United States Senate
Committee on Health, Education, Labor and Pensions
Michael B. Enzi, Ranking Member

RANKING MEMBER REPORT:
Health Care Reform Law's Impact on Child-Only Health Insurance Policies

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Executive Summary

The United States Senate Committee on Health, Education, Labor and Pensions Minority staff surveyed whether children under the age of 19 have access to child-only health insurance plans since enactment of the Patient Protection and Affordable Care Act; P.L. 111-148, as amended by the Health Care and Education Reconciliation Act; P.L. 111-152 ("the Act"). The survey found passage of the new health care law prompted health insurance carriers to stop selling new child-only health plans in many states. Of the 50 states, 17 reported that there are currently no carriers selling child-only health plans to new enrollees. Thirty-nine states indicated at least one insurance carrier exited the child-only market following enactment of the new health care laws. Accordingly, child-only health insurance access and competition in the market have declined significantly since passage of the Act. These findings are consistent with earlier surveys and highlight that the Department of Health and Human Services has failed to take action to address problems created by new regulations. This precedent raises concerns about the impact that similar changes, which are scheduled to go into effect in 2014, will have in reducing access and competition in the insurance market.

Background

Section 1201 of the Act attempted to address the problem created by health insurance plans imposing limits on coverage for individuals with preexisting conditions. These limits typically took the form of insurers offering insurance but not covering medical services that relate to the treatment of the preexisting condition.

Section 1201, which amended section 2704 of the Public Health Service Act ("PHSA"), prohibited group health plans and insurers from imposing preexisting condition exclusions on their enrollees. Section 1255 of the Act further specified that this provision would apply to children under the age of 19, effective September 23, 2010, while all other enrollees would be subject to the provision on January 1, 2014.

On June 28, 2010, the Departments of Health and Human Services, Treasury and Labor published an Interim Final Rule ("the rule"), which implemented these provisions[1]. In drafting the rule, the Administration expanded the existing statutory definition of preexisting condition to include denials of coverage. Section 2704(b)(1) of the PHSA defines preexisting condition exclusion to mean, with respect to coverage, "a limitation or exclusion of benefits relating to a condition based on the fact that the condition was present before the date of enrollment for such coverage, whether or not any medical advice, diagnosis, care, or treatment was recommended or received before such date."

Under the rule, the definition of a preexisting condition exclusion was expanded to include "a limitation or exclusion of benefits (**including a denial of coverage**) [emphasis added] based on the fact that the condition was present before the effective date of coverage (or if coverage is denied, the date of the denial) under a group health plan or group or individual health insurance coverage (or other coverage provided to federally eligible individuals pursuant to 45 CFR part 148)."

By adding denials of coverage, this regulatory modification of the statutory definition of preexisting condition exclusion imposed substantial new requirements on insurers, beyond those contemplated in the Act. As a result of this change, insurers are required to offer coverage to all children under the age of 19 who apply for insurance. This requirement, which is often referred to as "guaranteed issue", was not mentioned in either sections 1201 or 1255 of the Act. This is in contrast to the explicit imposition of a guaranteed issue requirement in Section 2702 of the Act, which is coupled with other comprehensive insurance reforms that are scheduled to occur in 2014.

After the publication of the rule, several insurers expressed concerns that this new regulatory definition of preexisting condition exclusion would force them to exit the market for child-only insurance plans. These insurers asserted that the guaranteed issue requirement imposed by the regulation would allow individuals to wait until a child

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[1] Patient Protection and Affordable Care Act: Preexisting Condition Exclusions, Lifetime and Annual Limits, Rescissions, and Patient Protections. (Interim final rules with request for comments). 75 Fed. Reg. 123, 37188 (June 28, 2010) (to be codified at 26 C.F.R. pts. 54, 602; 29 C.F.R. pt. 2590; 45 C.F.R. pts. 144, 146, 147), *available at* http://edocket.access.gpo.gov/2010/pdf/2010-15278.pdf.

became sick and then purchase insurance to cover the treatment of that illness. The insurers further indicated that this new requirement created a substantial risk of adverse selection, which would make it financially unsustainable to continue to offer these products.

