April 8, 2011

Joel Ario  
Office of Consumer Information and Insurance Oversight  
Department of Health and Human Services  
Hubert H. Humphrey Building  
200 Independence Avenue, SW  
Washington, DC 20201

Dear Mr. Ario:

As national organizations dedicated to representing the interests of consumers, including consumers likely to enroll in catastrophic plans, we are writing to relay our concerns around the importance of regulatory guidance that provides the best possible health and financial outcomes for individuals who choose to purchase a catastrophic plan. Many of our groups met with your staff and other members of CCIIO and the HHS staff on February 10, 2010 to discuss our concerns regarding these health plans, which are created by section §1302(e) of the Affordable Care Act, and we appreciated the opportunity to do so. This letter provides additional information regarding some of the issues that we raised in that meeting.

As HHS continues to draft regulations surrounding the plans that will be available through exchanges in 2014, we urge you to take into account the interest of young adults and other individuals who qualify by requiring catastrophic plans to meet basic standards before they are allowed into exchanges or offered in the non-exchange market. The Patient Protection and Affordable Care Act (“ACA”) created catastrophic plans specifically for people under 30 and for those unable to afford other insurance. These plans are prohibited by law from providing any benefits aside from preventive services and three primary care visits before the enrollee pays almost $6,000 in cost-sharing. Basic regulatory protections are necessary to ensure that these plans are consistent with congressional intent, which is focused on providing consumers with access to basic primary and preventive care, and ensuring that they are well-aware of the greater cost-sharing required by these plans.

Indeed, an estimated 9.6 million currently uninsured Americans, including approximately 5.6 million young adults under 30 and 4 million individuals above the 8 percent threshold, could be prime targets for catastrophic plans. And, while premiums for these plans will be lower than other levels of coverage, catastrophic plans generally require levels of out-of-pocket expenses that young adults and consumers cannot afford. They also provide disincentives to seek routine care needed for many common but chronic conditions. As such, we urge the Secretary to issue regulations in line with congressional intent, namely, provide access to primary and preventive care while at the same time encouraging consumers to consider other more comprehensive options. Doing so will improve health outcomes and financial stability for this population, and keep young adults as satisfied consumers in the health insurance exchange market. Specifically, we ask that the Secretary:

a) make clear that all catastrophic plans must cover three primary care visits prior to consumers incurring full cost-sharing expenses, at no cost-sharing or with reasonable co-payments in line with limited cost-sharing requirements  
b) develop a definition of “primary care” visit that would ensure the key health care needs of Americans, including women, are met  
c) use aggressive sunshine provisions around these plans, which includes delineating which benefits do

1 Analysis based on 2009 Census numbers, Kaiser subsidy calculator.
not come before cost-sharing requirements are met, providing consumers with information on out-of-pocket costs, and including explicit and detailed comparisons to other available options.

a) Ensuring All Plans Offer Three Primary Care Visits before Cost-Sharing Requirements are Met

As an initial matter, HHS should issue regulations clarifying that all qualifying catastrophic plans must cover three primary care visits that must be excluded from burdensome cost-sharing requirements. The ACA requires that these visits are excluded from the catastrophic plans’ $6,000 cost-sharing requirements, and HHS should ensure that this intent is reflected in the regulatory language. The ACA subsection describing catastrophic plans mandates that they provide no benefits until an enrollee pays nearly $6,000 in cost-sharing, except that all such plans must cover at least three primary care visits. The language clearly intends that primary care must (not just can) be covered before cost-sharing requirements are met; any plan that provides coverage for primary care only after an enrollee pays nearly $6,000 does not meet the statutory standards for catastrophic health plans. It is essential that HHS reiterate this requirement clearly in rulemaking to avoid any confusion.

