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# NAFSA KCISS Practice Resource

## Health Insurance and Health Care for Your International Students and Scholars

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*Authors: Brooke Stokdyk and Chien-Ying Wang, Michigan State University; David Fosnocht, NAFSA*

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## Introduction

The complexities and expense associated with health care in the United States make health insurance for international students, scholars, and accompanying family members a particularly challenging topic for advisers. This practice resource provides basic information meant to help advisers address the unique needs of the international community in the context of health insurance and health care. To do this, we plan to:

- Provide an overview of the U.S. Health Care System
- Discuss insurance requirements for the F and J nonimmigrant visa categories
- Describe health insurance options
- Introduce factors related to the [Patient Protection and Affordable Care Act](#) (Affordable Care Act - ACA)

## The U.S. Health Care System

Health care is very expensive in the United States. International students, scholars, and family members cannot rely on any government assistance with medical expenses as few states approve even partial Medicaid to nonimmigrants. Overall, international students and scholars are responsible for their medical costs unless they are covered by health insurance. If a member of your international community does not have insurance and needs medical care, that person will be responsible for paying the full cost of that care.

### Key Advising Points

- International students, scholars, and family members should expect to be fully responsible for health insurance and health care costs. The nonimmigrant community cannot expect government assistance.
- Stress the importance of having health insurance with coverage effective as soon as possible after arrival to protect your international community's well-being.
- Remind international students that it is generally impossible to wait until they are sick or hurt to purchase insurance. If a condition is "pre-existing" at the time insurance is purchased, the costs to treat that condition are rarely covered by a new insurance policy. Plans compliant with the ACA are expected to cover pre-existing conditions by 2014.

## Understanding Health Insurance Coverage: Key Terms

| Benefits                              | Explanations   |
|---------------------------------------|--|
| <b>Medical Lifetime Maximum</b>       | The maximum amount paid for covered medical costs during the policy-holder's lifetime.   |
| <b>Medical Annual Maximum</b>         | The maximum amount paid for covered medical costs in one year.   |
| <b>Benefits per illness or injury</b> | The maximum amount paid for covered medical costs related to any one condition (illness or injury).  |
| <b>Deductible</b>                     | The specific amount that must be paid by the policy-holder before the insurance company begins to pay.   |
| <b>Copay</b>                          | A specific dollar amount you the policy-holder pay for certain services. Typically applies to doctor visits and prescriptions drugs  |
| <b>Coinsurance</b>                    | The percentage of the total medical bill the patient is responsible for paying.  |
| <b>Annual Maximum Out-of-pocket</b>   | Deductibles plus your share of coinsurance.<br>The highest total amount your health insurance company requires you to pay towards the cost of your health care every year. <i>Note: Some plans don't include deductible in the annual out-of-pocket maximum.</i> |
| <b>Provider Network</b>               | Providers (doctors/hospitals) with whom the insurance company has an agreement. Coverage levels are higher at in-network providers.  |
| <b>Pre-existing condition</b>         | A medical condition determined to have been in existence before the policy went into effect.   |
| <b>Maternity</b>                      | Coverage for the costs of prenatal care and childbirth for pregnant women. Highly recommended for all women of childbearing age.   |
| <b>Medical evacuation</b>             | Coverage to transport seriously sick or injured patients to their hospital of choice in their home country for continued care.   |
| <b>Repatriation</b>                   | Transportation of mortal remains to home country for final interment.  |

## Health Insurance, Visa Status, and Institutional Policy

The most common visa categories for academic activities in the United States are:

- F-1, for academic students
- M-1, for vocational students
- J-1, for exchange visitors

Of these three categories, only J exchange visitors and their dependents are *required* by regulation to maintain health insurance.

### F and M Students and Dependents

The Department of Homeland Security's F and M student regulations impose no specific insurance requirement for F-1 and M-1 students and their dependents. However, Department of State guidance in the Foreign Affairs Manual states,

“While F and M students and their dependents are not required to have U.S. medical or travel insurance in order to qualify for a visa, most universities require students to have medical insurance. Assurance that a student would be able to afford any health care expenses in the United States could certainly help a student overcome public charge and unauthorized employment

concerns.” [9 FAM 41.61 N6.1-3]

| Visa Status | Visa regulation | Institutional policy  | Institutional enforcement  |
|-------------|-----------------|---|--|
| F-1/M-1     | Not required    | Many schools require F-1 and/or M-1 students to carry health insurance as a matter of internal institutional policy.  | Various institutional practices: <ul style="list-style-type: none"><li>• Require enrollment in a particular policy</li><li>• “Hard waiver” process</li><li>• Require proof of enrollment in any insurance which meets certain minimums</li><li>• Inform but do not enforce</li></ul> |
| F-2/M-2     | Not required    | Some schools also require F-2 or M-2 dependents to carry health insurance.<br>Many dependents are uninsured due to high cost, which is a major risk factor. | Often there is no institutional enforcement of F-2 or M-2 dependent insurance requirements. Because of this, the dependent population is at higher risk for health and/or financial disaster.  |

## J Exchange Visitors

Exchange visitor regulations at 22 C.F.R. § [62.14](#) require J-1 and J-2 nonimmigrants to have insurance that covers sickness or accident “during the period of time that an exchange visitor participates in the sponsor's exchange visitor program,” and which offers the following minimum coverage, although J exchange program sponsors may choose to establish insurance requirements that are higher than the requirements found in exchange visitor program regulations:

- (1) medical benefits of at least \$50,000 per accident or illness;
- (2) repatriation of remains in the amount of \$7,500;
- (3) expenses associated with medical evacuation of the exchange visitor to his or her home country in the amount of \$10,000; and
- (4) a deductible not to exceed \$500 per accident or illness.

