

December 26, 2012

Secretary Kathleen Sebelius  
U.S. Department of Health and Human Services  
200 Independence Avenue, S.W.  
Washington, D.C. 20201

**RE: CMS-9972-P, Patient Protection and Affordable Care Act, Health Insurance Market Rules; Rate Review, RIN 0938-AR40**

Dear Secretary Sebelius:

The Center for Public Policy Priorities (CPPP) respectfully submits the following comments to the Department of Health and Human Services (HHS) and Centers for Medicare & Medicaid Services (CMS) in response to the proposed regulations on health insurance market rules and rate review released in the Federal Register on November 26, 2012.

CPPP is a nonpartisan, nonprofit 501(c)(3) policy institute established in 1985 and committed to improving public policies to better the economic and social conditions of low- and moderate-income Texans. Improving access to health care for Texans has been at the core of our mission and activities since our founding. In addition to its long-time focus on public health benefit programs, for the last few years, CPPP has also focused on making private health insurance more affordable and accessible. For example, we advocated for the creation of Healthy Texas, a successful small group public reinsurance program that employs many of the same consumer protections included in the Affordable Care Act and this rule, such as modified community rating.

CPPP applauds CMS for releasing these rules that will expand access to health insurance for millions of Texans. These rules help revolutionize systems to sell health insurance to individuals and small businesses, which for too long limited access to coverage on the basis of health status, gender, group size, and occupation. We support the standardization of rate setting and enrollment practices as set forth in the rule, including provisions that align standards between the exchange and outside markets, and strongly urge CMS to implement these rules fully as of January 1, 2014, as is required by the ACA.

There are a few specific areas on which we would like to comment to support consumer access to high quality health care.

## **Recommendations for Additions to the Rule**

### **Require issuers to provide family coverage**

We strongly recommend that you make it clear in this rule that issuers must offer family-based coverage if they elect to offer individual coverage. It is not enough to say that families could simply purchase multiple individual plans, which would subject families to separate deductibles and out-of-pocket maximums for each individual within the unit. This does not appear to be what Congress intended, given that it explicitly called for allowing rating variation by individual and family tiers.

### **Provide a floor for the definition of family members**

We recommend that the final rule specify minimum categories of family members who should be included in a family policy. Minimum categories defined at the federal level will create some consistency among states and help ensure that families can be covered together while still allowing states and insurers the flexibility to identify additional categories of dependents.

The final rule should require that states, at a minimum, allow the following children to be included in a family unit for insurance purposes: biological children, adoptive children, step-children, grand children (if being cared for by the grandparent), children of other caretaker relatives, foster children, children under guardianship, and any other child who would be considered a tax dependent under IRS rules for purposes of the APTC. Without such clarity, there is a risk that in some states adults who are caring for children and responsible for their health and well-being will not be able to purchase coverage on their behalf.

We further recommend that CMS create a broad federal definition for family composition. Currently, many different types of families, including non-legally recognized same-sex partners and their children, are enrolled in family insurance plans. The final rule should account for different types of family compositions and ensure rating rules are broad enough to permit issuers to rate and continue to offer coverage to all families.

### **§147.102 Fair health insurance premiums**

We applaud CCIIO for creating standardized rating methodologies that are highly consistent across issuer and across the insurance market, both inside and outside Exchanges. This alignment increases transparency for consumers and helps to simplify the provision of tax credits.

### **Premium variation based on age**

We strongly support implementing 3:1 age bands for the individual and small group markets by January 1, 2014. We also support the requirement in §147.102 (a)(1)(iii) that age-related premium variation is determined and applied at the time of policy issuance and renewal, which assures a consistent premium that will not change on a person's birthday. Consistency of premiums throughout the year makes budgeting easier for enrollees and will simplify administration of premium tax credits. is especially important for administering tax credits.

### **Rating areas**

We believe that allowing up to 7 geographic rating areas in a state should be sufficient. Even in a state as large as Texas, our state high risk pool has just 6 rating areas. Each of Texas' 49 3-digit zip codes is assigned to one of the 6 tiers, with between 2 and 23 3-digit zip codes assigned to each.