Additionally, HHS should clarify that the primary care visits excluded from the $6,000 cost-sharing requirements must be covered either with no coinsurance or co-pays, or reasonable cost-sharing that is consistent with co-pays or coinsurance the health insurance provider has in other health plans such as their bronze or silver plan. The primary care services were offered as a way to give young adults and other qualifying enrollees access to at least basic care, and allowing for high levels of burdensome cost-sharing would defeat the purpose of adding this important provision. In other words, a $100 or more co-pay for a simple primary care visit should not be allowed.

b) Preventive Care with No Cost-Sharing and Primary Care Visits

HHS should also ensure that individuals with catastrophic plans can access an adequate range of services with their preventive care options and three primary care visits that meet their standard health care needs. The ACA does not define primary care visits for purposes of the catastrophic plan and it is incumbent on the administration to use rulemaking to ensure visits cover basic health care needs. Consistent with direction and scope of the ACA, HHS should define primary care visit to include the full set of services Americans need to stay healthy. In fact, Congress developed the catastrophic coverage provision with the intent of regulating high deductible plans while still ensuring that Americans would have access to basic primary and preventive care. Catastrophic plans are intended to bring young people, and others, into the health insurance system by providing a low-cost option to those who cannot afford costlier, higher-quality plans. Generally, catastrophic plans provide such limited coverage that they may actually dissuade young enrollees from staying in the system – a consequence that is bad for everyone, given 1) that the success of reform relies on youth participation, and 2) the negative effect of uninsurance. Congress designed the catastrophic plan provision to prevent this. HHS should mitigate some of these coverage deficiencies by ensuring access to preventive care and “primary care,” ensuring that plan participants can access an adequate variety of services from providers including physicians, nurse practitioners, and other allied health professionals.

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2 See ACA § 1302(e).
3 Id.
4 Senator Snowe introduced the plan, and further added “Amendment 5” in the Finance Committee, which expanded coverage from originally only targeted at young adults 25 and younger, to those for whom premiums would be too expensive. The final version expanded eligibility up to age 30. Senator Snowe told media that the impetus behind such an amendment was a concern for affordability. See “Snowe won’t Back Any Immediate Public Option,” Bloomberg, October 22, 2009, available at http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aQyE8zXxtzYY.
i) **Clarify that Preventive Services Are Covered with No-Cost Sharing**

All new group health plans and health plans sold in the individual and small group markets must provide coverage for preventive services with no-cost-sharing. Indeed, the language in the ACA that creates catastrophic plans specifically references preventive coverage, stating that a plan can provide no benefits until it has incurred requisite cost-sharing “except as provided for in section 2713.”

Section 2713 of the Public Health Service Act, as added by section 1010(a) of the ACA, states: “A group health plan and a health insurance issuer offering group or individual health insurance coverage” shall provide coverage of preventive services with no-cost-sharing. Catastrophic health plans, like all other new health plans, must cover preventive services with no cost sharing. Although it is clear that preventive coverage must be provided with no cost-sharing, we urge HHS to clearly state this in any ensuing regulatory statement lest there be any questions raised to the contrary.

Additionally, while developing the women’s preventive care guidelines and for future revisions of the various preventive health guidelines outlined in section 2713, we ask that HHS ensure the needs of young adults are met in order to avoid negative health outcomes in later years. This includes ensuring contraceptives are covered under section 2713(a)(4). For young adults who obtain catastrophic coverage, their only chance to receive vital preventive care at affordable rates is through this provision.

ii) **Define Primary Care Visits to Meet Congressional Intent**

HHS should employ an appropriate interpretation of what is included in a primary care visit that is consistent with congressional intent to ensure Americans have access to the care they need to remain healthy. First, HHS should define the scope of the "primary care visit" to meet the health care needs of Americans. Specifically for women, and consistent with the direct access provision in the ACA, a visit to a practitioner focused on obstetric and gynecological care should be considered a primary care visit. Second, a primary care visit should encompass visits to a variety of providers beyond physicians since often patients’ health care interactions are with other providers including nurse practitioners and physician assistants.

iii) **Make clear that a visit to a primary care provider for the purpose of receiving a preventive service does not count against the three primary care visits that are excluded from cost-sharing requirements that catastrophic health plans are required to cover.**

In accordance with congressional intent, visits to providers for the purpose of receiving preventive services outlined in section 2713 of the PHSA to be covered at no cost-sharing should not be counted as one of the three primary care visits excluded from cost-sharing requirements. In other words, an individual who has not visited a primary care provider in a given plan year, who then sees a primary care provider wholly for the purpose of receiving a preventive service, would still have coverage for three primary care visits excluded from cost-sharing requirements. This is vitally important because most preventive services cannot be administered without visiting a primary care provider.

