



American Cancer Society ☞ Children's Defense Fund/New York ☞ Community Service Society of New York ☞
Make The Road New York ☞ Metro New York Health Care for All Campaign
New Yorkers for Accessible Health Coverage ☞ New York Immigration Coalition
Public Policy and Education Fund of New York/Citizen Action of New York ☞ Raising Women's Voices

September 27, 2010

Secretary Kathleen Sebelius
Department of Health and Human Services
Office of Consumer Information and Insurance Oversight
Department of Health and Human Services
Attn: OCIO-9995-IFC
P.O. Box 8016
Baltimore, MD 21244-1850

Dear Secretary Sebelius:

Health Care for All New York (HCFANY) writes to comment on the interim final rules for the pre-existing condition insurance plan (PCIP) program. HCFANY is a statewide coalition of more than 100 organizations, which seek to achieve affordable, quality health care for all New Yorkers.

HCFANY congratulates the Department on having established, in less than six months, the PCIP program and resulting new coverage for consumers with pre-existing conditions in every state. In New York State, the Bridge Plan has already begun enrolling consumers, for coverage to begin on October 1. This new plan will provide affordable coverage for up to 15,000 consumers, supplementing the state's troubled individual market until the Exchanges go online in 2014. Overall, we commend the Department for developing interim final rules that will support strong PCIPs. We have three recommendations for making these rules stronger, through changes to regulation language concerning: the requirement that consumers be without creditable coverage for six months before applying to a PCIP; the restrictions on coverage of abortion services; and the definition of "lawfully present."

Six months without creditable coverage eligibility requirement

We recommend that the Department adopt exceptions to the requirement that a consumer be uninsured for a continuous six-month period before applying for PCIP. The goal of the PCIP is to make affordable coverage available to consumers with pre-existing conditions. This provision undermines that goal by forcing some consumers with pre-existing conditions to wait out a six-month period before applying for coverage.



While New York is a guaranteed issue state, insurance premiums on the individual market are prohibitive for many consumers, with average premiums of \$1,100 for an individual per month. When a consumer with a pre-existing condition loses creditable coverage through no fault of their own, they should not have to choose between paying higher premiums through the individual market or COBRA and taking the risk of going uninsured for six months in order to qualify for the PCIP pool.

We recommend that the Department allow exceptions to the statutory requirement that a consumer be without creditable coverage for six months before applying for coverage through the PCIP. One list of exceptions that would be appropriate would be the list of events that qualify an employee, spouse or dependents of an employee for COBRA coverage. If a consumer with a pre-existing condition loses their employment-based or individual coverage for any of the following reasons, they should be allowed to purchase coverage from the pre-existing conditions plan without first going without creditable coverage for six months:

- exhaustion of COBRA eligibility
- death of spouse or parent
- divorce or legal separation
- loss of dependent child status under the plan rules
- spouse's or parent becoming entitled to Medicare
- voluntary termination of employment
- involuntary termination of employment
- reduction in the number of hours of employment.

Coverage of abortion services

We also recommend that the Department eliminate or amend the restriction on coverage of abortion by a PCIP. The regulations prohibit PCIPs from covering abortion services except when the life of the woman would be endangered or in cases of rape or incest. This restriction is not required by the ACA or any other federal law, and undermines the goal of the program: to provide needed, affordable care to consumers with serious health conditions.

Pregnancy poses exceptional dangers to the health of women with serious medical conditions. For women with conditions such as heart disease and kidney disease, the progress of pregnancy can sharply exacerbate the underlying medical condition, risking a woman's health. In other cases, the treatment a woman needs for a serious medical condition, such as chemotherapy for breast cancer, can pose a grave risk to a developing fetus. But without the treatment, the woman may face accelerated progress of the disease, threatening her health. An abortion for a woman with a pre-existing medical condition, often provided in a hospital setting, can be prohibitively expensive for a consumer to pay out-of-pocket.



New York State has indicated that it intended to include abortion coverage in its PCIP. With the Interim Final Rule, however, it is unclear whether such coverage will be allowed through PCIPs, and New York's PCIP has been unable to move forward in offering this coverage to the women of reproductive health age who are enrolling.

We recommend that you remove the limitations on abortion coverage included in the Interim Final Rule. In the alternative, we request that you clarify the Rule to ensure that states that are willing to provide abortion coverage may do so in the PCIPs without using federal funds.

Definition of "Lawfully Present"

We recommend that the Department expand the definition of the term "lawfully present." We commend OCIIO for choosing the definition of lawfully present that was developed for the purpose of implementing Section 214 of the Children's Health Insurance Program Reauthorization Act of 2009 ("CHIPRA"), the state option to provide Medicaid and CHIP to lawfully residing children and pregnant women. Unfortunately, this definition leaves out some immigrants who should be able to qualify for the pre-existing condition plan.

We join the National Immigration Law Center (NILC) in recommending that the Department, rather than enumerating the only immigration statuses and documents that would qualify, clarify that the list included in the regulation is not exhaustive. We urge the Department to allow states flexibility in using the enumerated list as a floor, which will lessen their administrative burden. We respectfully urge the Department to permit states to provide coverage to additional categories of lawful immigrants.

Thank you for considering our comments. If you have any questions, please contact Elisabeth Benjamin at ebenjamin@cssny.org or at (212) 614-5461 or Carrie Tracy at ctracy@cssny.org or at (212) 614-5401.

Sincerely,

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