

February 21, 2013

Executive Director  
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Strategic Initiatives  
CAROLE SHAUFFERManaging Director  
MARIA F. RAMIUStaff Attorneys  
SUSAN L. BURRELL  
ALICE BUSSIERE  
DEBORAH ESCOBEDOParalegal  
MAMIE YEEAdministrator  
MEHRZAD KHAJENOORIAdministrative Assistant  
ROBIN BISHOP

Sarah deLone and Stephanie Kaminsky  
Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
Attention: CMS-2334-P  
P.O. Box 8016  
Baltimore, MD 21244-8016

Re: Proposed Rule: Medicaid, Children's Health Insurance Programs, and  
Exchanges; Proposed Rules for Extending Medicaid to Age 26 for  
Eligible Former Foster Children  
78 Fed. Reg. 4593 – 4724 (January 22, 2013)

Dear Ms. deLone and Ms. Kaminsky:

We write in general support of the proposed rule to implement the Affordable Care Act (ACA) provisions that provide Medicaid coverage for former foster youth up to age 26. These provisions will address an inequity for young adults who have been removed from their homes because of abuse or neglect and have lost the opportunity for continued coverage on a parent's health insurance plan. But we join others in a concern that the proposed rule would limit Medicaid eligibility for young adults who were not in foster care and enrolled in Medicaid in the same state in which coverage is sought.

The Youth Law Center is a public interest law firm that works to protect children in the nation's foster care and justice systems from abuse and neglect, and to ensure that they receive the necessary support and services to become healthy and productive adults. We have worked with local legal services and juvenile court advocates, state and county child welfare agencies, probation departments, and public health professionals to ensure that children in foster care receive the Medicaid services they need, to implement the Fostering Connections Act, and to support youth emancipating from state foster care.

### Interstate Placements

The proposed rule would deprive former foster youth placed across state lines of Medicaid coverage unless the state in which they live opts to cover them. As a result, vulnerable young adults will not have the health care coverage that Congress intended. Former foster youth in states that both decline this proposed option and choose not to implement ACA required coverage for childless adults will be especially disadvantaged.

Federal law and policy strongly support interstate placements. They provide an opportunity to place children with relatives and to locate caregivers able to care for children with special needs. Congress has passed laws that attest to the importance of interstate placement and the provision of Medicaid in the state where the child resides. *E.g.*, 42 U.S.C. § 671(a)(25) (States must have procedures for the orderly

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and timely interstate placement of children.); 42 U.S.C. §§673(b) (Children receiving adoption assistance are eligible for Medicaid in the state where they reside.); 42 U.S.C. §§673a, & 675(3) (States must provide protections for children placed for adoption in another state or when the adoptive family moves to another state.); 42 U.S.C §1396a(10)(A)(i)(I), 42 C.F.R. §435.403(g) (Children receiving Title IV-E foster care or adoption assistance are eligible for Medicaid in the state where they reside.) *See also* P.L. 109-239, the Safe and Timely Interstate Placement of Foster Children Act of 2006 summarized at: [https://www.childwelfare.gov/systemwide/laws\\_policies/federal/index.cfm?event=federalLegislation.viewLegis&id=82](https://www.childwelfare.gov/systemwide/laws_policies/federal/index.cfm?event=federalLegislation.viewLegis&id=82)

Not only is the proposed rule inconsistent with federal policy on interstate placement, it also disadvantages the very children Congress sought to protect: children placed across state lines who receive Medicaid in the state where they reside. Under the proposed rule, former foster youth who were placed by one state but enrolled in Medicaid in another state will not be eligible for Medicaid no matter where they live. We urge you to reconsider your interpretation.

#### Date of Emancipation

We are also concerned that the proposed rule requires enrollment in Medicaid on the youth's 18<sup>th</sup> birthday (or other emancipation date selected pursuant to Title IV-E.) While most youth in foster care will be enrolled in Medicaid on that date, administrative error or an erroneous termination of eligibility may occur. While it may be possible to correct the disenrollment in many cases, resolution is likely to require the youth to obtain legal help or have a sophisticated knowledge of the state's Medicaid rules. As a result, youth will have difficulty meeting the requirement of enrollment in Medicaid on a specific date. Youth who are most likely to be affected are those who are most vulnerable, such as youth who are still in foster care but have left a placement, have been arrested, or are in a facility that does not qualify for foster care funding.

Although the federal statute requires that youth be in foster care on their emancipation date, it requires only that the youth be enrolled in Medicaid while in state foster care. We urge you to clarify that youth must have been enrolled in Medicaid at some point while they were in foster care rather than on the date of emancipation.

Thank you for the opportunity to comment on the proposed rules.

Very truly yours,



Alice Bussiere  
Staff Attorney