



April 23, 2018

VIA ELECTRONIC SUBMISSION

The Honorable Alex Azar
Secretary
Department of Health and Human Services
Room 445-G, Hubert H. Humphrey Building
200 Independence Avenue SW
Washington, DC 20201

RE: Short-Term, Limited-Duration Insurance [CMS-9924-P]

Dear Secretary Azar:

The Medicare Rights Center (Medicare Rights) appreciates the opportunity to comment in response to the Departments of Treasury, Labor, and Health and Human Services (the Departments) proposed rule entitled, “Short-Term, Limited-Duration Insurance.” Medicare Rights is a national, nonprofit organization that works to ensure access to affordable health care for older adults and people with disabilities through counseling and advocacy, educational programs, and public policy initiatives. We provide services and resources to nearly three million people with Medicare, family caregivers, and professionals each year.

Our comments are informed by our work assisting newly-eligible individuals and their family members navigate the transition to Medicare from other types of health coverage—including employer-based insurance, the Affordable Care Act’s (ACA) individual marketplaces, and Medicaid—as well as from no coverage at all. Through this experience, we understand the importance of ensuring that people have continuous, comprehensive health insurance coverage before gaining Medicare. We are concerned the proposed rule would threaten people’s access to such coverage and urge the Departments not to finalize the rule as proposed.

Below, we outline our general concerns with the proposed rule in more detail, including (I) the potential for these expanded plans to undermine the ACA-compliant market, (II) the impact of the proposed rule on people with pre-existing conditions, (III) the inadequate coverage and consumer protections short-term plans confer, and (IV) the importance of further impact analysis.

We also offer specific recommendations for the agencies to consider if the rulemaking process does move forward, such as (I) maintaining the three-month limit on short-term plans, (II) improving consumer notices, and (III) delaying the effective date until the 2020 plan year.

General Concerns

Short-term, limited duration insurance (STLDI) plans are exempt from the definition of individual health insurance coverage under the ACA and, therefore, do not have to comply with the law’s core consumer protections or insurance regulations. If short-term plans are allowed to be sold as a long-term alternative to ACA-compliant health insurance, as proposed, they will attract healthier consumers away from the individual

insurance risk pools and endanger access to comprehensive, affordable coverage for millions of Americans, including those nearing Medicare eligibility.

For many of these people—in particular older adults and people with pre-existing conditions—switching to a short-term plan is not a viable option; they would remain in the ACA-compliant market and bear the full brunt of the proposed rule’s adverse selection. Consumers who could qualify for and afford short-term coverage would also be at risk, as these plans are unlikely to protect those who buy them.

I. Expanding Short-Term Plans Would Undermine the Individual Market

Expanding access to short-term policies would likely cause premiums in the ACA’s individual insurance marketplace to increase dramatically, as younger and healthier individuals would choose to enroll in cheaper, skimpier, short-term plans—leaving an older, sicker risk pool behind. In response, insurers would increase premiums and decrease plan choices for the remaining individual market participants.

The Departments acknowledge this pattern, anticipating that “most of the individuals who switch from individual market plans to short-term, limited duration insurance would be relatively young or healthy” and that the resulting impact on the individual market would be “an increase in premiums for the individuals remaining in those risk pools.”¹

The near and longer-term impacts of the proposed STLDI expansion and subsequent enrollment shifts would be significant. One analysis estimates that the proposed regulatory changes, in combination with the repeal of the requirement to have minimum essential health insurance coverage, would increase individual market premiums by an average of 18.3 percent in 2019.² For a 60 year-old buying silver plan coverage, this could mean a \$4,000 monthly premium hike.³

Premium increases would disproportionately impact middle-income older adults and people with pre-existing conditions, who are unlikely to have access to medically underwritten STLDI policies and who are also not financially protected by the ACA’s premium subsidies. If the proposed rule were finalized, these people would face higher costs, additional barriers to care, and fewer coverage options than they do now. This could lead some older adults to drop coverage entirely as they await Medicare eligibility, leading to worse health outcomes and higher resulting Medicare program costs.⁴

Exacerbating these impacts is the likelihood for expanded short-term plans to redirect enrollees back into ACA-compliant plans when they need access to care. The Departments acknowledge that the ACA-compliant market would ultimately bear these risks and expenses, noting that consumers who purchase STLDI policies and then develop health needs would “enroll in [ACA]-compliant plans what would provide coverage for such conditions.”⁵

¹ FR 7443.

