

July 13, 2011

Steve Larsen, Director  
Center for Consumer Information and Insurance Oversight  
Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
Attention: CMS-9999-FC  
P.O. Box 8010  
Baltimore, MD 21244-8010

**RE: Comments on individual and small group coverage sold through associations, CMS-9999-FC, Rate Increase Disclosure and Review final rule with comment period.**

Dear Director Larsen,

The Center for Public Policy Priorities (CPPP) applauds the Center for Consumer Information and Insurance Oversight (CCIIO) for taking measures to protect consumers and working to implement a major goal of the Patient Protection and Affordable Care Act (ACA): expanding health insurance coverage by controlling costs. We urge you to protect consumers by applying rate review and disclosure provisions to association health plans (AHPs) and multi-state trusts sold to individuals and small businesses. Creating a loophole in the regulation of AHPs could threaten the success of the ACA's insurance reforms and the viability of health insurance exchanges.

CPPP is a nonpartisan, nonprofit policy institute committed to improving public policies to better the economic and social conditions of low- and moderate-income Texans. Along with other issue areas, CPPP works on increasing access to quality, affordable health insurance. Our work includes research and education on public policies to increase accountability and transparency of health insurance premiums in Texas.

According to data collected by the Texas Department of Insurance, AHP premiums totaled over \$221 million in Texas in 2010. This represents nearly 13 percent of the individually underwritten health insurance market in Texas. Though Texas does not collect data on the number of consumers who buy through AHPs, it is clear that a notable share of the individually underwritten market is sold through AHPs.

In Texas, AHPs sold to individuals are regulated as group products (but not specifically small or large group products). Rates for AHPs and out-of-state trusts sold in Texas are neither filed with the Department of Insurance, nor reviewed to ensure they are reasonable.

Texas consumers in AHPs should not lack important consumer protections that help ensure reasonable rates simply because they happened to enroll in an AHP or similar plan. Unless the Department of Health and Human Services (HHS) explicitly ensures that association plans sold to individuals are regulated as part of the individual market and small group association plans are regulated as part of the small

group market, loopholes and inconsistencies in regulations will mean that many Texas consumers and consumers across the nation will have coverage that does not have to comply with rate review regulations intended to help bring down costs for consumers and increase transparency. Without being subject to rate review, AHPs may raise premiums at their discretion without accountability, oversight, or guarantee that increases are based on reasonable estimates and data. It would be a major step backward if AHPs are allowed to avoid this important consumer protection provision and continue to raise their rates without justification to regulators or consumers.

If AHPs are not appropriately considered individual or small group coverage under the ACA, not only would AHP coverage evade rate review protections, it may also escape critical 2014 reforms, such as the requirement to cover the essential benefits package and the elimination of health status underwriting. Many of the most important ACA protections for individuals and small groups – the consumers with the least power in the insurance market – would be nullified if states can use definitions that exempt AHPs from individual and small group market rules.

If the ACA fails to consider AHPs as individual and small group plans, insurers will have an incentive to offer more AHP options to avoid the ACA requirements for coverage in these markets. This would significantly limit the reach of the ACA's consumer protections. In addition, AHPs would potentially cherry pick who they cover, avoiding ill or high-cost individuals and small businesses. Insurance companies selling through associations have proven highly adept at risk selection and could attract a significant percentage of healthy individuals and groups. If they are exempt from the ACA's rules for individual and small group plans, AHPs could undermine states' health insurance exchanges by attracting healthy people away from the exchange.

Therefore, it is critical that HHS clearly and consistently classify AHPs as individual plans if they are sold to individuals and small group plans if they are sold in the small group market. This rule must apply across all requirements of the ACA, including rate review and other regulations. Categorizing AHPs as individual or small group coverage would be consistent with their definition under Health Insurance Portability and Accountability Act (HIPAA), which regulates AHPs as individual plans if they are marketed to individuals and as small group plans if marketed to small groups.<sup>1</sup>

We appreciate your attention to our comments to ensure that the ACA provides consumers in Texas and across the country with all of the protections that Congress intended. If you would like additional information, or to discuss this issue further, please do not hesitate to contact me at [pogue@cphp.org](mailto:pogue@cphp.org) or 512-320-0222, ext. 117.

Sincerely,



Stacey Pogue,  
Senior Policy Analyst

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<sup>1</sup> Department of Health and Human Services. Insurance Standards Bulletin 02-02. August 2002.  
<http://www.cms.gov/HealthInsReformforConsume/downloads/HIPAA-02-02.pdf>