DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop C2-12-16
Baltimore, Maryland 21244-1850

Center for Drug and Health Plan Choice

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DIRECTOR'S OFFICE

December 15, 2009

Dear State Insurance Commissioner:

Section 2741of the Public Health Service Act (PHS Act), as added by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), requires health insurance issuers to provide guaranteed issue of individual health insurance coverage to statutorily-defined "eligible individuals." (These are commonly referred to as Federally-eligible or HIPAA-eligible individuals.) Section 2744 of the PHS Act provides that section 2741 does not apply if a State establishes an "alternative mechanism" to provide eligible individuals guaranteed access to individual health coverage. An alternative mechanism is acceptable if it meets certain criteria, including that "all eligible individuals are provided a choice of health insurance coverage." (Section 2744(a)(1)(A)). There are other criteria, one of which is satisfied if the State uses a qualified high risk pool as part of its mechanism.

A question has arisen in a State that has an alternative mechanism based on its high risk pool. Specifically, the State law that governs its high risk pool imposes a lifetime maximum dollar amount on benefits. An individual who has applied for coverage under the risk pool had previously been enrolled in the pool and reached the lifetime maximum. Subsequently, after losing the risk pool coverage, the individual was able to enroll in a group health plan for several years. Now the group coverage has been lost, and the individual meets the statutory definition of an eligible individual. The State has asked for CMS guidance on whether the individual must be provided health coverage in the high risk pool as a Federally-eligible individual, despite having previously exhausted the risk pool coverage.

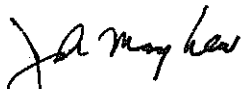
As noted above, under Federal law, States with alternative mechanisms must provide access to individual coverage for <u>all</u> Federally-eligible individuals, without exception. Under section 2762 of the PHS Act, Federal law would preempt any State laws that prevent the application of sections 2741 and 2744, or any of the other PHS Act requirements that apply to the individual market. If the high risk pool is the sole way for the State to comply with the Federal requirement, then State rules, such as lifetime limits, that would otherwise bar access to the pool cannot be applied in the case of a Federally-eligible individual. (The requirement can still be applied for other, non-Federally-eligible applicants to the high risk pool.)

Accordingly, all such individuals must be provided access to individual coverage regardless of whether they previously reached a maximum lifetime benefit amount in either the alternative mechanism, or other type of coverage. Applying the State law in a way that would have the effect of not providing coverage to all Federally-eligible individuals would raise serious doubt about whether an alternative mechanism is acceptable. The States can choose to provide access to coverage either through the alternative mechanism or through any other means that is

comparable to comprehensive coverage in the State's individual market. Once the individual is re-enrolled (in the alternative mechanism or other coverage) as a Federally-eligible individual, the individual's coverage can be limited again to the lifetime benefit amount in the coverage provided that it is comparable to the lifetime benefit limits in coverage offered in the private individual health insurance market. (The status of being an eligible individual is only relevant for purposes of **obtaining** coverage.)

If you have any questions regarding this matter, please feel free to contact me at james.mayhew@cms.hhs.gov or at 410-786-9244.

Sincerely,



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