### **§147.104 Guaranteed availability of coverage**

We support the proposed guaranteed issue and renewal regulations that allow everyone to enroll in coverage and maintain that coverage. In particular, we strongly support the open enrollment periods aligned with those for Exchanges.

### **§147.104 (b)(2) - Special Enrollment Periods**

The rule proposes a 30-day special enrollment in the individual market following a triggering event. We urge HHS to instead adopt a 60-day election period. A 60-day time frame will benefit consumers because it is consistent with standards established for special enrollment in exchange coverage and provides sufficient time for individuals to make an informed enrollment decision in the wake of a triggering event, such as loss of employment and death of a covered employee.

We believe that HHS should use its discretion under the law to ensure that qualifying events for special enrollment periods in the individual and small group markets outside of an exchange are consistent with those that are required inside of exchanges. Consistent special enrollment rights will make it easier for consumers to know when they may enroll in coverage or change their plan and will help protect the exchanges from the risk of adverse selection from plans offered in the outside market.

### **§147.104(e) – Marketing**

We strongly support the rule's application of marketing and benefit design requirements to *all* issuers in the individual and small group markets. This will help prevent issuers from employing marketing practices or benefit designs to cherry pick healthy enrollees and discourage the enrollment of individuals with significant health needs. We urge that the final rule clarify that market and benefit design requirements should explicitly adhere to §1557 of the ACA, which prohibits insurers from discriminating based on race, color, national origin, present or predicted disability, age, sex, gender identity, sexual orientation, expected length of life, degree of medical dependency, quality of life, or health conditions. We urge CMS to provide guidance to inform issuers, state regulators, and the public about what constitutes a discriminatory marketing practice or benefit design, and to create a plan to monitor and enforce non-discrimination provisions of the ACA.

### **§ 156.80 - Single Risk Pool**

We support regulations requiring issuers to maintain a single risk pool for their enrollees in each of the individual and small group markets. We believe the single risk pool requirement should be clear and broadly applicable, and are concerned about the ability to insurers to continue to segment risks through the creation of subsidiaries or affiliate companies that pool their risk separately from the parent company. A subsidiary of at

least one large issuer in Texas recently applied to change its authorization. The subsidiary company writes relatively little business in the state today, but could possibly be used in 2014 to write business only inside or outside of the exchange, presumably without pooling its risk with that of the parent company. It is possible that many issuers in Texas have existing subsidiaries or affiliates that could be used to circumvent the single risk pool rule. We urge CMS to consider ways to prevent insurers from circumventing the single risk pool requirements through subsidiaries in the final rule.

#### **§150.101 Enforcement in insurance markets**

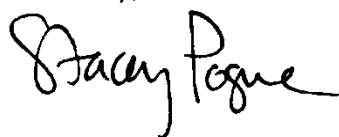
It is critical that CMS ensures meaningful enforcement of market reforms. CPPP recommends that CMS take a strong stance on enforcement and advise states that if they are unwilling or unable to substantially enforce the consumer protections in the ACA, then CMS will fulfill legal obligations and step in to enforce so consumers receive their full rights under the law. In assessing states' enforcement, CMS should look at both enactment of state conforming legislation and actual enforcement (i.e., the conduct of rate and form reviews, market conduct examinations, and responding to consumer complaints).

#### **§ 154.215 Submission of rate filing justification**

We strongly support requiring issuers to submit justifications for all individual market and small group rate increases to HHS. Consumers in Texas today cannot readily get information on rate increases under 10 percent. Increasing transparency for all rate increases will benefit consumers.

Thank you for consideration of our comments on this important rule. We believe that these regulations will help ensure millions of Texans have access to coverage at a fair price. If you have any questions regarding these comments, please contact Stacey Pogue, senior policy analyst with the Center for Public Policy Priorities at [pogue@cphp.org](mailto:pogue@cphp.org) or (512) 320-0222 x 117.

Sincerely,

A handwritten signature in black ink that reads "Stacey Pogue". The signature is written in a cursive, flowing style.

Stacey Pogue  
Senior Policy Analyst