

August 11, 2010

Amy Turner
Beth Baum
Office of Health Plan Standards and Compliance Assistance
Employee Benefits Security Administration
Room N-5653
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Attention: RIN 1210-AB41

Dear Ms. Turner and Ms. Baum:

The Children's Defense Fund (CDF) is pleased to have the opportunity to comment on the Interim Final Rules for Group Health Plans and Health Insurance Issuers Relating to Dependent Coverage of Children to Age 26 under the Patient Protection and Affordable Care Act (the Affordable Care Act) as amended by the Reconciliation Act. The Act and the regulations clarify that plans and issuers that make available dependent coverage of children must make coverage available for children until reaching age 26, with only one time limited exception. They make clear that many of the previous conditions attached to dependent coverage of adult children can no longer be applied to young adults or to minors covered by their parent's plans.

CDF's Leave No Child Behind® mission is to ensure every child a *Healthy Start*, a *Head Start*, a *Fair Start*, a *Safe Start* and a *Moral Start* in life and successful passage to adulthood with the help of caring families and communities. CDF provides a strong, effective and independent voice for *all* the children of America who cannot vote, lobby or speak for themselves. We pay particular attention to the needs of poor and minority children and those with disabilities. CDF educates the nation about the needs of children and encourages preventive investments before they get sick, drop out of school, get into trouble or suffer family breakdown.

CDF has worked for many years, in collaboration with others, to expand health coverage to children and youths that is comprehensive, accessible and affordable, recognizing how important health care is to children's transition to and success in adulthood. Yet today, 10.2 million of the 29.5 million young adults in America – or 1 in 3 -- is uninsured leaving them particularly susceptible to poor health outcomes and high medical bills. The Affordable Care Act's extension of dependent coverage to age 26, coupled with the creation of the temporary "high risk pool", the expansion of Medicaid that will take effect in 2014, and the option of the catastrophic plan can go far in reducing the number of young adults without health insurance. The new statutory provisions and the interim final rule will help prevent health insurance companies from restricting coverage to these young adults. Given that only seven states currently extend dependent coverage to non-students to age 26 or older in both individual and group health plans, this is a significant move in the right direction. It will help young people who

are not students and also assist young adult children after they graduate from college and before they find employment.

The interim final regulations build upon the Affordable Care Act's provisions in very helpful ways. The broad definition of dependent will ensure health coverage for a large number of previously uninsured young adults through their parents' health insurance plans and without penalty based on their residency, geographic status, student status, marital status or financial independence. The latter is especially important because it will no longer require that the young adult be a tax dependent and therefore documentation of tax status will be unnecessary. The law's prohibition on varying dependent's premiums with age is consistent with the law's other provisions to limit discrimination in the health insurance market and we see this particular provision as critical to expanding coverage to the young adult population. We are also pleased that the regulations require that insurers provide prominent notice about the extended coverage, but recommend ways to strengthen this provision.

Our comments and recommendations below are intended to further strengthen the likelihood that a broad group of young adults to age 26 will know about and be able to receive health coverage through their parent's plans, that full accommodation is made for youths with pre-existing conditions, and that none of these young adults will experience gaps in coverage as they move to and from health coverage through their own employer. Our comments and recommendations build on comments on the interim final regulations submitted to the Department on August 3, 2010, by the Young Invincibles and 14 other public health, grassroots, patient and consumer rights advocacy organizations.

Include Step-Children, Adopted Children, and Children Being Raised by Guardians or Relatives in the Definition of Child

CDF is pleased the regulations allow for an expansive definition of a dependent based solely on the relationship between a child and the participant and do not allow plans or issuers to discriminate against young adults based on their residential, marital, or student status, or financial dependence or independence.

Generally children who were eligible for coverage as children on their parent's plan would continue to be eligible as dependents to age 26. In defining the relationship between a child and the participant, we are concerned that there are several groups of children that may not be included unless they are specifically mentioned in the regulations. They include stepchildren, adopted children, and children being raised by guardians or other relatives who have not been adopted but have been eligible for the guardian's or caregiver's health insurance plan as children. While many insurance plans require that a child be a birth, step or adopted child to be eligible for a caregiver's health insurance plan, it is important to ensure that the last group of children – those being raised by legal guardians or other relatives – does not fall through the cracks. If a young adult was eligible for their caregiver's insurance while a child, they should continue to be eligible as a dependent to age 26 provided that other eligibility requirements are met.

Recommendation: Revised regulations or guidance should be issued that makes it clear that when determining who is a dependent child for purpose of the dependent coverage extension, child shall include birth children, stepchildren, and adopted children, and other children raised by a guardian or

relative. Children in this last category would be children being raised by a guardian or relative and eligible for coverage under their caregiver's health plan as children.