The current exchange visitor regulations also impose the following restrictions on insurance policies secured to fulfill the requirements of this section:

- (1) may require a waiting period for pre-existing conditions which is reasonable as determined by current industry standards;
- (2) may include provision for co-insurance under the terms of which the exchange visitor may be required to pay up to 25 percent of the covered benefits per accident or illness; and
- (3) shall not unreasonably exclude coverage for perils inherent to the activities of the exchange program in which the exchange visitor participates.

### Note

In September, 2009, the Department of State [proposed raising these minimum levels](#), noting that "The current minimum coverage has been in place since 1993. The amounts of coverage required is considered below current inflation and healthcare costs and does not cover actual costs incurred today as reported by the sponsors." The proposal would have raised levels as follows:

- Medical benefits of at least US\$200,000 per accident or illness
- Repatriation of remains in the amount of US\$25,000
- Medical evacuation expenses in the amount of US\$50,000

This was a proposed rule only, however, and it is unclear when or if it will become effective, or if the changes will be implemented as originally proposed.

Exchange program sponsors must also comply with the following:

- Sponsors must advise exchange visitors of the insurance requirements in writing prior to the arrival of the visitor, and must also provide information on "Available health care, emergency assistance, and insurance coverage" as part of required orientation. [22 C.F.R. § [62.10\(b\)\(7\)](#); 22 C.F.R. § [62.10\(c\)\(3\)](#); 22 CFR [62.14\(g\)](#)]. The sponsor should specify the required levels of coverage and include a strong statement regarding termination from the program for willful failure to maintain insurance.
- The sponsor must "require each exchange visitor to have insurance in effect which covers the exchange visitor for sickness or accident during the period of time that an exchange visitor participates in the sponsor's exchange visitor program." [22 C.F.R. § [62.14](#)]
- The sponsor must terminate from the program any exchange visitor who willfully fails to maintain the required insurance or who makes a material misrepresentation to the sponsor concerning such coverage. [22 C.F.R. § [62.14\(h\)-\(i\)](#)]
- Regarding insurance for J-2 dependents, the regulations state that, "An accompanying spouse or dependent of an exchange visitor is required to be covered by insurance in the amounts set forth in paragraph (a) of this section, "and that, "Sponsors shall inform exchange visitors of this requirement, in writing, in advance of the exchange visitor's arrival in the United States." [22 CFR [62.14\(g\)](#)].
- Part of the annual report process includes a sponsor's "Certification of compliance with insurance coverage requirements set forth in §62.14." [22 CFR [62.15\(d\)](#)]

Page 2 of Form DS-2019 contains an Exchange Visitor Certification that must be signed by the exchange visitor stating, "I agree that I will maintain compliance with the insurance regulations as specified in 22 CFR 62.14, including maintaining health insurance coverage for myself and my J-2 dependents throughout my J-1 program."

## Students studying in other nonimmigrant categories

Generally, a nonimmigrant in a status designed for a purpose other than study can engage in "incidental study." This means that there may also be students on your campus in statuses other than F, M, or J. Institutions may vary in whether they their domestic or international student requirements to students in other statuses.

The SEVP chart [Who Can Study](#) (May 14, 2008), lists study conditions for the various nonimmigrant categories, and describes the "incident to status" condition:

"Nonimmigrants who are attending school incidental to their primary purpose for being in the United States may attend the school of their choice either part-time or full-time (unless otherwise noted). However, these nonimmigrants must abide by the rules of their current status and cannot extend their stay in the United States for the purposes of completing a program of study or a degree."

There are several important exceptions to this general rule, namely:

- Visitors in B-1, B-2, WB, or WT status are prohibited from enrolling in a course of study unless they apply for and USCIS approves a change from B status to a status that allows study.
- F-2 and M-2 dependents are also subject to similar restrictions on study.

## Health Insurance Options for International Students and Scholars in the United States

International students, scholars, and accompanying family members usually have three choices available for establishing sufficient health insurance coverage:

1. **School-sponsored health insurance plan:** Student health plans offered by colleges, universities, or other institutions of higher education through a health insurance company.
  - a. **Mandatory:** Some institutions require all enrolled students and/or all visiting scholars to purchase the school-sponsored plan. Schools may offer a separate health insurance plan for international students/scholars or may have one plan for both international and US students/scholars.
  - b. **Hard Waiver:** Some institutions allow international students/scholars to waive the mandatory school policy by providing proof that their private health insurance meets certain minimum requirements.
  - c. **Voluntary:** Some institutions make an insurance policy available but do not mandate participation. Only those students/scholars who actively purchase coverage are enrolled.
2. **Purchase a health insurance policy from a private company in the United States** (which meets institutional minimum requirements, when applicable.)
3. **Bring a health insurance policy from home country** (which meets institutional minimum requirements, when applicable)

### Key Advising Points

- If your institution has its own student health insurance plan, a waiver procedure, and/or minimum health insurance requirements, make sure international students/scholars are aware of the requirements in advance of their arrival.
- If there is no institutional requirement, educate your students/scholars about how to find a good insurance plan or recommend quality insurance plans that have been vetted in advance by your institution.
- Inform students/scholars that if they choose to bring a health insurance policy from their home

### **Key Advising Points**

country, they may need to pay their medical bills by themselves first and get reimbursement later when they return to their home countries. This can be difficult with large bills, which motivates some students and scholars to cancel their existing home country policy and purchase a US-based policy.

