

enrollment "for cause at any time." Interpreting this section for purposes of Medicaid, CMS regulations (42 CFR 438.56) require a state that restricts disenrollment to ensure access to a state fair hearing for any enrollee dissatisfied with a state agency determination that there is not good cause for disenrollment. CMS has not yet indicated whether it will apply this Medicaid regulation to CHIP programs. If it does, this requirement will be inconsistent with state law and California will require a state statute in order to comply. Similarly, we do not yet know which other Medicaid managed care regulations CMS will apply to CHIP programs as a result of CHIPRA. Depending on the outcome, California may need additional state statute to comply with CHIPRA.

Section 501 Mandatory Dental Coverage

Section 501(a) requires states to provide coverage of dental services necessary to prevent disease and promote oral health, restore oral structures to health and function, and treat emergency conditions. MRMIB's understanding, based on our conversations to date with CMS, is that HFP dental coverage complies.

Section 503 Medicaid Prospective Payment Rules for FQHC and RHC Services

Section 503 requires CHIP programs to apply the requirements of section 1902(bb) of the Act, relating to payment for services provided by federally-qualified health centers and rural health centers, in the same manner as those provisions apply under Title XIX of the Act. In California, implementation of these provisions will not be possible under the statutorily-defined negotiated managed care model and related statutory provisions related to plan pricing. Furthermore, the state statute does not authorize any delivery system other than the current managed care model for providing CHIP services. Therefore, a state statute is required in order to implement the Prospective Payment rules made applicable to CHIP through section 503. The Board has directed staff to pursue the changes needed to implement the Prospective Payment rules through an agreement to use the Medi-Cal payment system; this of course is subject to the agreement of the Legislature and the Governor.

MRMIB staff is in the process of analyzing CMS' SHO #10-004 concerning the Prospective Payment rules and may supplement this letter with additional concerns or questions based on that SHO letter. One matter of immediate concern is CMS' statement (SHO #10-004, p.4) concerning the implementation date for the new FQHC/RHC requirement. Specifically, CMS states that, "notwithstanding" the later effective date permitted by Section 3(b) of CHIPRA, separate CHIP programs requiring state legislation to comply with the new FQHC/RHC requirements should make CHIPRA-compliant payments retroactive to October 1, 2009. On its face, this CMS request conflicts with Section 3(b) of CHIPRA, under which a state plan "shall not be regarded as failing to comply with the requirements of such title [Title XXI] solely on the basis of its failure to meet such an additional requirement before the first day of the first calendar

Cindy Mann
May 24, 2010
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quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act.” Any requirement by CMS that states make the retroactive payments described in SHO #10-004 would be a de facto requirement of an earlier compliance date than the one explicitly permitted in CHIPRA.

Next Steps

MRMIB would appreciate CMS’ confirmation that, pursuant to section 3(b) of CHIPRA, the Secretary has determined that state legislation is required as described above; in California, this means that the effective date for these provisions will be January 1, 2011. As CMS provides further guidance concerning its interpretation of CHIPRA, it is possible that California will identify additional areas where state statute is needed. The Board looks forward to receiving CMS’ further guidance and working with CMS for the successful implementation of CHIPRA. Please contact me if you have any questions.

Sincerely,



Lesley Cummings
Executive Director

cc: Katie Marcellus, California Health & Human Services
Scott Carney, California Health & Human Services



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

May 10, 2010

The Honorable Nancy Pelosi
Speaker of the
House of Representatives
Washington, D.C. 20515

The Honorable Harry Reid
Majority Leader
United States Senate
Washington, D.C. 20510

The Honorable John Boehner
Minority Leader
House of Representatives
Washington, D.C. 20515

The Honorable Mitch McConnell
Minority Leader
United States Senate
Washington, D.C. 20510

Dear Speaker Pelosi, Senator Reid, Senator McConnell, and Representative Boehner:

Just over a month ago, Congress passed and President Obama signed the Affordable Care Act. We wanted to provide an update on the Administration's implementation of this landmark new law that will give the American people control over their own health insurance by holding insurance companies accountable, bringing down costs, and giving Americans more insurance choices.

Over the last month, the Administration, including the Departments of Health and Human Services, Labor, and Treasury, has worked expeditiously but carefully to implement the early insurance market reforms called for in the Affordable Care Act and to strengthen the health care system for all Americans. We have made significant progress. A brief update on our implementation efforts is provided below.

Adult Child Coverage: Today, the Departments of Health and Human Services, Labor and Treasury issued new regulations to extend coverage to young adults by allowing them to stay on their parents' health care plan until age 26. Before Congress passed the Affordable Care Act, many health plans and issuers could – and, in fact, did – remove young adults from their parents' policies because of their age, leaving many college graduates and others with no insurance. Today, about 30 percent of young adults are uninsured, representing more than one in five of the uninsured Americans. This rate is higher than for any other age group. The Affordable Care Act and the regulations announced today will help close the coverage gap for young Americans. While the new provision takes effect for policies and plan years beginning on or after September 23, 2010, more than 65 insurance companies have voluntarily agreed to provide coverage to young adults before the deadline. On April 27, the Internal Revenue Service released new guidance specifically stating that children can be covered tax-free on their parents' health insurance policies. According to analysis by the Department of Health and Human Services of this provision, adding young adult coverage would increase average family premiums by an average of 0.7 percent, while allowing 1.2 million young Americans coverage under their parents' plans through employers or the individual market.

Pre-existing Conditions: Effective for policies or plan years beginning on or after September 23, the Affordable Care Act will prohibit health insurers from excluding coverage of children because of pre-existing conditions. We will soon be issuing regulations to implement that important policy. When questions were raised about whether insurers would work to avoid covering children with pre-existing conditions, we called on the nation's health insurance companies to provide coverage to these vulnerable Americans. On March 29, health insurance companies agreed to ensure that children with pre-existing conditions were not denied coverage.

