



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

October 13, 2010

Jane L. Cline
President and West Virginia Insurance Commissioner
National Association of Insurance Commissioners
1124 Smith Street
Charleston, West Virginia 25301

Dear Jane:

I want to thank the NAIC and its members for the productive September 22 meeting with President Obama and me on the implementation of the Affordable Care Act. It was fitting that our meeting was held so close to the six-month anniversary of the passage of the Affordable Care Act and the effective date for many of its important consumer protections. I have been gratified by our collaborative efforts and look forward to our continuing partnership as we work to make the provisions of the Affordable Care Act a reality for all Americans.

One issue we discussed at the meeting, that I know is important to both the states and to our Administration, is ensuring there are health coverage options for all children under the age of 19, regardless of their health status. One goal of the Affordable Care Act is prevent insurers from denying coverage to those who need it most – starting with children with pre-existing health conditions. Without access to insurance, many sick children will not get the care they need to lead healthy lives. The inability to obtain affordable coverage can also create significant financial challenges for the parents of these children.

Unfortunately, as we discussed, some insurers have decided to stop writing new business in the “child-only” insurance market – reneging on a previous commitment made in a March letter to “make pre-existing condition exclusions a thing of the past.” Although this is a small market and children currently insured by such policies will not be affected, the decision of some health insurance companies to stop selling new policies for children is extremely disappointing. Nothing in the Affordable Care Act, or any other existing federal law, allows us to require insurance companies to offer a particular type of policy at this time.

We have been trying to work with the insurance industry to resolve this situation. Some insurers have said they would sell new child-only policies if they could accept year-round those applicants who are healthy, while restricting access for children with pre-existing conditions to a time-limited open enrollment period. We have carefully considered these insurers’ legal and policy arguments, and have concluded that the approach they advocate is legally infirm, and inconsistent with the language and intent of the Affordable Care Act. Nor would it be lawful for a state to allow denials of coverage for children based on pre-existing conditions outside of an open enrollment period. We will continue to reach

out to insurers in our effort to encourage them to sell new “child-only” policies between now and 2014 – when the new health insurance exchanges will begin to offer affordable options to children and families, banning all discrimination against all Americans based on health status.

While we recognize industry concerns about adverse selection, we believe that there are options other than abandoning families who seek this coverage, as evidenced in States with similar laws already in place. In response to questions we have received, we have clarified that a range of practices related to “child-only” policies are not prohibited by the Affordable Care Act, such as allowing:

- Issuers in the individual market to determine the number and length of open enrollment periods for children under 19 (as well as those for families and adults), consistent with state law;
- Rates to be adjusted for health status as permitted by state law (note: the Affordable Care Act prohibits health status rating for all new insurance plans starting in 2014);
- The imposition of a surcharge for dropping coverage and subsequently reapplying for it if permitted by state law;
- The implementation of rules, consistent with state law, to help prevent employers from encouraging workers to enroll children in child-only policies instead of employer-sponsored insurance; and
- The sale of “child-only” policies that are self-sustaining and separate from closed “child-only” books of business if permitted by state law.

Enclosed with this letter are additional answers to frequently asked questions that address more recent inquiries.

In addition to these efforts by HHS, many states have in place existing laws to prevent discrimination against children and others with pre-existing conditions. For example, in Maine, Massachusetts, New Jersey, New York, and Vermont, all individual market insurers are required to “guarantee issue” all their policies – meaning that all children must be offered health insurance, irrespective of their health status. In addition, New Hampshire requires individual market carriers to guarantee issue all their policies to applicants under 19 years old. Parents of children with pre-existing conditions in these states therefore have a right to purchase child-only policies throughout the year. And in Michigan and Pennsylvania, so-called “insurers of last resort” are required to offer coverage on a guaranteed issue basis either periodically or continuously throughout the year to qualified applicants, including children under age 19.

The threat of insurers’ no longer selling child-only policies has prompted additional state action as well. Recently, Governor Schwarzenegger signed legislation that bans insurers

in California from offering policies in the individual market for five years if they fail to offer child-only coverage. A number of states, including California, Colorado, Ohio, Oregon, and Washington, have established uniform open enrollment periods, and others, such as Minnesota, have been considering doing so. This creates a level playing field by preventing families from signing up for coverage for children only when their costs are high, and it ensures that no insurer will receive a disproportionate share of children with pre-existing conditions, since all insurers must accept such children during the same period.

States have also looked to existing programs for options for health insurance for children. Some states offer an unsubsidized buy-in to the Children's Health Insurance Program (CHIP). Roughly a dozen states now allow middle-income families to purchase child-only coverage at a full but fair premium. For example, Oregon both has required a consistent annual open enrollment period through an emergency regulation and is marketing its CHIP buy-in program to ensure that families have private and public options for insuring their children. No federal approval is required for this type of buy-in, and the Centers for Medicare and Medicaid Services stands ready to work with states interested in adopting this option.

The new Pre-Existing Condition Insurance Plan (PCIP) program created by the Affordable Care Act also offers options for families to access insurance for their children with pre-existing conditions. The PCIP program is available for eligible children with pre-existing conditions who have been uninsured for at least six months. The PCIP program includes coverage of pediatric benefits, prescription drugs, and inpatient, outpatient, and mental health services. Coverage is provided at standard premium rates charged in the commercial individual market, with no pre-existing condition exclusions. PCIPs normally require an applicant to produce a denial letter from an insurer to be eligible for PCIP coverage. However, uninsured children with pre-existing conditions can qualify if they have a letter from their doctor or are charged a high rate, depending on the state program's rules. The Administration is working to ensure that PCIPs in all states offer coverage for children at a premium based on the standard rate for children.

Further, prior to the enactment of the Affordable Care Act, 34 states established high-risk pools for all residents with pre-existing conditions whom private insurers declined to insure. These pools are an additional option in those states for children with pre-existing conditions, and some states, including Mississippi, are planning to open their pools to all uninsured children. Finally, every state has coverage available to children without regard to pre-existing conditions through their Medicaid and CHIP programs; in most states, these programs are available to families with incomes below \$88,000 (twice the poverty level).

Ms. Jane L. Cline

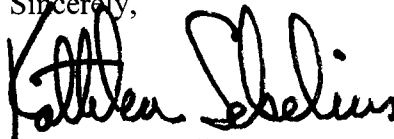
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I encourage all states to take whatever actions they can, whether issuing bulletins under existing law to establish uniform open enrollment periods or seeking appropriate legislation to preserve options for children to obtain coverage regardless of their health status.

I want to underscore my personal appreciation for the outstanding work of the NAIC and all state officials as we work together to implement the Affordable Care Act. I look forward to continuing to work in partnership with the NAIC and with state insurance regulators to implement the Affordable Care Act, and to maintain and strengthen state insurance regulation and the improved access and consumer protection that it yields.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathleen Sebelius". The signature is written in a cursive, flowing style with a large initial "K".

Kathleen Sebelius

Enclosure