## **What to Look For In International Student/Scholar Health Insurance Policies**

It can be very challenging to identify which policies offer sufficient coverage in the event of an illness or injury. In terms of scope of coverage, it may be helpful to review the American College Health Association's (ACHA) [Standards for Student Health Insurance/Benefits Programs](#). Although directed to college student health plans, it lists types of recommended coverage that can be helpful in analyzing other kinds of insurance as well. The ACHA recommends that student health plans ensure "An adequate and appropriate scope of coverage is provided, including, but not limited to:

- Coverage for preventive health services. Coverage for catastrophic illness or injury.
- Coverage for prescription medications, including coverage for psychotropic medications.
- Minimization, or ideally elimination, of pre-existing condition exclusions/waiting periods.
- Coverage for dependents of covered students including children, spouses, and domestic partners.
- Continuity of coverage up to plan limits for students requiring a medically-necessary leave of absence.
- Continuity of coverage for previously insured students in plan renewals or with new carriers (i.e., no gain/no loss provision), subject to RFP provisions and final negotiations.
- Program benefits, limitations, exclusions, special provisions, and definitions are reviewed to assure they are consistent with common practices of the group health insurance field and/or there is a compelling reason for the college or university to have a provision that is unique for its SHIBP.
- The program encourages use of campus health and counseling services, where doing so provides cost effective and high quality care for students."

Below are some specific recommendations from the university-based authors of this resource, formulated after studying the private insurance market for international students and scholars for more than six years at an institution with a very sizable international population and consulting with professionals from the insurance industry.

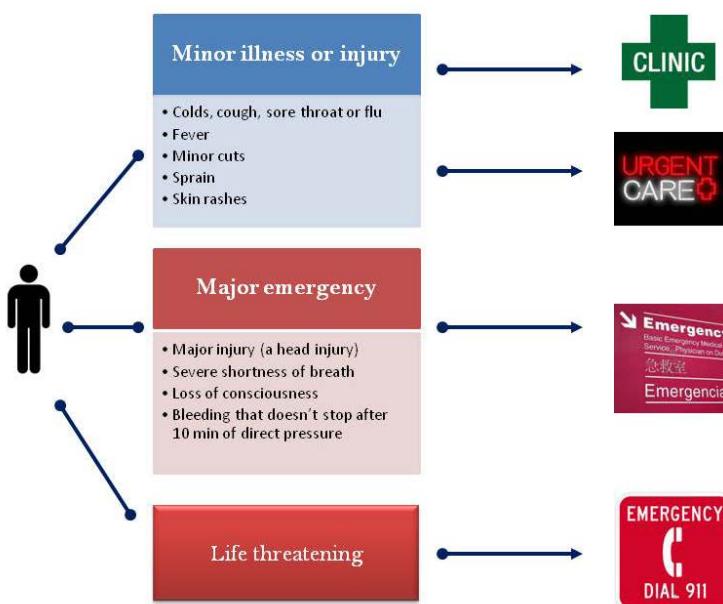
| <b>Concern</b> | <b>Explanation</b>  | <b>Look For</b>  |
|----------------|---|--|
| Low coverage   | \$50,000 in coverage may meet the J-1 regulatory requirement, but it is not enough to meet major medical or hospitalization costs.                          | \$250,000 lifetime minimum<br>\$200,000 per condition minimum  |
| Benefit caps   | Policy may purport high coverage but contain dollar-amount caps on specific common benefits. (Example: \$200,000 coverage but surgery cap of only \$3,000.) | Look for coverage to be for URC (Usual, Reasonable, Customary costs) instead of specific dollar amount |
| Exclusions     | What is not covered? Some policies exclude high-cost conditions such as heart attacks, strokes, or cancer.  | No unreasonable exclusions – read the fine print   |

| Concern                          | Explanation   | Look For                                |
|----------------------------------|---|---|
| Time limits                      | The insurance will only pay for eligible expenses incurred within certain period of time from the date of the accident causing the injury or the onset of sickness. Any expenses after that time period won't be covered. | None or 12 months minimum               |
| No out-of-pocket maximum         | The highest total amount your health insurance company requires you to pay towards the cost of your health care every year.   | Annual out-of-pocket maximum ≤ \$2,000  |
| High deductible                  | It is the specific amount that must be paid by you before the insurance company begins to pay.  | No more than \$500 per year             |
| High coinsurance                 | The percentage of the total medical bill the patient is responsible for paying. The insurance will cover the rest.  | Max coinsurance 10%                     |
| Pre-existing condition exclusion | Any condition determined to have been in existence before the policy went into effect is not covered.   | None or 6 months waiting period maximum |
| Poor network                     | Insufficient in-network providers in your local area  | In-network hospital in your local area  |

