www.lookoutmountaingroup.net

Jim Mitchell
Spokesperson for the Lookout Mountain Group
Student Health Service
Montana State University
P.O. Box 173260
Bozeman, MT 59717-3260

406-994-5901 ● Email: jimm@montana.edu

May 25, 2010

Andrew M. Cuomo
Attorney General
State of New York
Office of the Attorney General
The Capitol
Albany, NY 12224-0341

RE: Investigation of Student Health Insurance/Benefit Programs (SHIBPS)

Dear Attorney General Cuomo:

The Lookout Mountain Group (LMG) was founded in February 2009 as a non-partisan group, composed of college health administrators, physicians, nurse practitioners, counseling center directors, chief student affairs officers, and student health insurance coordinators. Our primary objective is to provide policy guidance for health care reform affecting the nation's 17 million college students. Attached with this letter is our most recent position paper on regulation of student health insurance/benefit programs (SHIBPs) under the Patient Protection and Affordable Care Act. Our major research paper on health care reform and college students, published June 2, 2009, is available at our web site, along with recordings of our May 7, 2010, webinars.

We are writing to first express our appreciation for the announcement of the preliminary results of your investigation of SHIBPs and the correspondence you provided to college presidents dated April 6, 2010. The Lookout Mountain Group endorses your findings, specifically your conclusion that many SHIBPs provide "dangerously insufficient coverage." The LMG strongly encourages colleges and universities to provide comprehensive coverage that fully complies with the enclosed standards for SHIBPs endorsed by the American College Health Association (www.ACHA.org).

Our second objective in writing to you is to respectfully request clarification of the following provision in your letter to college presidents:

Requiring students with Medicaid to Purchase the School-Sponsored Plan
When student health plans are mandatory, or where the plan must be purchased unless the student can show comparable coverage, some students who are recipients of Medicaid are nevertheless required to purchase the school-sponsored coverage at additional, unnecessary cost (sometimes by taking out additional student loans). Considering that these students may be the most financially-strapped students at the school, it may be inappropriate to require them to purchase the coverage.

The LMG has concluded that Medicaid, in many states, does not provide appropriate access to health care services to meet the needs of college students. This is often due to inadequate reimbursement for services, and, therefore, there is a lack of participating providers. More specifically, the shortage of participating providers for mental health care services and specialist physicians is so limited that Medicaid does not qualify for acceptable personal health insurance required by many colleges or universities. This is often a more significant concern for colleges and universities located in rural areas.

Most colleges and universities, despite major increases in funding and resources for counseling services over the past decade, cannot provide all of the resources necessary to meet the health care needs of students through on-campus health and counseling services. Accordingly, minimum standards for health insurance, including appropriate access to local health care providers via personal health insurance or enrollment in the college's SHIBP, is an integral component of campus safety. We would encourage you to clarify your position to college presidents by noting it is appropriate to continue to disallow Medicaid for waiver of SHIBP enrollment if the extent of coverage for essential services is not available in the local area of the college or university.

It is also important to note that federal law allows for Medicaid and State Children's Health Insurance Program (SCHIP) funds to be used to pay for private health insurance coverage (refer to 42 U.S.C., §§ 1396e and 1396e-1). The LMG's enclosed position paper calls for colleges and universities to work closely with their respective state agencies to allow their comprehensive SHIBPs to be used as the vehicle for providing appropriate health insurance coverage for low income students.

College presidents should be advised that their institutions already have an overarching fiduciary responsibility to manage their SHIBPs solely in the best interests of their students. The attorneys and benefit consultants who are working with the LMG believe this responsibility is implicit in a college or university choosing to endorse and administer a SHIBP. We would respectfully suggest that a follow-up letter to college presidents should make note of this existing condition to act in the best interests of students above all other consideration. A fiduciary responsibility has also been a key feature (refer to Standard III) of ACHA's standards since 1986.

