

State Health Reform Assistance Network

Charting the Road to Coverage

ISSUE BRIEF

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Regulation of Student Health Plans Under Federal and State Law: An Overview

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I. Federal regulation of student health plans

In 2008, the Government Accountability Office (GAO) estimated that approximately 80 percent of college students (ages 18 through 23) had health insurance. Sixty-seven percent were covered through their parents' employer-sponsored plans, six percent through public programs, and seven percent through other private health insurance plans, including student health plans.¹ In 2012, the Center for Consumer Information & Insurance Oversight (CCIIO) reported that over 1 million students were covered by a student health plan.²

Historically, student health plans were issued for a contract period of less than 12 months and were considered short-term, limited-duration policies.³ Therefore, these plans were not subject to much of the Public Health Service Act (PHS Act), as amended by the Affordable Care Act, and their quality varied widely.⁴ Some plans were comprehensive, while some offered limited benefits and included annual dollar caps on coverage.⁵ To address these variations, in March of 2012, the U.S. Department of Health and Human Services (HHS) issued a regulation defining student health plans as individual health insurance under federal law.⁶ As a result, student health plans are now subject to the same consumer protections afforded to all those covered by individual health insurance set forth in the PHS Act including, for example: prohibitions on pre-existing condition exclusions,⁷ no cost-sharing for preventive services,⁸ prohibitions on lifetime or annual limits,⁹

¹ GAO. 2008. "Report to the Committee on Health, Education, Labor, and Pensions, U.S. Senate." <http://www.gao.gov/new.items/d08389.pdf>.

² CCIIO. 2012. "Student Health Plans and the Affordable Care Act." Last modified April 5, 2012. <https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/student-health-plans03162012a.html>.

³ Short-term, limited-duration insurance is health insurance "provided pursuant to a contract with an issuer that has an expiration date specified in the contract (taking into account any extensions that may be elected by the policyholder without the issuer's consent) that is less than 12 months after the original effective date of the contract." See 45 C.F.R. 144.103.

⁴ *Id.*; 42 U.S.C. § 300gg–91(b)(5).

⁵ CCIIO, *supra* note 2.

⁶ 45 C.F.R. 147.145.

⁷ 42 U.S.C. § 300gg–3.

⁸ 42 U.S.C. § 300gg–13. Notably, student health fees are not considered cost-sharing. 45 C.F.R. 147.145(c).

⁹ 42 U.S.C. § 300gg–11.

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State Health Reform Assistance Network, a program of the Robert Wood Johnson Foundation, provides in-depth technical support to states to maximize coverage gains as they implement key provisions of the Affordable Care Act. The program is managed by the Woodrow Wilson School of Public and International Affairs at Princeton University. For more information, visit www.statenetwork.org.

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annual review of premium increases,¹⁰ and coverage for essential health benefits.¹¹ Furthermore, student health plans must comply with medical loss ratio reporting and rebate requirements, but student coverage is reported separately from other types of individual coverage and uses national aggregation of student health coverage, rather than state aggregation.¹² In fact, there are only two individual market protections that specifically do not apply to student health insurance—guaranteed availability and guaranteed renewability.¹³

While fully-insured student health plans are subject to the many protections of the PHS Act, the same cannot be said for self-funded plans. Federal guidance on the issue specifically states that HHS “do[es] not have the authority to regulate self-funded student health plans. The PHS Act gives HHS regulatory authority over health insurance issuers in the group and individual markets and over non-federal governmental group health plans, but self-funded student health plans do not fit into these categories.”¹⁴ The regulation does acknowledge that self-funded student health plans may be regulated by the states,¹⁵ and HHS has designated that self-funded plans that began before December 31, 2014 are minimum essential coverage.¹⁶

II. State regulation of student health plans

In addition to the consumer protections provided by the PHS Act, student health insurance issuers must also abide by applicable state laws,¹⁷ as the PHS Act “only preempts state standards and requirements to the extent that they prevent the application of a [federal] requirement.”¹⁸ Therefore, while states have great flexibility in terms of regulating student health plans, several states have raised questions about the interplay between federal and state law. For example, in some states, student health insurance plans were being sold as blanket policies before the regulation that defined student health plans as individual health insurance was implemented. As stated in the regulation, states can continue to regulate student health insurance as a form of group or blanket health insurance, so long as doing so does not “prevent the application of the relevant individual market provisions of the PHS Act.”¹⁹ This same principal would apply when evaluating the application of other relevant state laws to student health plans.

Additionally, states have expressed their concerns that the overall value of a student health plan may be less than the individual coverage purchased through the applicable marketplace. Students may choose student health plans for a variety of reasons, including plan cost or the ability to access a local network of providers. With that said, during open enrollment, a student can enroll in a marketplace plan and qualify for subsidies regardless of whether he or she is enrolled in a student health plan.²⁰

III. Conclusion

Ultimately, student health plans must be treated as individual health insurance under federal law, even if provided pursuant to a contract between an institution of higher education and a health insurance issuer.²¹ Therefore, students covered by these plans are protected by the individual market requirements set forth in the PHS Act, except for guaranteed issue and availability. Furthermore, states have the flexibility to regulate student health insurance in accord with their own laws, provided that the state standards do not prevent the application of the relevant provisions of the PHS Act.²²

¹⁰ 42 U.S.C. § 300gg–94. 42 U.S. Code § 300gg–94(a)(2) requires “health insurance issuers” to submit justification for unreasonable premium increases. Health insurance issuer is defined as “an insurance company, insurance service, or insurance organization ... that is required to be licensed to engage in the business of insurance in a State and that is subject to State law that regulates insurance” but does not include a group health plan. 42 U.S.C. § 300gg–91.

¹¹ 42 U.S.C. § 300gg–6.

¹² Student Health Insurance Coverage, Final Rule, 77 Fed. Reg. 16453, 16459 (Mar. 21, 2012).

¹³ 45 CFR 147.145(b)(1).

¹⁴ 77 Fed. Reg. at 16455.

¹⁵ *Id.*

¹⁶ 45 C.F.R. 156.602.

¹⁷ 45 C.F.R. 147.145(a)(3).

¹⁸ 77 Fed. Reg. at 16458.

¹⁹ *Id.*

²⁰ Volk, JoAnn. *Studying for Final Exams and Signing up for Health Care: Answering Questions for Young Adults*. CHIR Blog: 2013, <http://chirblog.org/studying-for-final-exams-and-signing-up-for-health-care-answering-health-care-questions-for-young-adults/>.

²¹ 45 CFR 147.145(a).

²² 77 Fed. Reg. at 16458.