## Educating Students about the U.S. Health Care System

### Where do I go when I am sick or injured?

Be mindful of cultural differences. It is common for members of the international community to seek help at a hospital Emergency Room (ER) for non-emergency medical care because they are accustomed to visiting a hospital for such care in their home country. This is a particular problem on evenings and weekends, when regular doctors and/or on-campus clinics are closed. However, if a patient goes to an ER in the United States when the condition is not considered an emergency, the wait will be long, the costs will be high, and, the insurance won't always cover the bill. *Education about the role of Urgent Care centers is especially critical.* Help your international community understand when and where to seek medical help when they are sick or injured. You may find the image below helpful in this regard.



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## Health Care Reform and International Students/Scholars

Under the [Patient Protection and Affordable Care Act](#) (Affordable Care Act - ACA), beginning January 1, 2014 individuals who do not maintain "minimum essential healthcare coverage" must make an additional payment to the IRS when they pay their taxes. This is often called the "individual mandate." The administration also refers to this as the "individual shared responsibility" provision. On June 28, 2012, the [U.S. Supreme Court upheld](#) the constitutionality of the "individual mandate" provision of the ACA.

As 2014 is fast approaching, this section will give some general information regarding the Affordable Care Act and individuals in nonimmigrant status.

### Some common questions that arise regarding the individual mandate

- To what extent will nonimmigrants be subject to the ACA's "individual mandate"?
- Will a school's student health plan meet the requirements of minimum essential coverage under the ACA?

### The individual mandate and nonimmigrant students and scholars

The APA provides in general that aliens who are "lawfully present in the United States" will be subject to the individual mandate and the shared responsibility payment. However, you must also be aware of several important exemptions. Since the shared responsibility payment is connected to the tax process, the categories of individuals *exempt* from the requirement to maintain minimum essential coverage or pay the shared responsibility payment are listed in IRS regulations, at [26 CFR §1.5000A-3](#) [as amended by [78 Fed. Reg. 53646](#) (August 30, 2013)]. Paragraph (c) of that section defines "exempt noncitizens" to include individuals who are not U.S. citizens or U.S. nationals and are either:

- A *nonresident alien for tax purposes* for the taxable year that includes the month being counted; or
- An individual who is not lawfully present on any day in the month

For lawfully-present aliens such as nonimmigrants, then, it is the alien's [tax status](#) that determines whether he or she is subject to the requirement to carry ACA-compliant insurance or to pay the tax penalty for not carrying it. The rules for determining tax status are beyond the scope of this resource. Those rules have not changed, however, and remain as complex as they have always been. For example, F students and J exchange visitors can exclude much more time from being counted under the "substantial presence test" than can H-1B employees. For additional general information on tax filing requirements for students and scholars, view the following IRS Web pages. For specific information, consult a tax expert.

- IRS [Foreign Students and Scholars](#) page
- IRS [Foreign Student/Foreign Scholar Filing Requirements](#) page
- IRS [Determining Alien Status](#) page
- IRS [Substantial Presence Test](#) page
- IRS [Publication 519](#) U.S. Tax Guide for Aliens

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It is also important to distinguish between being subject to the individual mandate and being eligible to participate in the insurance marketplace. In most cases, a lawfully present nonimmigrant who is exempt from the requirement to carry insurance or pay a penalty would still qualify for marketplace coverage, and be eligible to voluntarily participate in the insurance marketplace, if he or she so desired. See [www.healthcare.gov](http://www.healthcare.gov) for a list of immigration statuses that qualify for Marketplace coverage.

Some other peculiarities of the law may also impact whether someone is covered by the ACA, and if so, whether the tax penalty must be paid:

- The ACA specifies that a person is considered a “qualified individual” only if the person is and can reasonably expected to be lawfully present in the United States *for the entire period of enrollment* in a plan that offers required coverage [ACA 1301(f)(3)]. A [Congressional Research Service report](#) concluded that “Until the exchanges are operational, it is unknown what the shortest period of enrollment will be and whether certain nonimmigrants who are in the United States for limited periods of time, in many cases under six months, would be covered by the mandate (e.g., tourists (B-visas), cultural exchange (J-visas), performers and athletes (O- and P-visas)).”
- The [Congressional Research Service report](#) also noted that, “In addition, no penalty will be imposed on those without coverage for less than three months (with only one period of three months allowed in a year), so for aliens in the United States for less than three months (e.g., most tourists) there would be no consequences to not having health insurance.”

## Student health plans under the ACA

An HHS Final Rule effective April 20, 2012 [[77 Fed.Reg. 16453](#) (March 21, 2012)] defined “student health insurance coverage” as a type of “individual health insurance coverage” under the ACA. A student health plan that meets the requirements specified in the HHS rule will:

1. Constitute “minimum essential health coverage” that satisfies the individual mandate
2. Receive more favorable “phase-in” exceptions than other types of individual coverage The supplementary information that precedes the 2012 final rule discusses the variety of student health plans currently offered, and identifies plans that qualify for the above purposes and those that do not.