Lastly, we feel that a follow-up communication to college presidents should note that the PPACA does not diminish or reduce existing federal law responsibilities to comply with the three civil rights laws that have long applied to SHIBPs (Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973; and the Age Discrimination Act of 1975, as all three laws were amended by the Civil Rights Restoration Act of 1987). Enclosed with this letter is a copy of ACHA's position paper regarding SHIBP compliance with federal civil rights law. Unfortunately, we routinely find college SHIBPs that have impermissible exclusions (e.g., exclusions for expenses resulting from attempted suicide that

are not allowed under Section 504, stronger pre-existing condition exclusions for pregnancy than other conditions that are impermissible under Title IX, and age rating schemes that are not actuarially valid as required by the Age Discrimination Act).

Again, we thank you for the efforts you've made in this area to date and would welcome the opportunity to discuss any of the issues we have identified in this letter.

Sincerely,

Jim Mitchell

Spokesperson, Lookout Mountain Group

Director, Student Health Service
Montana State University

Contact
Jim Mitchell
Lookout Mountain Group Spokesperson
406-994-5901 ● jimm@montana.edu

Findings and Recommendations
for
Student Health Insurance/Benefit Programs (SHIBPs)
under the
Patient Protection and Affordable Care Act (PPACA)

This document was developed following the Lookout Mountain Group's (LMG) meeting at Northeastern University on Sunday, April 11, 2010. Reference materials for these findings and recommendations may be found in the LMG position paper, dated June 2, 2009.

Findings

1. The American College Health Association's (www.acha.org) standards for SHIBPs provide guidance for colleges and universities to provide comprehensive coverage and effectively manage their SHIBPs. The LMG estimates that 15 percent of four-year institutions comply with the standards, covering more than 500,000 students. The preliminary results of the investigation of college health programs by the New York State Attorney General, as well as the recent review of SHIBPs by the Massachusetts Division of Health Care Finance and Policy, affirm the need for vigorous promotion of ACHA's standards.

2. The LMG strongly supports requiring all SHIBPs to meet the comprehensive coverage requirements specified for group health insurance plans in the PPACA. We recognize this may result in significant numbers of colleges and universities terminating their SHIBPs and relying on state insurance exchanges for students to purchase individual coverage. Conversely, many colleges and universities will provide SHIBPs that meet the unique health and safety needs of their respective student populations and that provide a much more cost effective insurance than would otherwise be available on the insurance exchanges or from many employer-sponsored health plans.

3. The expansion of parental coverage up to age 26 (there are no tax consequences for employers and employees for coverage through the calendar year in which the dependent turns age 26) will not significantly reduce the need for effective SHIBPs. Well-managed SHIBPs can provide access to local health care providers, first dollar coverage for on-campus services, and nominal copayments for community health care services and prescription medications. Employer-sponsored plans increasingly have high deductibles and often limited access to providers if the students are not attending college in the employer's local area. Even when the employer's plan provides comprehensive coverage, the additional cost for a college-aged dependent may remain disadvantageous compared to the cost effective SHIBPs.

4. Many SHIBPs are engaging in the same best practices for quality of coverage and cost effectiveness seen among large employer-sponsored group health insurance plans. The LMG members providing comprehensive coverage and using self-funding arrangements (often returning more than 90% of plan funding contributions in the form of benefit payments) include the University of Minnesota, Dartmouth College, the University of California at Berkeley, the University of New

Contact
Jim Mitchell
Lookout Mountain Group Spokesperson
406-994-5901 ● jimm@montana.edu

Hampshire, Northeastern University, and the Colorado School of Mines. Both large and small colleges and universities, in all areas of the country, can achieve these highly effective programs.

5. The college health model, providing pre-funded on-campus health and counseling services, with a strong emphasis on health education and wellness programs, is affirmed by the substantial trend for large employers to adopt on-site employee health clinics. The traditional college health model, in assuring students have equitable access to primary health care services, is also consistent with the universal access objectives of the PPACA.