Clarify the Time-Limited Exemption for Young Adults with Employer-Sponsored Insurance

Congress, by passing the Affordable Health Care Act, made clear that it wanted to increase the number of young adults with health coverage. It therefore included only one exception in defining who the dependent children are who are eligible under their parent's insurance plans, and even that is time limited. Prior to January 1, 2014, grandfathered health plans that are group health plans may exclude an adult child who has not attained age 26 from coverage if the adult child is eligible to enroll in an eligible employer-sponsored health plan other than a group health plan of the parent. In 2014, children up to age 26 can decide to stay on their parent's employer plan even if they have another offer of coverage through an employer.

CDF is concerned that the regulations as drafted to not take steps needed to ensure that these young adults will only be denied coverage on their parent's plans once they are actually receiving coverage through their own employer. It is important that the regulations make clear that young adults may stay on their parents plan or enroll in their parents plan until they receive full coverage from an employer, clearly define what is and is not considered an employer plan for purposes of this provision, and clarify that insurance companies cannot impose burdensome requirements for determining whether or not a young adult has coverage through his or her employer. All of these improvements will help ensure that the goal of health reform is honored and that additional young adults will be insured.

Clarifying what constitutes employer-sponsored plans

While there is an exception until 2014 to the Affordable Care Act's requirement for dependent coverage to age 26 for youths in employer-sponsored plans, it is important that these plans provide coverage that is adequate and affordable. Regulations or guidance should clarify that young adults offered an inadequate employer sponsored plan should continue to have the option of enrolling in their parents' policy. For example, a plan that only offers coverage for specific illnesses or for injuries from automobile accidents or similar situations should not trigger the exemption.

In making these clarifications, the Department also should clarify how college-sponsored student health plans will be treated for purposes of dependent coverage under the new Act. These student health plans, like some of the plans noted above, may offer less generous benefits and lower annual and lifetime caps. Therefore it should be made clear that these student health program plans should not be treated as employer sponsored insurance. Instead, it should be made clear that a dependent adult child could obtain coverage under both his student health plan and his parent's health insurance coverage.

Recommendation: The regulations must make clear that, for purposes of the dependent coverage extension, the exempted benefit plans described in section 5000A(f)(3) of the Internal Revenue Code, as inserted by the Affordable Care Act, are not considered eligible employer sponsored insurance. The exclusions specified in section 5000A (f) (2) should also apply to the dependent coverage provisions.

The regulations should also clarify that a young adult may join a parent's grandfathered plan as a dependent regardless of whether that young adult has accessed to a student health plan through a college or university.

Ensuring that young adults truly have employer-based health coverage

For purposes of ensuring that young adults have affordable and adequate health coverage, it is not sufficient to say that they are "eligible" for such insurance from their employers without further clarification. The regulations should make clear that the young adults are actually receiving such health coverage before they can no longer participate in their parent's plans. Grandfathered plans should not be able to drop dependents while they wait for coverage from an employer.

Young people starting jobs often cannot enroll immediately in health plans. There may be a waiting period before a young adult may join the company's insurance (which under the Affordable Care Act may not exceed 90 days), but the law and regulations as proposed only state that the adult dependents must be "eligible to enroll" in an employer sponsored plan. It should be clarified that a person waiting for insurance would not yet be eligible to enroll and could remain on his or her parent's insurance while waiting.

Similarly, there may be some young adults with pre-existing conditions who will face exclusionary periods under employer plans and who should be allowed to remain on their parent's plan until they would be fully eligible for the care they need. A young adult facing a pre-existing condition exclusion could be eligible for employer sponsored insurance but lack the medical care he or she needs for a specific health or mental health condition. While many of these young adults might previously have had coverage which will help reduce the time a new insurer can exclude for a pre-existing condition, they may still face a gap in adequate coverage. These youth may be particularly vulnerable and in need of intensive medical services, and they should not be prevented from receiving them.

Recommendation: The regulations should be modified to state clearly that a grandfathered plan may only remove a dependent with employer-sponsored insurance when the dependent can receive full coverage under his or her employer sponsored plan. It should further state that a young adult who becomes eligible but is then subjected to a waiting period would not be considered eligible for employer coverage until the waiting period ends and the employer's plan begins providing full coverage to the young adult. Similarly the regulations should make clear that young adults with pre-existing conditions should not lose their parent's insurance if an employer plan does not pay for the medical care that a young person needs because of pre-existing condition exclusions or the extremely limited nature of the employer plan.

Protections against burdensome documentation requirements to demonstrate that employer coverage is not available for adult dependent children to age 26

Now that insurance companies have little ability to restrict coverage to dependents to age 26, there is less opportunity for plans to impose onerous documentation requirements to prove eligibility for coverage as was sometimes done in the past. However, we still have concern that, at least between now and January 2014, plans might instead divert all their attention to those young people who are working and make it extremely burdensome for them to demonstrate that they do not have access to coverage

under an employer plan. Guidelines are needed that suggest reasonable documentation requirements to use with dependents to age 26 to ensure that non-eligible dependents are not enrolled.