Under a subsequent HHS final rule effective August 26, 2013 [[78 Fed.Reg. 39493](#) (July 1, 2013)], self-funded college or university health plans or policy years that begin on or before Dec. 31, 2014 will be deemed to constitute “minimum essential coverage.” Sponsors of self-funded plans that begin after that date will be able to apply to HHS for recognition as minimum essential coverage, as described later in this practice resource. The following table explains which types of institutional health insurance will be considered “student health insurance coverage” constituting “individual health insurance coverage” under the ACA:

| Institutional Insurance Type    | Definition   | Health Care Reform   |
|---------------------------------|--|--|
| <b>Student Health Insurance</b> | <p>Student health insurance is a written agreement between an institution of higher education and a health insurance issuer, and provided to students enrolled in that institution and their dependents, that meet certain conditions.</p> <p>A school insurance plan that makes health insurance coverage available <i>other than</i> in connection with enrollment as a student (or a dependent of a student) in the institution, e.g., to international scholars and employees, does not qualify as a student health plan under the regulations. Such a plan might still qualify as an individual plan, though, in which case the special phase-ins of a "student health plan" would not apply.</p> | <p>Defined as individual health insurance coverage under ACA. Student health insurance plans that are considered individual plans under ACA are subject to certain provisions with few exceptions. ACA will impose the following requirements starting in 2014:</p> <p>No Lifetime Limits on coverage<br/>No annual coverage limits<br/>No discrimination based on pre-existing conditions and rescissions allowed<br/>Preventative care offered with no cost sharing to students<br/>80% medical loss ratio (MLR) minimum</p> |
| <b>Self-Funded plans</b>        | Coverage offered to students by an institution of higher education, where the institution assumes the risk for payment of claims.  | Regulated by the ACA - see HHS final rule at <a href="#">78 Fed.Reg. 39493</a> (July 1, 2013). Under the final rule, self-funded plans or policy years that begin on or before Dec. 31, 2014 constitute "minimum essential coverage;" sponsors of self-funded plans that begin after that date may apply to HHS for recognition as minimum essential coverage. Self-funded plans may also be regulated by the States.  |

| Institutional Insurance Type                           | Definition   | Health Care Reform  |
|--|--|---|
| <b>Short-Term Limited Duration plans</b>               | Student health insurance plans that can't be continued for more than 12 months under the same issuer | <p>Not regulated by ACA. This definition is frequently met by policies written for foreign students studying for only one semester in the United States or U.S. citizens studying abroad for one summer. May be regulated by the States.</p> <p>Note: Coverage that a student could have through the same issuer for one or more years during the course of his/her undergraduate or graduate education is not considered a short-term limited duration plan.</p> |
| <b>Student associations sponsoring insurance plans</b> | Student health insurance coverage offered through student associations                               | Not regulated by the ACA. Student associations that sponsor insurance plans are not considered institutions of higher education and such plans would not be considered student health coverage within the meaning of the rule.  |

According to [healthcare.gov](http://healthcare.gov), the student health insurance rule extends all of the protections provided to enrollees in individual market plans with several adjustments in light of the unique nature of these plans. Here are the main differences in how student health plans can transition into ACA compliance in ways that differ from other plans in the individual market:

- Annual limits. To ensure the continued availability of coverage for students, the final rule modifies the phase in schedule so that student health plans cannot have annual limits of less than \$100,000 on essential health benefits for policy years beginning on or after July 1, 2012 but before September 23, 2012, and \$500,000 for policy years beginning on or after September 23, 2012, but before January 1, 2014. For policy years beginning on or after January 1, 2014, annual limits on essential benefits are prohibited.
- Medical Loss Ratio (MLR). To address the special circumstances of Student Health Plans, HHS will apply a methodological adjustment to the way the medical loss ratio is calculated for those plans. Similar to mini-med and expatriate plans, the adjustment will address the unusual expense and premium structures of student health plans. These changes to the methodology for reporting and rebates apply only in calendar year 2013, after which time no adjustment is provided.
- Student coverage is to be aggregated nationally as its own pool rather than on a State by State basis.

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- Notice Requirement. The regulation requires a health insurance issuer to disclose to the student in the insurance policy and other plan materials that the policy being issued does not meet the minimum annual limits requirements of other plans in the individual market. Students must also be notified that they may be eligible for health coverage as a dependent under their parents' employer plan or individual market coverage if they are under the age of 26. The regulation contains model language to satisfy this requirement, using terms easily understood by students and their dependents. HHS will require insurers that sell student health plans to provide this notice prominently in order to improve transparency and ensure consumers are aware of the product they are purchasing. The notice requirement sunsets in 2014 when annual limits are prohibited.
  - The final rule clarifies that the student health plans of non-profit religious institutions of higher education qualify for a one-year transition from the new contraceptive coverage requirement, similar to non-profit employers.

Also see the College Student Health Association's [Frequently Asked Questions](#) for more information on student health plans and the ACA.