Recommendations

1. SHIBPs endorsed and administered by colleges or universities should be regulated as a form of *group* coverage on the same basis as employer-sponsored health insurance programs under the PPACA. Self-funded programs must be permitted to continue to exist to the extent they are permissible under state laws and regulations. Regulations should be issued to assure self-funded student health plans can issue documents that allow students to prove they have satisfied the new federal mandate for health insurance when submitting federal tax returns.

2. Both fully insured and self-funded SHIBPS must provide benefits that comply with the essential coverage requirements of the PPACA and other required benefits or administrative practices, as specified by regulations issued by the Department of Health and Human Services. The few states that do not presently permit self-funding of student health plans should take action to end these impediments (e.g., adopt enabling legislation and/or licensing procedures for non-ERISA governed group health plans to operate self-funded group health plans).

3. International students should be required to enroll in a college or university SHIBP if the student's home country does not provide coverage equal to the requirements specified by the PPACA. A national coverage option should be provided to international students who enroll at a college or university that does not provide a SHIBP.

4. As stated in the standards endorsed by ACHA, colleges and universities providing SHIBPs should be required to manage their programs solely in the best interest of covered students under a fiduciary responsibility requirement. The LMG accepts that SHIBPs should be governed under the same fiduciary responsibility requirements that are applicable to employers under the Employee Retirement Income Security Act of 1974.

5. Colleges and universities should have the option of requiring students to participate in their SHIBPs regardless of parental coverage that might otherwise be available through age 26. This provision may be essential for the viability of SHIBPs at small colleges and/or necessary because of unique environmental needs of a specific college or university. Ultimately, the lowest cost of providing health insurance for college students would be to have all students covered under a comprehensive health plan provided by the college or university rather than a fractured mix of parental health insurance, SHIBP coverage, Medicaid, and other governmental programs.

Contact
Jim Mitchell
Lookout Mountain Group Spokesperson
406-994-5901 ● jimm@montana.edu

Colleges and universities should also retain existing authority to establish requirements for conditions of enrollment and require payment of mandatory health fees and specify levels of health insurance coverage that are deemed by an individual institution as necessary for public health and safety. For example, a college may choose to require that students enroll in its SHIBP if the students' personal health insurance coverage does not include access to local mental health care providers or other essential medical providers.

6. Nothing in the PPACA should be construed to change or modify the requirements and authorizations for the operation of SHIBPs that presently exist under the Civil Rights Restoration Act of 1989, as this law amended Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

7. Favorable tax treatment should be provided for employer contributions for the cost of SHIBPs as an alternative to providing coverage for dependents under an employer-sponsored health plan. Vouchers or other compensation to employees for SHIBP costs should be treated as a tax deductible employee benefit expense for the employer and non-taxable income to the employee.

8. Financial assistance programs under the PPACA for young adults that are available to college students should apply toward the purchase of SHIBPs. Students eligible for Medicaid should have the option of enrolling in a SHIBP and receiving a financial voucher for the cost that would have otherwise been incurred for Medicaid enrollment. This provision should be adopted immediately for SHIBPs that provide coverage that meets PPACA requirements for group coverage.

9. Fully insured SHIBPs should be required to meet the 85 percent medical loss ratio requirement specified for fully insured group insurance plans on an individual client basis. Retention expenses should include large claim pooling charges and all other charges that do not reflect a direct reimbursement for a medical expense claim or wellness program service. Enrollment/waiver costs, administrative costs, and other program support expenses should not be included in the retention expense calculation to the extent they are paid by the college or university or entire student population. Costs for medical evacuation and repatriation coverage, nurse line service costs, and other ancillary services should not be included in the retention expense calculation.

10. Flexibility should be provided by the Department of Health and Human Services to approve exclusions and limitations that may be appropriately unique for SHIBPs. For example, excluding expenses incurred from participation in NCAA-sanctioned intercollegiate athletics may be appropriate as this is an expense that could be borne by the college or university or the entire student population.