For example, if an individual with a catastrophic health plan may receive an immunization from a nurse-practitioner in a family physicians office the visit should not count as one of the three primary care visits

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5 PHSA § 2713 as added by § 1010(a) of the ACA. Preventive services are defined as “evidence-based items or services that have in effect a rating of ‘A’ or ‘B’ in the current recommendations of the United States Preventive Services Task Force”; immunizations recommended by the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention; “preventive care and screenings provided for in the comprehensive guidelines supported by the Health Resources and Services Administration”; and, with respect to women, any preventive care and screenings “as provided for in comprehensive guidelines supported by the Health Resources and Services Administration.” § 2713(a).

6 § 1302(e)(1)(B)(i).
exempt from cost-sharing requirements. If preventive services received from a primary care provider are counted against the three primary care visits, people may be discouraged from getting those preventive services for fear that they would then be unable to afford a doctor’s visit in case of illness. This would be contrary to the purpose of covering preventive services with no cost-sharing, which is to remove barriers and encourage people to get necessary screenings and immunizations.\(^7\) When people receive recommended preventive care they are better able to avoid serious illness and identify and manage chronic diseases.\(^8\) In addition, preventive services can help reduce the economic costs of illness and disease.\(^9\) Therefore, a visit to a primary care provider in order to receive a preventive service should not be considered a primary care visit for the purpose of the three primary care visits that catastrophic health plans are required to exempt from cost-sharing requirements.

c) **Catastrophic Plan Sunshine Provisions**

Apart from guaranteeing that catastrophic plan enrollees receive a minimum level of benefits, HHS should draft regulations to ensure that individuals who purchase a catastrophic plan understand how few benefits it actually offers before the large cost-sharing requirements are met. Many young adults will purchase insurance for the first time through the state exchanges. Because young adults under 30 are one of two groups of people who qualify for catastrophic plans, there is danger that young adults will perceive these plans as “designed” to meet the needs of young people. But this is simply not true; catastrophic plans provide minimal coverage before cost-sharing requirements are met because they are cheap, and a better option than having no coverage at all - not because they provide the type of coverage that young people actually need. Unless they receive adequate information, many young adults may choose to join catastrophic plans thinking they offer real coverage, when in fact such plans should only be purchased when no other options are affordable. They may even purchase a catastrophic plan when they are eligible for subsidies to buy a more robust plan on the exchange, making that better plan less expensive. The ACA gives the Secretary of HHS the responsibility to set minimum standards for all plans offered on the exchange and to create uniform explanation of coverage documents.\(^10\) The Secretary should use this authority to do everything in her power to “nudge” consumers away from barebones coverage and onto plans that will results in better health and financial outcomes.

i) **Uniform Explanation of Coverage Documents**

The ACA requires each insurance product to provide uniform documentation on each of their plans. Specifically, § 2715(b)(3)(C)-(D) requires a description of the “exceptions, reductions, and limitations on coverage” and the “cost-sharing provisions, including deductible, coinsurance, and co-payment obligations.” Additionally, § 2715(b)(3)(F) instructs HHS to provide common scenarios and related cost sharing. We understand that HHS is currently working with an NAIC working group around these issues. All three of those sections provide authority for HHS to give specific warnings to consumers about catastrophic plans, and must be used to do so.

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\(^7\) For example, one study found that the rate at which women received mammograms increased by 9% when cost-sharing was removed. Solanki G., Halpin Schaufller, H., Miller, L.S. “The Direct and Indirect Effects of Cost-Sharing on the Use of Preventive Services,” *Health Services Research*, vol. 34, no. 6, February 2000, pp. 1331-1350.

\(^8\) See *e.g.*, Woolf, S. A Closer Look at the Economic Argument for Disease Prevention. *JAMA* 2009; 301(5):536-538 (finding that colorectal and breast cancer screening, flu vaccines, and counseling on smoking cessation and regular aspirin use – could avert 100,000 deaths each year) and Curry, S.J., Byers, T. and Hewitt, M., eds. 2003. *Fulfilling the Potential of Cancer Prevention and Early Detection*. Washington, DC: National Academies Press. (finding that effective cancer screening and early and sustained treatment could reduce the cancer death rate by 29%).