## Short-Term Limited Duration plans under the ACA

The definition of short-term limited duration health insurance pre-dates the ACA, and remains unchanged by the student health plan final rule:

"Short-term, limited-duration insurance means health insurance coverage provided pursuant to a contract with an issuer that has an expiration date specified in the contract (taking into account any extensions that may be elected by the policyholder without the issuer's consent) that is less than 12 months after the original effective date of the contract."

Since student health policies are generally issued year to year, one question that had arisen well before passage of the ACA, and which rose again after passage of the ACA, was whether a school health plan should be classified as "short-term limited duration insurance" plans (which are not regulated by the ACA, but may be regulated by the States), or "individual market" health plans, which are regulated under the ACA.

Although the final rule did not change the regulatory definition of "short-term limited duration coverage," it did clarify how the government will interpret that definition, both for purposes of the ACA as well as for other purposes. In response to comments received on the proposed student health plan rule, the government responded,

"While there may be instances where short-term limited duration coverage is appropriately sold to students—for instance, foreign students studying for only one semester in the United States or U.S. citizens studying abroad for one summer—the short-term limited duration model does not apply to coverage that a student could have through the same health insurance issuer for one or more years during the course of his or her undergraduate or graduate education."

That being the case, most student health plans offered by schools will constitute ACA-regulated plans. Insurers who do offer true short-term limited duration insurance plans are not bound by the ACA requirements. This may allow them to offer less expensive plans, but those plans may offer different levels of coverage and may not satisfy the individual mandate.

## Foreign health plans under the ACA

Under [45 CFR 156.604](#) [added by HHS final rule effective August 26, 2013 ([78 Fed.Reg. 39493](#) (July 1, 2013))], sponsors of any health coverage that is not otherwise recognized as "minimum essential coverage" under the ACA or ACA implementing regulations can apply to HHS for recognition as minimum essential coverage. The supplemental information preceding the final rule gives several examples of types of coverage that might take advantage of this recognition process, including "foreign health coverage." The same process would be used by self-funded student plans that are not covered by the grandfather provision.

## Insurance requirements for J exchange visitors

Exchange visitors in J-1 nonimmigrant status and their dependents in J-2 status have for many years been subject to a separate requirement to obtain and maintain health insurance as a condition of their participation in a J exchange visitor program. This requirement predates the ACA, and the minimum levels set forth at 22 C.F.R. § 62.14 will continue to be required as a condition of J-1 or J-2 status even if those nonimmigrants are additionally subject to the ACA's individual mandate. In the supplemental information preceding the HHS final rule effective April 20, 2012 ([77 Fed.Reg. 16453](#), 16458 (March 21, 2012)) HHS responded to comments regarding the different minimum requirements of the exchange visitor regulations and the ACA as follows:

*"Comment:* Issuers noted that the State Department's Bureau of Educational and Cultural Affairs requires students on J-1 Exchange Visitor visas to maintain health insurance coverage that includes medical benefits of at least \$50,000 per accident or illness, includes a deductible of not more than \$500 per accident or illness, and meets other requirements (22 CFR 62.14). One commenter requested that we ensure that our final rule and 22 CFR 62.14 do not conflict. *Response:* We reviewed the requirements under 22 CFR 62.14 and believe that issuers will be able to comply both with those rules and this final rule."

J nonimmigrants would have to purchase separately any coverages required by the J exchange visitor regulations that are not typically included in a standard health plan (such as such medical evacuation and repatriation coverage).

## ACA compliance as a factor in developing institutional approaches to addressing health needs of international students and scholars

Whether your school offers a student health plan or not, as an adviser to international students and scholars you should be aware of how health insurance works in the United States, and be able to help students and scholars address their health care needs. Schools should consider ACA compliance as a factor in the context of their approach to addressing the health needs of their international student and scholar

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communities. Factors that schools might consider in developing institutional policy regarding international student health insurance requirements might include:

- What needs to be done to bring the school's student health plan into compliance with the ACA?
- For schools that have a hard waiver policy, should ACA compliance be a criterion for waiver qualification?
- For schools that do not offer a student health plan, how can the school inform students about the individual mandate and help the student evaluate plans in the private market or the health insurance exchange if applicable? For example, should the student be counseled about the benefits of ACA compliant plans, and how to compare short-term limited duration policies, which may be less expensive but offer lower coverage than a fully ACA-compliant plan?

## Some ACA and other resources

### [Text of the Patient Protection and Affordable Care Act](#)

- Text of the U.S. Supreme Court Decision in [NFIB v. Sebelius](#)
- HHS final rule effective April 20, 2012 [[77 Fed.Reg. 16453](#) (March 21, 2012)] defining "student health insurance coverage"
- HHS final rule effective August 26, 2013 [[78 Fed.Reg. 39493](#) (July 1, 2013)] self-funded college or university health
- [CRS Report](#): Treatment of Noncitizens Under the Patient Protection and Affordable Care Act
- [www.healthcare.gov](#)
- As a general resource regarding health insurance and international students and scholars, you can also consult NAFSA's Knowledge Community on International Students and Scholar Services (KC-ISSS) resource, [Health Insurance and Health Care for Your International Students and Scholars](#)

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Under the [Patient Protection and Affordable Care Act](#) (Affordable Care Act - ACA), beginning January 1, 2014 individuals who do not maintain “minimum essential healthcare coverage” must make an additional payment to the IRS when they pay their taxes. This is often called the “individual mandate.” The administration also refers to this as the “individual shared responsibility” provision. On June 28, 2012, the [U.S. Supreme Court upheld](#) the “individual mandate” provision of the ACA.

