TED STRICKLAND
GOVERNOR
STATE OF OHIO

Executive Order 2010 – 12S

Immediate Adoption of Rules Maximizing Access to Health Insurance for Children Under Age 19

1. **Children Under Age 19 With Pre-existing Medical Conditions Are Now Better Protected From Being Denied Health Insurance.** For policy years beginning on and after September 23, 2010, the recently enacted federal health care reform law better protects children under age 19 from being denied health insurance coverage because they have a pre-existing medical condition. In particular, it prohibits insurers selling new insurance policies which cover children under age 19 from denying coverage, or from imposing limitations or exclusions on that coverage, to children with a pre-existing health condition.

2. **Health Insurers Are Concerned About Exposure To Unfair "Adverse Selection" Financial Risk.** When those buying a type of insurance are more likely to have claims than would be expected in the general population of those eligible to buy the insurance, the phenomenon of "adverse selection" is occurring. Adverse selection exposes insurance companies to unfair financial risk because the pool of those insured disproportionately includes those who will be making claims. Insurers have told the United States Department of Health and Human Services that they are concerned that insurance for children with pre-existing medical conditions will only be purchased for brief periods of time when the purchaser knows that the child will need medical care. Because insurance companies can choose to entirely avoid selling individual health insurance policies to children under age 19, their desire to avoid the financial risk associated with carefully timed insurance purchases for children with pre-existing medical conditions may lead some insurance companies to stop selling individual health insurance policies to all Ohio children under age 19.

3. **Insurers Can Be Protected From Adverse Selection Risk Through Carefully Managed Insurance Enrollment Procedures.** Requiring all insurers selling individual insurance policies for children under age 19 to accept insurance

enrollments for children at the same time, and for the same length of time, during specified "open enrollment periods", will provide a level playing field for insurers. That, in turn, will encourage insurers to continue to make coverage available to children under age 19. Thus, setting specific dates for "open enrollment periods" for those seeking to purchase insurance for children with pre-existing medical conditions, will result in predictable access to coverage for those children. Guidance regarding the implementation of the federal health care reform law from the United States Department of Health and Human Services permits insurers in the individual market to restrict enrollment of children under 19 to specific "open enrollment" periods to address carrier concerns over adverse selection.

4. **Prescribing Open Enrollment Periods For Health Insurance for Children Under Age 19 By Administrative Rule.** The Department of Insurance has drafted an administrative rule to establish adequate and consistent open enrollment periods in the Ohio insurance market in order to mitigate the adverse selection concerns discussed above. Implementation of the rule will better assure access to health insurance coverage to children across Ohio.

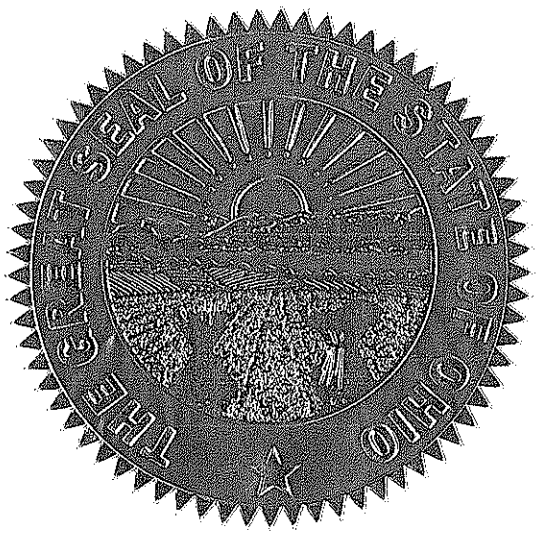
5. **The Rule Must Take Effect Immediately.** The law prohibiting health insurers from denying coverage to children under age 19 due to a preexisting condition is in effect for policy years beginning on and after September 23, 2010. Because that law is already in effect, the rule establishing a consistent statewide process for open enrollment must go into effect immediately in order to accomplish its desired goal of maximizing access to health care insurance to all Ohio children.

6. **Procedure for Immediate Enactment of Rule Changes.** Section 119.03(F) of the Ohio Revised Code authorizes the Governor, on the request of a state agency, to suspend the normal rule-making procedures with respect to a specific rule when an emergency exists necessitating the immediate adoption, amendment, or rescission of the rule. When a determination is made, the agency may immediately adopt, amend, or rescind that rule, but the rule is valid for only ninety (90) days.

7. **Determination of an Emergency.** I believe that an emergency exists justifying the suspension of the normal rule-making process when the failure to act immediately would negatively impact the citizens of Ohio. The Ohio Department of Insurance has asked me to determine, and I have determined, that the failure to immediately implement a new rule regarding open enrollment periods for health insurance for children under the age of 19 may result in insurers refusing to offer individual health insurance coverage to those children, subjecting children across the state to an unnecessary risk of being unable to access health insurance. Lack of access to health insurance increases the risk of serious health concerns going unattended to. Therefore, an emergency exists necessitating the immediate adoption of an administrative rule in this regard.

8. **Authorization for Immediate Rule Implementation.** Accordingly, the normal rule-making procedures are suspended with respect to the adoption of rule 3901-8-14 of the Ohio Administrative Code regarding open enrollment for children under 19 in the individual market. ODI may, therefore, adopt this rule immediately by electronically filing it with the Secretary of State, the Director of the Legislative Service Commission, and the Joint Committee on Agency Rule Review.

9. I signed this Executive Order on September 26, 2010, in Columbus, Ohio, and it will expire at the end of the ninetieth day it is in effect, December 25, 2010.



Ted Strickland

Ted Strickland, Governor

ATTEST:

Jennifer Brunner, Secretary of State