Adults with pre-existing conditions also suffer under the old industry rules that allowed insurance companies to carve out needed benefits, charge sky-high rates or deny coverage altogether. In 45 states across the country, insurance companies can discriminate against people based on their pre-existing conditions when they try to purchase health insurance directly from insurance companies in the individual insurance market. In 2014, discrimination based on pre-existing conditions will be banned under the Affordable Care Act. In the meantime, a new transitional high-risk pool program was included to help provide affordable health insurance coverage to people who are uninsured because of pre-existing conditions. This high-risk pool program will operate until health insurance exchanges are implemented in 2014. States may choose whether and how they participate in the program, which is funded entirely by the federal government. If states choose not to run the program, individuals can apply for insurance from a federal fallback high-risk pool. The program begins on July 1, 2010.

Over the course of the last month, the Administration has engaged in significant outreach to determine the needs of states in implementing the program. As of May 3, 30 states have indicated that they want to operate their own transitional high-risk pools, while 18 have said they would prefer a federal fallback high-risk pool for eligible citizens in their state. For those that wish to run a state-based program, applications were sent today, May 10, to expedite the implementation. To ensure states can obtain all the information they need to establish this program, a working session will be scheduled in the near future to give states an opportunity to ask questions and receive technical assistance directly from our subject matter experts.

Early Retiree Reinsurance Program: On May 4, the Department of Health and Human Services issued a regulation implementing the \$5 billion early retiree reinsurance program, which will be launched on June 1, 2010, several weeks ahead of the June 21 start date required by law. We worked closely with large employers, early retirees, and other interested parties in developing this regulation. The Business Round Table released a positive statement in support of the program. Participating employment-based plans will receive reimbursement for a portion of the costs of certain medical claims associated with providing health benefits to early retirees age 55 through 64, as well as for retirees' spouses and dependents. The amount of this payment to the plan sponsor is 80 percent of the costs attributable to that claim, provided the amount of the claim is between \$15,000 and \$90,000. Both self-funded and insured plans may apply, including plans sponsored by private entities, state and local governments, nonprofits, religious entities, unions, and other employers.

Rescissions: Effective for policies or plan years beginning on or after September 23, the Affordable Care Act prohibits some of the worst insurance company practices, including the practice of rescinding coverage from policyholders when they become sick and need it most. We are pleased that the insurance industry announced they will immediately follow the new rules rather than wait for the new law to make it illegal and we will watch closely to ensure they keep their word.

Small Business: The Affordable Care Act provides tax credits to small employers who purchase health insurance for employees. An estimated 4 million small businesses nationwide could qualify for the tax credit, which will provide a total of \$40 billion in relief for small firms over the next 10 years. Small businesses can take advantage of the tax credit immediately, and, last month, the Internal Revenue Service released guidance and began delivering postcards to the estimated four million small businesses and tax-exempt organizations to make them aware of the tax credit.

Lowering Premiums: A new policy in the Affordable Care Act – the “medical loss ratio” – creates new incentives for insurance companies to be more efficient, and ensures that consumer premiums are being used to pay for medical care rather than excessive and unnecessary administrative costs. The law requires large-group plans to spend 85 percent of premium dollars (80 percent in the small group market) on clinical services and activities that improve health care quality. Insurers offering coverage in the small group and individual markets must allocate at least 80 percent of premiums to such services and activities while those in the large group market must spend at least 85 percent of premiums on benefits. It also calls for the National Association of Insurance Commissioners (NAIC) to establish uniform definitions and methods for calculating medical loss ratios. While the law requires NAIC to submit such definitions and methods for the Secretary’s review by December 31, 2010, at our request, NAIC has agreed to accelerate delivery to June 1, 2010.

Medicare Part D Doughnut Hole: As required by the new law, the U.S. Department of Health and Human Services plans to issue \$250 rebate checks to Medicare beneficiaries who have reached the “doughnut hole” in prescription drug coverage. We expect the first checks to be mailed on June 15, and additional checks to be mailed roughly every six weeks thereafter until the end of the year. The Centers for Medicare & Medicaid Services projects four million beneficiaries will receive a check in 2010 – about 80,000 of them in the June 15 initial mailing, followed by larger mailings throughout the summer and fall. As part of our effort to ensure seniors can afford the prescription drugs they need, we will increase efforts to prevent Medicare fraud and scams targeted at seniors related to the mailing of these rebate checks.

Over the course of the coming weeks, our team across government will continue to work diligently to produce the regulations and guidance necessary to implement this landmark new law, and we look forward to working with you to deliver the benefits of the Affordable Care Act to the American people.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathleen Sebelius". The signature is fluid and cursive, with the first name "Kathleen" written in a larger, more prominent script than the last name "Sebelius".

Kathleen Sebelius

cc: The Honorable Max Baucus, Chairman
Senate Committee on Finance

The Honorable Charles Grassley, Ranking Member
Senate Committee on Finance

The Honorable Tom Harkin, Chairman
Senate Committee on Health, Education, Labor and Pensions

The Honorable Michael Enzi, Ranking Member
Senate Committee on Health, Education, Labor and Pensions

The Honorable Henry Waxman, Chairman
House Committee on Energy and Commerce

The Honorable Joe Barton, Ranking Member
House Committee on Energy and Commerce

The Honorable Sander Levin, Chairman
House Committee on Ways and Means

The Honorable Dave Camp, Ranking Member
House Committee on Ways and Means

The Honorable George Miller, Chairman
House Committee on Education and Labor

The Honorable John Kline, Ranking Member
House Committee on Education and Labor