THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

September 24, 2010

Ms. Karen Ignagni
President and Chief Executive Officer
America's Health Insurance Plans
601 Pennsylvania Avenue, NW
South Building, Suite 500
Washington, DC 20004

Dear Ms. Ignagni:

I am writing again regarding the critical issue of access to health insurance by children. The Affordable Care Act includes a number of provisions that help ensure Americans, including children, have access to health coverage when they need it, including a prohibition on denying coverage to children because of pre-existing conditions beginning this year. In March, AHIP committed to working with us to implement this important provision and assured us that "health plans recognize the hardship that a family faces when they are unable to obtain coverage for a child with a pre-existing condition." Regrettably, it appears that some of your members are now turning a blind eye and declining to sell new child-only policies in lieu of offering coverage to children with pre-existing conditions. This is inconsistent with your March letter.

While we appreciate the concerns of insurers and commissioners about adverse risk selection, and want to clarify what legal options exist, the plight of millions of parents who desperately want to provide health coverage and critical treatments for their children is a top priority, and we would hope that insurers who have for years offered child-only policies to healthy children would not deny coverage to families who desperately want to purchase health insurance.

To that end, we are publishing the enclosed supplemental Question and Answer document, which clarifies certain actions that insurers may take to continue to offer child-only coverage that are not precluded by the regulations implementing the pre-existing condition exclusion prohibition if they are consistent with State law.

As previously clarified, issuers may choose to institute open enrollment periods for child-only policies. To require a uniform open enrollment period for child-only policies, however, would require a change in the existing regulations. The Administration would consider making such a change only if it would result in issuers selling new child-only policies.

The Administration is determined that children and families receive the full benefits provided to them in the Affordable Care Act. We will be working in a number of ways to identify ways to provide access to coverage for those affected. This includes access to employer-based family coverage, eligibility for Medicaid or the Children's Health

Insurance Program, and access to the Pre-Existing Condition Insurance Plan (PCIP), also created by the Affordable Care Act.

Some states are considering legislation to require individual-market issuers that offer family coverage to also offer child-only policies. This approach could increase the options available to families with healthy as well as sick children, and would lower the risk of adverse selection. The Administration would welcome this and other state actions that ensure access to health plans by families with children.

Americans want and need affordable and reliable health insurance, and it is our job to make it happen. We worked hard to change the system to help children and families. It is my hope that AHIP and its members will work with us to ensure that children with pre-existing conditions receive the coverage contemplated for them by the Affordable Care Act.

Sincerely,

Kathleen Sebelius

Enclosure

Questions and Answers on Enrollment of Children Under 19 Under the New Policy that Prohibits Pre-Existing Condition Exclusions
Updated: September 23, 2010

On June 28, 2010, the Administration published the interim final regulations prohibiting new group health plans and health insurance issuers in both the group and individual markets from imposing pre-existing condition exclusions on children under 19 for the first plan year (in the individual market, policy year) beginning on or after September 23, 2010. These regulations apply to grandfathered group health plans and group health insurance coverage but do not apply to grandfathered individual health insurance coverage that was in existence on March 23, 2010.

Accordingly, for non-grandfathered individual health insurance policies, children under 19 cannot be denied coverage because of a pre-existing condition for policy years beginning on or after September 23, 2010. These questions and answers will assist issuers with implementation of this requirement.

Question #1: Will children in child-only individual market health plans today be affected by the new access to these plans for children with pre-existing conditions?

A: Child-only insurance plans that existed on or prior to March 23, 2010, and that do not significantly change their benefits, cost sharing, and other features, will be "grandfathered" or exempt from these regulations. As such, children enrolled in grandfathered child-only plans today are unlikely to be affected by the new policies.

Question #2: Do these interim final rules require issuers in the individual health insurance market to offer children under 19 non-grandfathered family and individual coverage at all times during the year?

A: No. To address concerns over adverse selection, 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. This is not precluded by the new regulations.

For example, an insurance company could set the start of its policy year for January 1 and allow an annual open enrollment period from December 1 to December 31 each year. A different company could allow quarterly open enrollment periods. Both situations assume that there are no State laws that set the timing and duration of open enrollment periods.

Question #3: How often must an issuer in the individual market provide an open enrollment period for children under 19?

A: 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). The Administration, in partnership with States, will monitor the implementation of the pre-existing condition exclusion policy for children and issue further guidance on open enrollment periods if it appears that their use is limiting the access intended under the law.

Question #4: How do these rules affect existing enrollment requirements in States that already require guaranteed issue of coverage for children under 19 in the individual market?

A: If a State requires continuous open enrollment or requires issuers to maintain an open enrollment period of a particular length or open enrollment periods of a particular frequency, then the State requirement will apply. The State law is not preempted by any current federal requirements.

Question #5: "Premium assistance" programs allow States to provide payments to help people eligible for Medicaid and Children's Health Insurance Programs (CHIP) enroll in private coverage. Won't the policy to ban pre-existing condition exclusions in new plans for children lead cash-strapped States to steer high-cost children into individual market policies for children as a way to limit their own liability?

A: Federal law prohibits Medicaid and CHIP from denying children coverage based on their health status. Moreover, it limits the extent to which these programs can provide payment to support coverage in individual market policies. "Premium assistance" programs in CHIP allow States to provide payment to private policies to cover children if doing so both protects children and is cost effective to the Federal and State governments. Premium assistance is not designed as a strategy to transfer vulnerable children to individual market coverage. The Administration will enforce its current policies on premium assistance and consider new ones if evidence emerges that children with pre-existing conditions are being diverted inappropriately from Medicaid or CHIP to private insurance plans that newly offer guaranteed issue to children regardless of their health status.

HHS will not enforce these rules against issuers of stand-alone retiree-only plans in the private health insurance market.

Question #6: Some issuers have expressed concerns about adverse selection from newly offering child-only health insurance on a guarantee issue basis, and have asked for clarifications of what they could do, consistent with the current regulations, to mitigate this concern?

A: A number of actions have been suggested by insurance commissioners and insurers to address adverse selection in child-only policies. The following actions are not precluded by existing regulations:

- Adjusting rates for health status only as permitted by State law (note: the Affordable Care Act prohibits health status rating for all new insurance plans starting in 2014);

- Permitting child-only rates to be different from rates for dependent children, consistent with State law;

- Imposing a surcharge for dropping coverage and subsequently reapplying if permitted by State law;

- Instituting rules to help prevent dumping by employers to the extent permitted by State law;

- Closing the block of business for current child-only policies if permitted by State law; and

- Selling child-only policies that are self-sustaining and separate from closed child-only books of business if permitted by State law.

In addition, some States are considering legislation that would require individual-market issuers that offer family coverage to also offer child-only policies. This approach could increase the options for families with healthy as well as sick children, and would lower the risk of adverse selection. The Administration would welcome this and other State actions that ensure access to health plans by families with children and prevent adverse selection in the market.

Question #7: In some States with guarantee issue, to limit adverse selection, open enrollment periods are set for a particular time of the year, required to be used by all issuers, and, in some cases, are the only time when issuers can sell policies. Would the Administration consider adopting such a policy?

A: As clarified earlier, issuers and States can already choose to use open enrollment periods consistent with existing regulations. To require a uniform open enrollment period for child-only policies would require a change in the existing regulations. The Administration would consider making such a change if it would result in issuers continuing to sell child-only plans.