On September 23, 2010, the new requirements took effect for children under the age of 19. At approximately the same time, several large insurance companies announced that they would no longer sell child-only insurance plans in several states[2]. This in turn, has caused significant hardships for parents and grandparents seeking to purchase health insurance coverage for their children[3].

In response to the insurers exiting these markets, the Department of Health and Human Services published a Questions and Answers document on October 13, 2010, that attempted to respond to the concerns raised by insurance companies. The document states: "issuers in the individual market may restrict enrollment of children under 19, whether in family or individual coverage, to specific open enrollment periods if allowed under State law." The guidance goes on to state: "unless State laws provide such guidance, issuers in the individual market may determine the number and length of open enrollment periods for children under 19 (as well as those for families and adults)."[4]

The United States Senate Committee on Health, Education, Labor and Pensions Minority staff conducted a survey to determine the impact of the Act on children under the age of 19. The methodology, findings, and analysis of the survey are detailed below. The report also includes recommendations, that if adopted by the Administration could ensure parents and grandparents are able to purchase health insurance for children under the age of 19.

Methodology

The purpose of this report is to determine the impact that the Act and the Rule have had on child-only health insurance. The Committee staff contacted all 50 states' insurance departments via phone and email in two separate instances, the first in early January of this year, and the second during the month of July with the final responses received by July 22, 2011, and asked: (1) have any carriers in the state exited the child-only market since health care reform was signed into law; and (2) are any carriers in the state

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[2] Tom Murphy, *5 Major Insurers Stop Selling New Child-only Health Plans*, ASSOCIATED PRESS (Sept. 22, 2010, 6:01 PM), http://www.msnbc.msn.com/id/39314403/ns/health-health_care/.

[3] Alex Nussbaum, *Health Law May Cost Children Coverage as UnitedHealth Ends Plans*, BLOOMBERG (July 23, 2010), http://www.bloomberg.com/news/2010-07-23/health-care-law-may-cost-children-as-unitedhealth-ends-kid-only-coverage.html.

[4] OFFICE OF CONSUMER INFORMATION AND INSURANCE OVERSIGHT, U.S. DEP'T OF HEALTH AND HUMAN SERVICES, FACT SHEET: QUESTIONS AND ANSWERS ON ENROLLMENT OF CHILDREN UNDER 19 UNDER THE NEW POLICY THAT PROHIBITS PRE-EXISTING CONDITION EXCLUSIONS (Oct. 13, 2010), *available at* http://www.hhs.gov/ociio/regulations/children19/factsheet.html.

currently selling child-only plans to new enrollees. See Appendix A for a list of the state's survey responses.

Findings

All 50 states responded to the survey. In 39 states, at least one health insurance carrier has exited the child-only plan market following issuance of the Rule. The survey concluded that in 17 states, there are no carriers that currently sell child-only plans to new enrollees. The 17 States without carriers offering child-only plans to new enrollees are: Alaska, Arizona, Connecticut, Delaware, Florida, Georgia, Idaho, Minnesota, Nebraska, Nevada, North Dakota, Oklahoma, South Carolina, Tennessee, Texas, West Virginia and Wyoming.

As a result of the new regulations, children who are not eligible for Medicaid, the State Children's Health Insurance Program (SCHIP), or high risk pools have fewer plans to choose from, and in many states are no longer able to obtain insurance coverage under child-only plans. Parents and grandparents in 17 States have no options for insuring their children who are not eligible for these programs.

Six states identified themselves as guarantee issue states prior to passage of the new health care law. These states include Maine, Massachusetts, New Jersey, New York, Rhode Island, and Vermont. Under state law, carriers offering coverage in these six states must issue coverage to any individual that applies.