## Some common questions that arise regarding the individual mandate

- To what extent will nonimmigrants be subject to the ACA’s “individual mandate”?
- If subject, will the mandate impact an individual’s eligibility for immigration benefits?
- Will a school’s student health plan meet the requirements of minimum essential coverage under the ACA?

## The individual mandate and nonimmigrant students and scholars

In general, aliens who are “lawfully present in the United States” will be subject to the individual mandate and would be eligible, if otherwise qualified, to participate in the health insurance exchanges to be established under the law. Unauthorized aliens are not subject to the individual mandate, and are not eligible to seek insurance through health insurance exchanges. Nonimmigrant students and scholars, as aliens who are “lawfully present in the United States,” would therefore appear to be subject to the individual mandate as well. Some peculiarities of the law, however, may impact this general assumption:

1. The ACA specifies that a person is considered a “qualified individual” only if the person is and can reasonably expected to be lawfully present in the United States *for the entire period of enrollment* in a plan that offers required coverage [ACA 1301(f)(3)]. What would happen, then, if a student is here for a 5-month program of study, but the shortest period of insurance enrollment available is six months? In that case, the student would not be expected to be present in the United States for the entire period of enrollment. A [Congressional Research Service report](#) concluded that “Until the exchanges are operational, it is unknown what the shortest period of enrollment will be and whether certain nonimmigrants who are in the United States for limited periods of time, in many cases under six months, would be covered by the mandate (e.g., tourists (B-visas), cultural exchange (J-visas), performers and athletes (O- and P-visas)).”
2. The [Congressional Research Service report](#) also noted that, “In addition, no penalty will be imposed on those without coverage for less than three months (with only one period of three months allowed in a year), so for aliens in the United States for less than three months (e.g., most tourists) there would be no consequences to not having health insurance.”
3. Finally, because the *penalties* for noncompliance with the individual mandate are tax-based, the fact of whether the student or scholar has to file a tax return, as well as the amount of the individual’s taxable income, are factors that may affect if and how the individual mandate applies, and whether there are any penalties for noncompliance. For basic information on tax filing requirements for students and scholars, view the following IRS Web pages:
  - IRS [Foreign Students and Scholars](#) page
  - IRS [Foreign Student/Foreign Scholar Filing Requirements](#) page.

## Student Health Plans under the ACA

An HHS Final Rule effective April 20, 2012 [[77 Fed.Reg. 16453](#) (March 21, 2012)] defined “student health insurance coverage” as a type of “individual health insurance coverage” under the ACA. A student health plan that meets the requirements specified in the HHS rule will:

1. Constitute “minimum essential health coverage” that satisfies the individual mandate
2. Receive more favorable “phase-in” exceptions than other types of individual coverage

The supplementary information that precedes the 2012 final rule discusses the variety of student health plans currently offered, and identifies plans that qualify for the above purposes and those that do not.

Under a subsequent HHS final rule effective August 26, 2013 [[78 Fed.Reg. 39493](#) (July 1, 2013)], self-funded college or university health plans or policy years that begin on or before Dec. 31, 2014 will be “grandfathered” and deemed to constitute “minimum essential coverage.” Sponsors of self-funded plans that begin after that date will be able to apply to HHS for recognition as minimum essential coverage, as described later in this practice resource.

The following table explains which types of institutional health insurance will be considered “student health insurance coverage” constituting “individual health insurance coverage” under the ACA:

| Institutional Insurance Type    | Definition  | Health Care Reform   |
|---------------------------------|---|--|
| <b>Student Health Insurance</b> | <p>Student health insurance is a written agreement between an institution of higher education and a health insurance issuer, and provided to students enrolled in that institution and their dependents, that meet certain conditions.</p> <p>A school insurance plan that makes health insurance coverage available <i>other than</i> in connection with enrollment as a student (or a dependent of a student) in the institution, e.g., to international scholars and employees, does not qualify as a student health plan under the regulations.</p> | <p>Defined as an individual health insurance coverage under ACA</p> <p>Student health insurance plans that are considered individual plans under ACA are subject to certain provisions with few exceptions. ACA will impose the following requirements starting in 2014:</p> <ul style="list-style-type: none"><li>• No Lifetime Limits on coverage</li><li>• No annual coverage limits</li><li>• No discrimination based on pre-existing conditions and rescissions allowed</li><li>• Preventative care offered with no cost sharing to students</li><li>• 80% medical loss ratio (MLR) minimum</li></ul> |
| <b>Self-Funded plans</b>        | Coverage offered to students by an institution of higher education, where the institution assumes the risk for payment of claims.   | Regulated by the ACA - see HHS final rule at <a href="#">78 Fed.Reg. 39493</a> (July 1, 2013). Under the final rule, self-funded plans or policy years that begin on or before Dec. 31, 2014 constitute “minimum essential coverage;” sponsors of self-funded plans that begin after that date may apply to HHS for recognition as   |

|  |  |  |
|--|--|--|
|  |  | minimum essential coverage. Self-funded plans may also be regulated by the States.   |
| <b>Short-Term Limited Duration plans</b>               | Student health insurance plans that can't be continued for more than 12 months under the same issuer | Not regulated by ACA. This definition is frequently met by policies written for foreign students studying for only one semester in the United States or U.S. citizens studying abroad for one summer. May be regulated by the States.<br><br>Note: Coverage that a student could have through the same issuer for one or more years during the course of his/her undergraduate or graduate education is not considered a short-term limited duration plan. |
| <b>Student associations sponsoring insurance plans</b> | Student health insurance coverage offered through student associations                               | Not regulated by the ACA. Student associations that sponsor insurance plans are not considered institutions of higher education and such plans would not be considered student health coverage within the meaning of the rule.   |

