PROGRAM MEMORANDUM
INSURANCE COMMISSIONERS
INSURANCE ISSUERS

Department of Health and Human Services

Centers for Medicare and Medicaid Services

Transmittal No. 05-01 **Date** March 2005

Title: Insurance Standards Bulletin Series--INFORMATION

Subject: Coverage through a Foreign Government, the U.S. Government, and a State Children's Health Insurance Program, is Creditable Coverage for Purposes of Identifying Eligible Individuals under HIPAA

Market: Individual Market Issuers, Risk Pools, and Other Entities that are Required to Offer Coverage to Eligible Individuals

I. Purpose

This bulletin clarifies that:

- Any public health plan, including a plan established or maintained by the U.S. government, or a foreign country, or by any political subdivision of the U.S. government or a foreign country, is creditable coverage for purposes of identifying eligible individuals under Part B of title XXVII of the Public Health Service Act (PHS Act).
- Public health plan coverage is creditable coverage, regardless of whether it meets the definition of health insurance coverage.
- Regardless of whether a State Children's Health Insurance Program (SCHIP) is a stand-alone separate program, a SCHIP Medicaid expansion program, or a combination program[i], it is creditable coverage, whether it is provided through a group health plan, health insurance, or any other mechanism.

II. Background

The interim final regulation implementing the individual market provisions of title XXVII of the PHS Act provides that eligible individuals, as defined in 45 CFR 148.103, are entitled to purchase a choice of health care coverage, without any preexisting condition exclusion[ii]. That regulation specifies that one criterion for qualifying as an eligible individual is that "(1) The individual has at least 18 months of creditable coverage (as determined under 45 CFR 146.113) as of the date on which the individual seeks coverage under this part." (There are several other criteria, all of which an individual must meet in order to qualify as an eligible individual[iii].) 45 CFR 146.113 is part of the interim final regulation implementing the group market provisions of title XXVII. One of the ten forms of creditable coverage listed in that regulation at 45 CFR 146.113 is a public health plan, which that regulation defines as "any plan established or maintained by a State, county, or other political subdivision of a State that provides health insurance coverage to individuals who are enrolled in the plan." 45 CFR 146.113(a)(1)(ix).

On December 30, 2004, the Centers for Medicare & Medicaid Services published a final regulation that amended portions of the interim regulations implementing the group market provisions of title XXVII[iv]. The final regulation expands the definition of a public health plan in section 146.113(a)(1)(ix), to "any plan established or maintained by a State, the U.S. government, a foreign country, or any political subdivision of a State, the U.S. government, or a foreign country that provides health coverage to individuals who are enrolled in the plan." Additionally, the final regulation at 45 CFR 146.113(a)(1)(xi) identifies title XXI of the Social Security Act (State Children's Health Insurance Program (SCHIP)) as a form of creditable coverage. SCHIP coverage was not specifically identified as creditable coverage in the interim final group market regulation[v].

III. Foreign Government, U.S. Government, and SCHIP Coverage, is Creditable Coverage for Purposes of Determining Who is an Eligible Individual

The interim final individual market regulations at 45 CFR Part 148 continue to cross-reference 45 CFR 146.113 for purposes of determining whether an individual has 18 months of creditable coverage. Therefore, the expanded definition of creditable coverage in the final group market regulation (i.e., the expanded definition of the "public health plan" category of creditable coverage, as well as the new category consisting of SCHIP coverage), applies in determining whether a given individual is an eligible individual. For example, coverage through Britain's national health care program, or through the U.S. Veterans Administration, neither of which previously satisfied the definition of public health plan under the interim final group market regulation, must be considered creditable coverage for that purpose. Also, coverage through any arrangement that satisfies the definition of public health plan in the group market final regulation must be considered creditable coverage for this purpose, regardless of whether the coverage constitutes health insurance coverage[vi]. Regardless of whether a SCHIP program is a stand-alone separate program, a SCHIP Medicaid expansion program, or a combination program, it is creditable coverage, whether it is provided through a group health plan, health insurance, or any other mechanism[vii].

Where to get more information:

The interim final regulations cited in this bulletin are found in Parts 144, 146 and 148 of the Code of Federal Regulations (45 CFR 144, 146, 148). The final regulation cited in this bulletin is found in the Federal Register (69 FR 78720, December 30, 2004). Information about the PHS Act is also available on CMS' HIPAA health insurance reform Web site at http://www.cms.hhs.gov/hipaa1

If you have any questions regarding this bulletin, call the HIPAA Health Insurance Reform Help Line toll-free at 1-877-267-2323, extension 61565.

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[i] States have three options in creating their State Children's Health Insurance Programs. They can: (1) create a stand-alone, separate child health program, (2) expand coverage under Medicaid (a SCHIP Medicaid expansion program), or (3) do both and create a combination program that includes both components. 42 USC 1397(aa)(a)(1)-(2).

[ii] Such coverage is provided either pursuant to federal fallback standards in 45 CFR 148.120, or through a state alternative mechanism that satisfies the standards in 45 CFR 148.128.

[iii] 45 CFR §148.103. The other criteria, also listed in this section of the regulation, are that (2) The individual's most recent prior creditable coverage was under a group health plan, governmental plan, or church plan (or health insurance coverage offered in connection with any of these plans). (3) The individual is not eligible for coverage under any of the following: (i) A group health plan. (ii) Part A or Part B of Title XVIII (Medicare) of the Social Security Act. (iii) A State plan under title XIX (Medicaid) of the Social Security Act (or any successor program). (4) The individual does not have other health insurance coverage. (5) The individual's most recent coverage was not terminated because of nonpayment of premiums or fraud. (For more information about nonpayment of premiums or fraud, see 45 CFR 146.152(b)(1) and (b)(2)).(6) If the individual has been offered the option of continuing coverage under a COBRA continuation provision or a similar State program, the individual has both elected and exhausted the continuation coverage.

[iv] 69 FR 78720 (December 30, 2004).

[v] Following the enactment of title XXVII of the PHS Act and the publication of the group market interim final regulation, Congress specifically provided that SCHIP coverage is creditable coverage under title XXVII. See Section 2109 of the Social Security Act, enacted by section 4901 of the Balanced Budget Act of 1997, Pub. L. 105-33, 111 Stat. 567.

[vi] The interim final individual market regulation, the interim final group market regulation, and the final group market regulation all define health insurance coverage as "benefits consisting of medical care (provided directly, through insurance or reimbursement, or otherwise) under any hospital or medical service policy or certificate, hospital or medical service plan contract, or HMO contract offered by a health insurance issuer." All three regulations define health insurance issuer as "an insurance company, insurance service, or insurance organization (including an HMO) that is required to be licensed to engage in the business of insurance in a State and that is subject to State law that regulates insurance (within the meaning of section 514(b)(2) of ERISA). This term does not include a group health plan." (see 45 CFR 144.103, and 69 FR 78782 (September 30, 2004).

[vii] Like the interim final group market regulation, the final group market regulation identifies group health plans, as well as title XIX of the Social Security Act (Medicaid), other than coverage consisting solely of benefits under section 1928 of that Act (the program for distribution of pediatric vaccines), as creditable coverage. See 45 CFR 146.113(a)(1)(i) and (iv), respectively, at 69 FR 78788. (December 30, 2004).