Analysis

The finding that insurers have exited the child-only plan market, often leaving families with no options to purchase insurance coverage for their children, is an entirely predictable consequence of how the Administration drafted the new rule prohibiting preexisting condition exclusions.

By redefining through regulation the definition of these exclusions, the Administration created a new guaranteed issue requirement for child-only plans. This regulatory policy change went beyond the scope of the language in section 2704 of the PHSA, and created the problems that have caused insurance companies to no longer offer child-only plans in several states.

Requiring carriers to sell child-only plans to anyone at any time allows individuals to wait until a child is sick and then purchase coverage. This undermines one of the fundamental principles of insurance, which allows individuals to manage risk by pooling resources to help pay for future, unpredictable expenses. If an individual can avoid paying premiums until they know they will incur an expense, it is impossible for such a system of insurance to be financially sustainable.

This is not a hypothetical concern, but rather one that has already been documented in the market. A recent study, commissioned by the Massachusetts Division of Insurance, reported that after Massachusetts enacted its health care reform law (which included a guaranteed issue requirement), there was a significant increase in the number of individuals who purchased coverage for short periods of time and incurred high costs.[5]

The Administration has also previously acknowledged this reality. A January 31, 2011 White House blog post noted:

> If insurance companies can no longer deny coverage to anyone who applies for insurance – especially those who have health problems and are potentially more expensive to cover – then there is nothing stopping someone from waiting until they're sick or injured to apply for coverage since insurance companies can't say no. That would lead to double digit premiums increases – up to 20% – for everyone with insurance, and would significantly increase the cost health care spending nationwide.
>
> We don't let people wait until after they've been in a car accident to apply for auto insurance and get reimbursed, and we don't want to do that with healthcare. If we're going to outlaw discrimination based on pre-existing conditions, the only way to keep people from gaming the system and raising costs on everyone else is to ensure that everyone takes responsibility for their own health insurance."[6]

This statement indicates that the Administration understood how a stand-alone guaranteed issue requirement could raise costs for everyone. Despite this understanding, the Administration still chose to arbitrarily impose a guaranteed issue requirement.

When confronted with the reality of this regulatory action, insurers in 39 states stopped selling child-only plans to new enrollees. They indicated that to do otherwise would likely expose them to significant, unsustainable financial losses and thereby jeopardize their continuing ability to offer insurance coverage to current enrollees.

The October 13, 2010, Administration Questions and Answers document did not solve the problems created by the initial rule. Insurers have asserted that absent a uniform annual enrollment period applicable to all market participants, they would still face potential competitive disadvantages created by plans with different open enrollment periods, which in turn could create serious risks of adverse selection. For these reasons, insurers have declined to return to the child-only plan market in many states.

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[5] DIANNA K. WELSCH & KURT GIESA, OLIVER WYMAN, ANALYSIS OF INDIVIDUAL HEALTH COVERAGE IN MASSACHUSETTS BEFORE AND AFTER THE JULY 1, 2007 MERGER OF THE SMALL GROUP AND NONGROUP HEALTH INSURANCE MARKETS (June 2010), *available at* http://www.mass.gov/Eoca/docs/doi/Companies/adverse_selection_report.pdf.

[6] STEPHANIE CUTTER, *Judicial Activism and the Affordable Care Act*, THE WHITE HOUSE BLOG (Jan. 31, 2011, 4:49 PM), http://www.whitehouse.gov/blog/2011/01/31/judicial-activism-and-affordable-care-act.

Recommendations

In order to address the problems created by the regulatory actions, the Secretary of Health and Human Services should immediately amend the interim final rule and define a uniform annual open enrollment period applicable to all carriers in States, as allowed under State law. This would provide greater stability in the marketplace for carriers and consumers by preventing individuals from waiting until a child is sick before purchasing insurance. Amending the rule would also address the competitive concerns raised by several insurers about how the lack of a uniform annual enrollment period could create the potential for adverse selection against some insurers.