***Recommendation*:** The Departments should issues guidance for plans that outline reasonable documentation requirements to use with dependents who are eligible for coverage to age 26 to ensure that non-eligible dependents who have access to employer sponsored coverage are not enrolled in their parent's plan.

Strengthening Notice Requirements for Dependent Coverage

The Interim Final Regulations require that beneficiaries receive "prominent notice" about the new opportunity to enroll in health coverage based on this dependent coverage extension in the Affordable Care Act. However, the regulations do not adequately specify what constitutes prominent notice and should be strengthened to ensure notice is received by both the young adult dependent as well as the plan holder.

As this important new extended dependent coverage for young adults has been unveiled, there is still a lot of confusion about who is eligible, when they are eligible and for what they are eligible, despite the good efforts by the White House and the Departments, as well as the good work of organizations like the Young Invincibles. Clear information about the dependent coverage extension is key to its successful implementation. It is particularly important given that group health plans and insurers only have to give the adult dependent children 30 days to enroll in their parents' plans, although they may allow for a longer enrollment period.

Without appropriate notice, the millions of young adults expected to participate may not be reached. "Prominent notice" must be defined more specifically to ensure that the plan holders and dependents understand what is necessary for them to enroll in coverage prior to the enrollment period. Customary notice is not sufficient. The notice should include basic information about the benefit and the responsibilities of both the carrier and the beneficiaries. In describing the employer coverage exemption discussed earlier, it is important that the notice make clear that it only applies when the dependent is actually able to receive the coverage. Wherever possible, adult dependents as well as carriers should be notified of their ability to be covered under their parents plan. Language is important too as references to their ability to "remain on" the plan may be misinterpreted to mean that dependents that have not been on their parent's plans as young adults may not be covered.

***Recommendation*:** The Departments in the regulations must provide further specificity about notice of the extended dependent coverage that addresses who must receive it, what it must include, and how it must be delivered:

- **Notice to the dependent as well as the insurance carrier**. Currently the regulations only require that the notice go to the plan-holder. In addition, notice should at least be provided to adult dependent children currently enrolled in the plan, and where possible adult dependent children who may have been enrolled in the past. This is especially important since the eligible dependents may likely not be living with the plan holder, perhaps in a different city or state. It is also important in situations where each parent

has a separate policy and a dependent adult child is eligible in one but not the other that the dependent himself or herself gets the notice directly. As referenced earlier, the notice provided to all must make clear that adult dependent children are eligible for their parent's plans even if they have not bee enrolled previously as adults in their parents plan. A likely scenario in the past, for example, has been that the young adults who went on to college remained on the plan, but those who did not have been without coverage. It needs to be clear that both groups may now be able to be enrolled.

- **Nature of the notice.** "Prominent" notice about the dependent coverage extension must be able to be distinguished from the myriad of communications insurance holders receive from their plans. It should be a customized notice that is a clear and conspicuous, stand alone document highlighting the availability of the new coverage option and how to enroll. It should also include resources where adult dependents can learn more about their eligibility and rights under the plan.

- **Delivery of the notice**. Notice to the dependent adult child must be by mail or electronic transmission. In-hand furnishing to the plan holder at his or her place of enrollment may be sufficient for the plan holder, but is certainly not an adequate way to get notice to the young adult about this new opportunity for him or her to continue coverage or resume coverage. In fact, given the importance of this new coverage, insurance plans should be encouraged to get from their plan holders the names and contact information of their adult dependents and to notify them on a one time basis about the new opportunity for coverage.

Enforcement of the obligation to provide health coverage to dependent adult children to age 26.

Group health plans and insurers essentially hold the futures of these young adults as they decide how to implement the extended health coverage for dependent young adult children to the age of 26. Comprehensive, affordable, and accessible coverage is key to their likelihood of success in both school and work. It is essential that there be mechanisms in place to ensure enforcement of the dependent coverage extension so that these young adults can be successfully enrolled. It will be critically important for both the states and federal government to have systems in place for monitoring and receiving complaints about barriers to implementation of the dependent coverage extension and for taking prompt action when a pattern of questionable practice seems evident. Insurance companies should also be encouraged to establish an ombudsman or other mechanism established to answer queries about the dependent coverage of adult children and the information should be readily accessible to young adults who are applying for coverage under their parent's plans and to their parents. Given that enrollment is to begin for plan years that begin on or after September 23, 2010, it is essential that the additional guidance recommended above should be provided immediately so as to prevent erroneous delays in establishing coverage of young adults dependent children.

Thank you for the opportunity to comment on and make recommendations about the Interim Final Regulations for Group Health Plans and Health Insurance Issuers Relating to Dependent Coverage of

Children to Age 26. We are optimistic about the opportunity to ensure millions of young adults who in the past have not been able to obtain health coverage. CDF appreciates your consideration of our comments and would be pleased to discuss any of our concerns or recommendations with you further. Thank you.

Sincerely yours,



MaryLee Allen
Director, Child Welfare and Mental Health



Kathleen King
Policy Associate, Child Health