\(^10\) ACA §§ 1311(c), 2715.
Specifically, HHS should require that catastrophic plan documents affirmatively and boldly state that enrollees will have to pay nearly $6,000 before receiving any substantial coverage of medical care. The warning should appear on the first page of catastrophic plan benefit documents and/or prominently on a web portal page before a young adult purchases a catastrophic plan. Young people must understand that they are not buying insurance in the traditional sense and will only have coverage for preventive services and three primary care visits. The benefits that come after the cost-sharing requirements are met should be clearly delineated as such. The explanations mandated by these requirements are particularly important, given that this coverage will apply to both on-and off-exchange plans – unlike the requirements below.

**ii) Other Sunshine Requirements**

Additionally, § 1311(c) provides the Secretary with guidance for the minimum sunshine requirements for qualified health plans. While the guidance provided in this section is useful in starting to provide consumers with the information necessary to make smart purchasing decisions, the Secretary should keep in mind that it is a minimum threshold. As such, given the potentially devastating financial impact on out-of-pocket costs for consumers, further requirements should be issued as to what information must be provided on catastrophic plans: this might include the cost of a plan that qualifies for subsidies vis-a-vis catastrophic plans, which do not qualify, and a clear delineation of the benefits not required before cost-sharing requirements are met.

The Secretary should ensure that the rating system (based on price and quality) developed for all qualified health plans in each “benefits level” includes catastrophic plans as a benefits level. The Secretary should use this guiding language to create inter-level comparisons that will allow consumers to compare, for instance, the price and quality of purchasing a silver plan with subsidies, to the premiums and average out-of-pocket costs spent while enrolled in a catastrophic plan. Additionally, the Secretary is clearly required to include catastrophic plans in the satisfaction survey required for exchange plans. The survey should be specifically designed to ensure that the limitations that consumers face while enrolled in these plans are adequately captured.

Sections § 2715(b)(3)(F) and (G) provide further opportunities to ensure that young adults and others understand the limitations of catastrophic coverage. Section F, the coverage facts label, must include medical scenarios that would resonate with young adults. Consumers tend to overlook information that doesn't seem salient to their personal situation. Hence, we recommend that at least one of the scenarios describe a medical scenario common to younger adults, such as a ordinary sports injuries or other trauma.

Section G is required disclaimer indicating whether the plan has an actuarial value of 60% or more. Catastrophic plans will not meet this bar. However, instead of simply noting the plan's failure to meet the bar, require an actionable statement of what the implications are for consumers. If they are a qualified purchaser, the policyholder won't be subject to the IRS penalty but the statement should go further. The required statement should also explain that this plan requires more patient cost-sharing than other plans that are available. Plans that would meet the 60% threshold can be found on healthcare.gov (or something similar).

Finally, the Secretary should provide guidance that encourages states that set up their own exchanges to expand upon these provisions and requirements in their own legislation.

**iii) Concerns Regarding Plans Outside of the Exchanges**

Special attention should be paid to catastrophic plans that are available outside the exchanges. Consumers are

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11 See § 1311(c)((3).
12 See § 1311(c)((4).
13 See § 1311(e).
likely to find these plans online or through targeted advertising, and may not have the same context or easy comparison provided by an exchange portal. Therefore, while HHS control of off-exchange markets is limited, states should be encouraged to rigorously enforce strong consumer protections around those plans, and to expand any requirements that they can around catastrophic plans that may be limited on exchanges.

We appreciate the opportunity to submit these concerns to your office, and look forward to working with you as the regulations around these plans take shape. Please feel free to contact Jen Mishory at jen.mishory@younginvincibles.org, or 202.339.9365, with any follow-up questions.

Sincerely,

American Heart Association
Campus Progress
Community Catalyst
Consumers Union
Families USA
The National Campaign to Prevent Teen and Unplanned Pregnancy
National Partnership for Women & Families
National Women’s Law Center
Planned Parenthood Federation of America
Progressive States Network
Timothy Jost, Professor, Washington And Lee University School of Law
U.S. PIRG
Young Invincibles