

ARTICLES

Affordable Care Act Deregulation and Student Health Insurance Plans

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Treatment of Student Health Insurance Plans

Student Health Insurance Plans (SHIPs) have been in a regulatory quandary since passage of the Patient Protection and Affordable Care Act (ACA). The underlying cause is tied to SHIPs operating as a “group plan”, but regulated as an “individual plan” under the ACA.

The student health market has recently seen favorable guidance from federal agencies on several key hurdles, most notably the removal of the actuarial value banding requirement and the permissibility of premium subsidies for Graduate Assistants.

However, despite clarity at the federal level, SHIPs have continued to struggle with variable treatment at the state level. Interpretational differences around policy form and rate filing requirements, permissibility of product offerings, extra territorial benefits, and state mandated benefits, among other requirements have left carriers to adjust business plans on a state by state basis.

All states require SHIPs be filed and approved, but the rules vary from state to state. Some states give carriers latitude to file benefit variability and rating methodologies. Others require school-specific benefits and rates to be approved prior to distribution of policy information. In more restrictive states, some schools have seen rates and/or benefits being adjusted after renewal negotiations are completed. In many cases, schools wishing to obtain competitive quotes on their SHIP were restricted due to timing.

In an attempt to address these variances, Center for Medicare Services (CMS) [issued the Health and Human Services \(HHS\) Notice of Benefit and Payment Parameters for 2019 \(PDF\)](#) to “reduce fiscal and regulatory burdens across different program areas” and to “provide states with greater flexibility to meet the needs of their markets and reduce the burden associated with review of plans that are not part of the single risk pool.” As a result, SHIPs are now exempt from federal rate review requirements beginning in the current 18/19 school year

Recognizing SHIPs do in fact act more like a group plan than an individual plan, that same report states “as a practical matter, student health insurance coverage has generally been given the same plan design



flexibility as plans in the large group market. Just like purchasers of large group plans, purchasers in the student market are viewed as more sophisticated, with greater leverage and ability to avoid the imposition of unreasonable rate increases. Single risk pool pricing, the primary focus of the rate review program, does not apply to student health insurance coverage."

However, the 2019 Benefit and Payment Parameters report continues "we note that states maintain the flexibility to review rate increases of any size and any other aspects of student health insurance coverage." It is worth noting that for the three states that do not have an Effective Rate Review Program (Oklahoma, Texas, and Wyoming), HHS will "continue to monitor the compliance of student health insurance coverage with applicable market rating reforms based on complaints and as part of targeted market conduct examinations." The guidance can be interpreted to ease fiscal and administrative burdens, while it can also be an opportunity to increase state-based regulation.

Short Term Limited Duration Plans

Short Term Limited Duration (STLD) plans are sold to individuals and are exempt from ACA-related market reforms such as pre-existing limitations, essential health benefits, guaranteed issue/renewability, etc. While STLDs have been available to individuals for roughly 20 years, federal rules limited the availability to no more than three months. However, [guidance from the Department of Labor on August 3, 2018](#), effective October 2, 2018, allow STLD policies to have "an expiration date specified in the contract that is less than 12 months after the original effective date of the contract and, taking into account renewals or extensions, has a duration of no longer than 36 months in total."

When the final STLD regulations were in review some commenters asked whether short-term, limited-duration insurance may be sold as "student health insurance coverage" within the meaning of HHS regulations. It may not. Quoting the above cited DOL guidance:

"'Student health insurance coverage' is defined in HHS regulations at 45 CFR 147.145(a), which provides that 'student health insurance coverage' is a type of individual health insurance coverage. Thus, 'student health insurance coverage' under the definition of 'student health insurance coverage' must satisfy the PHS Act requirements for individual health insurance coverage, except for those specified in 45 CFR 147.145(b). Accordingly, short term, limited-duration insurance cannot be 'student health insurance coverage' because it is by definition not individual health insurance coverage. However, to the extent permitted by state law, an issuer may sell short-term, limited-duration insurance to individual students in institutions of higher education (or to individual students in boarding or other pre-higher-education institutions). Some higher education institutions may require their students to either purchase 'student health insurance coverage,' or a type of coverage other than short-term, limited- duration insurance."

The emergence of STLD plans will likely be a hot topic over the coming year. While the market consensus is that we will not see the "mini-med" plans that existed pre-ACA, the STLD plans will expand and students will purchase them. While many schools will not want their students to have non-ACA compliant plans, more students will try to waive the SHIP with the STLD plans.

The tax penalty for not being covered by a Qualifying Health Plan has been eliminated as of January 1, 2019, but the individual mandate is technically still in place. To date, no guidance has been issued, and students will continue to receive applicable tax forms (i.e. 1095Bs) as well as solicitation notices for Social

Security Numbers.

While the tax penalties of the individual health insurance mandate are eliminated at the federal level, several states are in various phases of implementing their own individual health insurance mandate. Most notably New Jersey, District of Columbia, and Vermont (effective 2020) have recently promulgated their regulations to mandate coverage, similar to the Massachusetts 2006 requirement. California, Connecticut, Hawaii, Maryland, Minnesota, Rhode Island, and Washington are also in various phases in implementing their own mandate, and New York is reinforcing ACA regulations with an emphasis on compliance.

SHIP in lieu of Medicaid

In an effort to reduce state Medicaid costs, several states have explored enrolling and paying the premium for students eligible for Medicaid. The thought is that SHIPs are more effective in managing care for the college student, ensuring access to student health centers, broader PPO network providers, and availability of coverage while traveling, while saving insurance premium for the state.

Massachusetts, Minnesota, Montana, and New York have passed regulations allowing the state to pay for SHIPs in lieu of Medicaid. New York piloted the program with Cornell and has expanded the option to other self-funded programs. Other states, including Connecticut, Pennsylvania, Ohio, and California, are reported to be at various stages of exploration. New Jersey recently indicated they will not be moving forward with this initiative.

Massachusetts has purchased SHIPs for students enrolled in Massachusetts Medicaid (MassHealth) for the current and past two academic years. Students eligible for SHIP that are MassHealth members are now required to participate in the program, if the school opts to offer the program. Approximately 30,000 MassHealth students now have the SHIP benefits enabling much better access to specialty and mental health providers.

Emerging data is showing that the loss ratios (claims paid out relative to premium) are higher than the regular, non-MassHealth population. In other words, the MassHealth students will drive premiums higher for the non-MassHealth students. Due to ACA regulations MassHealth cannot have a separate student plan that is provided to all MassHealth students, which would set up different underwriting for the regular and MassHealth populations. Possible solutions to the issue are being explored and we will provide an update when direction is provided.

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