According to [healthcare.gov](http://healthcare.gov), the student health insurance rule extends all of the protections provided to enrollees in individual market plans with several adjustments in light of the unique nature of these plans. Here are the main differences in how student health plans can transition into ACA compliance in ways that differ from other plans in the individual market:

- Annual limits. To ensure the continued availability of coverage for students, the final rule modifies the phase in schedule so that student health plans cannot have annual limits of less than \$100,000 on essential health benefits for policy years beginning on or after July 1, 2012 but before September 23, 2012, and \$500,000 for policy years beginning on or after September 23, 2012, but before January 1, 2014. For policy years beginning on or after January 1, 2014, annual limits on essential benefits are prohibited.
- Medical Loss Ratio (MLR). To address the special circumstances of Student Health Plans, HHS will apply a methodological adjustment to the way the medical loss ratio is calculated for those plans. Similar to mini-med and expatriate plans, the adjustment will address the unusual expense and premium structures of student health plans. These changes to the methodology for reporting and rebates apply only in calendar year 2013, after which time no adjustment is provided.
- Student coverage is to be aggregated nationally as its own pool rather than on a State by State basis.
- Notice Requirement. The regulation requires a health insurance issuer to disclose to the student in the insurance policy and other plan materials that the policy being issued does not meet the minimum annual limits requirements of other plans in the individual market. Students must also be notified that they may be eligible for health coverage as a dependent under their parents' employer plan or individual market coverage if they are under the age of 26. The regulation

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contains model language to satisfy this requirement, using terms easily understood by students and their dependents. HHS will require insurers that sell student health plans to provide this notice prominently in order to improve transparency and ensure consumers are aware of the product they are purchasing. The notice requirement sunsets in 2014 when annual limits are prohibited.

- The final rule clarifies that the student health plans of non-profit religious institutions of higher education qualify for a one-year transition from the new contraceptive coverage requirement, similar to non-profit employers.

Also see the College Student Health Association's [Frequently Asked Questions](#) for more information on student health plans and the ACA.

## Short-Term Limited Duration plans under the ACA

The definition of short-term limited duration health insurance pre-dates the ACA, and remains unchanged by the student health plan final rule:

"Short-term, limited-duration insurance means health insurance coverage provided pursuant to a contract with an issuer that has an expiration date specified in the contract (taking into account any extensions that may be elected by the policyholder without the issuer's consent) that is less than 12 months after the original effective date of the contract."

Since student health policies are generally issued year to year, one question that had arisen well before passage of the ACA, and which rose again after passage of the ACA, was whether a school health plan should be classified as "short-term limited duration insurance" plans (which are not regulated by the ACA, but may be regulated by the States), or "individual market" health plans, which are regulated under the ACA.

Although the final rule did not change the regulatory definition of "short-term limited duration coverage," it did clarify how the government will interpret that definition, both for purposes of the ACA as well as for other purposes. In response to comments received on the proposed student health plan rule, the government responded,

"While there may be instances where short-term limited duration coverage is appropriately sold to students—for instance, foreign students studying for only one semester in the United States or U.S. citizens studying abroad for one summer—the **short-term limited duration model does not apply to coverage that a student could have through the same health insurance issuer for one or more years during the course of his or her undergraduate or graduate education.**"

That being the case, most student health plans offered by schools will constitute ACA-regulated plans. Insurers who do offer true short-term limited duration insurance plans are not bound by the ACA requirements. This may allow them to offer less expensive plans, but those plans may offer different levels of coverage and may not satisfy the individual mandate.

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## Foreign health plans under the ACA

Under [45 CFR 156.604](#) [added by HHS final rule effective August 26, 2013 [[78 Fed.Reg. 39493](#) (July 1, 2013)]], sponsors of any health coverage that is not otherwise recognized as “minimum essential coverage” under the ACA or ACA implementing regulations can apply to HHS for recognition as minimum essential coverage.

The supplemental information preceding the final rule gives several examples of types of coverage that might take advantage of this recognition process, including “foreign health coverage.” The same process would be used by self-funded student plans that are not covered by the grandfather provision.

## ACA compliance as a factor in developing institutional approaches to addressing health needs of international students

Whether your school offers a student health plan or not, as an adviser to international students you should be aware of how health insurance works in the United States, and able to help students address their health care needs. Schools should consider ACA compliance as a factor in the context of their approach to addressing the health needs of their international student and scholar communities. Factors that schools might consider in developing institutional policy regarding international student health insurance requirements might include:

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