11. Colleges and universities should have flexibility to continue to purchase accident-only coverage for summer camp participants, intramural sports programs, and other specialty risk needs. This coverage should be regulated as a form of property and casualty insurance and not subject to regulation by the PPACA.

Contact
Jim Mitchell
Lookout Mountain Group Spokesperson
406-994-5901 ● jimm@montana.edu

12. Until pre-existing condition exclusions are removed under PPACA, SHIBPs should be uniformly regulated in all states on the same basis as employer-sponsored group health insurance under the Health Insurance Portability and Accountability Act of 1996.

ACHA Guidelines

Standards for Student Health Insurance/Benefits Programs

The American College Health Association has instituted these standards to guide colleges and universities in the establishment of an appropriate, credible student health insurance/benefits program.

Standard I.

As a condition of enrollment, the college or university requires students to provide evidence that they have adequate health insurance coverage.

Standard II.

The college or university recognizes that students rely upon its student health insurance/benefit program for their primary source of health insurance protection.

An adequate and appropriate scope of coverage is provided, including, but not limited to:

- Coverage for preventive health services.
- Coverage for catastrophic illness or injury.
- Coverage for prescription medications, including coverage for psychotropic medications.
- Minimization, or ideally elimination, of pre-existing condition exclusions/waiting periods.
- Coverage for dependents of covered students including children, spouses, and domestic partners.
- Continuity of coverage up to plan limits for students requiring a medically-necessary leave-of-absence.
- Continuity of coverage for previously insured students in plan renewals or with new carriers (i.e., no gain/no loss provision), subject to RFP provisions and final negotiations.
- Program benefits, limitations, exclusions, special provisions, and definitions are reviewed to assure they are consistent with common practices of the group health insurance field and/or there is a compelling reason for the college or university to have a provision that is unique for its SHIBP.
- The program encourages use of campus health and counseling services, where doing so provides cost effective and high quality care for students.

Standard III.

The college or university acknowledges it has a fiduciary responsibility to manage student health insurance/benefits programs in the best interests of students covered by the programs.

Standard IV.

The student health insurance/benefits program is annually reviewed to assure it is in full compliance with all applicable federal and state statutes and regulations.

Standard V.

Student consumers, student health program staff, and other internal or external experts, as appropriate, are involved with the selection, monitoring, and evaluation of the student health insurance/benefits program.

Standard VI.

The student health insurance/benefits program is reviewed annually to ensure the program: (a) meets the needs of covered individuals; (b) provides desired benefits at the least possible cost; and (c) returns as much of the premium or fund contributions as possible to covered individuals in the form of benefits. Reserve funds may also be maintained to assure short- and long-term financial viability for the program.

Standard VII.

Commercial insurance carriers, agents, brokers, and all others providing services to the student health insurance/benefits program are required to provide a full description of estimated claims, reserve estimates, administrative expenses, and all other fees. The student health insurance/benefits program is audited periodically and the results are provided to appropriate university or college officials and student consumers. Each year, a summary financial report for the program is published and made available to student consumers and campus officials responsible for management of the student insurance/benefits program.

Standard VIII.

The selection of vendors for the student health insurance/benefits program adheres to institutional and/or applicable governmental requirements relative to competitive vendor selection processes.

Standard IX.

Agents, brokers, consultants, and program managers do not have relationships that could be construed to be a real or potential conflict of interest. Agreements with consultants or brokers are fully disclosed and clearly define the services to be performed and the compensation to be received.

Standard X.

The student health insurance/benefit program is available to all eligible students regardless of age; gender identity, including transgender; marital status; psychological/physical/learning disability; race/ethnicity; religious, spiritual or cultural identity; sex; sexual orientation; socioeconomic status; veteran status.

American College Health Association
P.O. Box 28937
Baltimore, MD 21240-8937
(410) 859-1500
(410) 859-1510 fax
www.acha.org