(1)(E).) In keeping with the spirit of ACA, to preserve nondiscriminatory high-quality, low-cost coverage, we respectfully request that the secretary designate, in regulation, that student health coverage is considered minimum essential coverage under the individual mandate if it is:

*(1) offered by an “eligible educational institution” as defined in §§101, 102(a)(1) and 102(b) of the Higher Education Act of 1965 (20 U.S.C. 1001 and 1002),*

*(2) made available to eligible students and their eligible dependents as defined by the policy without regard to health status or pre-existing conditions,*

*and*

*(3) meets, at a minimum, the actuarial standards for the Bronze Plan as defined in ACA §1302 (d)(1)(A).*

**Issue: Insurance Market Reforms**

The application of certain insurance market reforms is also raising significant questions for colleges and universities that offer insured SHPs. As noted above, historically, most insured SHPs have been treated as short-term limited duration insurance policies under PHSA. (See 42 USC 300gg-91(b)(5).) Pursuant to PHSA, short-term limited duration policies are neither “group health plans” nor “individual health insurance coverage.” The short-term limited duration designation has allowed colleges and universities to provide SHPs to individuals while they are enrolled as students and to provide the policies at lower cost because they are rated on a campus-wide (i.e. group-like) basis rather than across the individual market.

ACA’s insurance market reforms were added to the existing PHSA legislative and regulatory structure. As a result, ACA’s insurance market reforms generally apply to either group or individual “health insurance coverage.” However, ACA does not use consistent language with respect to the application of the reforms. Instead, the act uses interchangeably the terms “health insurance coverage” and “insurance market.” This distinction does not appear to have any policy basis but nonetheless is causing confusion in the SHP market, particularly with respect to the application of PHSA §§2701 (premium variation), 2702 (guaranteed availability), and 2703 (guaranteed renewability) as created by ACA. The application of these provisions to limited duration SHPs would prohibit colleges and universities from providing coverage only to their student population (rather than the whole individual market) and from doing so on a cost-effective basis via campus-wide (group-like) rating.

**Regulatory Confirmation**

To avoid unintended consequences, we respectfully request regulatory confirmation that SHPs can continue to provide coverage under ACA without altering their design to comply with §§2701, 2702, and 2703 and that the existing definitions under PHSA, including provisions related to limited duration policies, remain intact under ACA.

This confirmation is urgently needed prior to 2011 contract negotiations for SHPs, which for many colleges and universities will begin this fall.

Thank you for your assistance in preserving an important source of coverage. We look forward to working with you throughout this process.