Additionally, if States were still left without carriers selling new child-only health insurance policies, the Secretary of Health and Human Services should allow parents in these States to purchase policies from other states. The Secretary would work closely with the National Association of Insurance Commissioners to ensure plan compliance with State solvency and other regulatory requirements, as well as the payment of applicable fees to the Insurance Commissioner in the State from which the policy was sold and to the State where the child resides.

If adopted, these recommendations could enable parents and grandparents to once again purchase health insurance for children under the age of 19.

Appendix A: Child-only Health Insurance Survey Responses

Child-only Health Insurance Phone and Email Survey					
	Have any carriers in the state exited the child-only market since health care reform was signed into law?	**Are any carriers in the State currently selling child-only plans to new enrollees?**		**Have any carriers in the state exited the child-only market since health care reform was signed into law?**	**Are any carriers in the State currently selling child-only plans to new enrollees?**
State	**January 2011 responses**			**July 2011 responses**	
Alabama	No	Yes		No	Yes
Alaska	Yes	No		Yes	No
Arizona	Yes	No		Yes	No
Arkansas	Yes	Yes		Yes	Yes
California	Yes	Yes		Yes	Yes
Colorado	Yes	Yes		Yes	Yes
Connecticut	Yes	No		Yes	No
Delaware	Yes	No		Yes	No
Florida	Yes	No		Yes	No
Georgia	Yes	No		Yes	No
Hawaii	No	Yes		No	Yes
Idaho	No	Yes		Yes	No
Illinois	Yes	No		Yes	Yes
Indiana	Yes	Yes		Yes	Yes
Iowa	Yes	Yes		Yes	Yes
Kansas	Yes	Yes		Yes	Yes
Kentucky	Yes	Yes		Yes	Yes
Louisiana	No	Yes		Yes	Yes
Maine	Guarantee Issue	Guarantee Issue		Guarantee Issue	Guarantee Issue
Maryland	Yes	Yes		Yes	Yes
Massachusetts	Guarantee Issue	Guarantee Issue		Guarantee Issue	Guarantee Issue
Michigan	N/A*	N/A*		N/A*	N/A*
Minnesota	Yes	No		Yes	No
Mississippi	Yes	Yes		Yes	Yes
Missouri	Yes	Yes		Yes	Yes
Montana	No	Yes		Yes	Yes
Nebraska	Yes	No		Yes	No
Nevada	Yes	No		Yes	No
New Hampshire	Yes	Yes		Yes	Yes
New Jersey	Guarantee Issue	Guarantee Issue		Guarantee Issue	Guarantee Issue
New Mexico	Yes	No		Yes	Yes
New York	Guarantee Issue	Guarantee Issue		Guarantee Issue	Guarantee Issue
North Carolina	Yes	Yes		Yes	Yes
North Dakota	Yes	No		Yes	No
Ohio	Yes	Not provided		Yes	Yes
Oklahoma	Yes	No		Yes	No

Oregon	Yes	Yes		Yes	Yes
Pennsylvania	Yes	Yes		Yes	Yes
Rhode Island	Guarantee Issue	Guarantee Issue		Guarantee Issue	Guarantee Issue
South Carolina	Yes	No		Yes	No
South Dakota	No	Yes		No	Yes
Tennessee	Yes	No		Yes	No
Texas	Yes	No		Yes	No
Utah	Yes	No		Yes	Yes
Vermont	Guarantee Issue	Guarantee Issue		Guarantee Issue	Guarantee Issue
Virginia	Yes	Yes		Yes	Yes
Washington	No	Yes		No	Yes
West Virginia	Yes	No		Yes	No
Wisconsin	Yes	Yes		Yes	Yes
Wyoming	Yes	No		Yes	No
TOTALS	**Yes: 36**	**No: 19**		**Yes: 39**	**No: 17**

*Michigan has an agreement with an insurance company to be a carrier of last resort for individuals and children; the agreement states anyone who applies for coverage will receive it.