² Linda J. Blumberg, Matthew Buettgens, & Robin Wang, “Updated: The Potential Impact of Short-Term Limited-Duration Policies on Insurance Coverage, Premiums, and Federal Spending,” Urban Institute (March 14, 2018), <https://www.urban.org/research/publication/updated-potential-impact-short-term-limited-duration-policies-insurance-coverage-premiums-and-federal-spending>.

³ Jane Sung & Lina Walker, “Warning: Short-Term Health Plans = Higher Premiums for Older Adults,” AARP (March 21, 2018), <https://blog.aarp.org/2018/03/21/warning-short-term-health-plans-higher-premiums-for-older-adults/>.

⁴ David Baker, et al., “Changes in Health for the Uninsured After Reaching Age-eligibility for Medicare,” J Gen Intern Med. 21(11): 1144–1149 (November 2006), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1831646/>.

⁵ FR 7443.

This cycle would further undermine the ACA risk pool and lead to even higher costs for marketplace enrollees. That insurers and brokers also typically advise short-term plan customers that if they do get injured or sick, they can return to the ACA's guaranteed-issue marketplace at open-enrollment time and buy a plan that covers their condition threatens to create even greater risk segmentation between the two markets, to the detriment of the older adults and people with pre-existing conditions who rely on ACA-compliant plans for comprehensive coverage.⁶

These and other harmful effects of STLDI plans would grow over time, as insurers fully implement and market these products. This may lead to more insurer exits from the ACA-compliant markets in future years, further challenging affordability and reducing choice for individual market enrollees.⁷

II. Short-Term Plans are Not a Viable Option for Older Adults and People with Pre-existing Conditions

In the preamble, the Departments state the proposed rule is being promulgated to “increase insurance options for individuals unable or unwilling to purchase [ACA]-compliant plans.”⁸ This seems to indicate a belief that expanding short-term plans would create a meaningful new health insurance option for those who need coverage. However, because these plans do not have to comply with the ACA's consumer protections and coverage requirements, they are not a realistic option for people with pre-existing conditions, who would likely either have services for those conditions excluded from coverage or be denied coverage altogether.

The ACA's consumer protections are especially important as people approach Medicare eligibility, as an estimated 40 percent of adults ages 50-64 have a pre-existing condition for which a STLDI plan could deny coverage.⁹ Even if an older adult could qualify for a short-term plan, he or she might not be able to afford it. In addition to being able to vary premiums based on medical history, short-term plans are not required to comply with the ACA's age rating protections and could therefore charge older adults considerably more than they charge younger people. Studies indicate that weakening this protection, such as by increasing the ACA-required age band from 3:1 to 5:1, would have devastating effects for older adults, raising their costs so significantly that an estimated 400,000 would drop coverage completely.¹⁰

Older adults and others with pre-existing conditions are at extreme risk of being denied coverage or charged more based on age and medical history in the non-ACA, short-term plan market, where medical underwriting and other discriminatory practices are permissible. Therefore, for people nearing Medicare eligibility—including the six million older adults who currently purchase insurance in the individual market—short-term plans are not a viable coverage option.¹¹

⁶ Harris Meyer, “Risky business: Short-term health plans could alter insurance landscape: It's buyer beware for short-term health plans, as insurers await new HHS rule to expand them,” *Modern Healthcare* (January 13, 2018), <http://www.modernhealthcare.com/article/20180113/NEWS/180119957>.

⁷ Wakely Consulting Group, “Effects of Short-Term Limited Duration Plans on the ACA-Compliant Individual Market,” Association for Community Affiliated Plans (last visited April 23, 2018), <http://www.communityplans.net/wp-content/uploads/2018/04/Wakely-Short-Term-Limited-Duration-Plans-Report.pdf>.

⁸ FR 7441.

⁹ Claire Noel-Miller & Jane Sung, “In Health Reform, Stakes are High for Older Americans with Preexisting Health Conditions,” AARP (March 2017), <https://www.aarp.org/ppi/info-2017/affordable-care-act-protects-millions-of-older-adults-with-pre-existing-conditions.html>.

¹⁰ Jane Sung, “Protecting Affordable Health Insurance for Older Adults: The Affordable Care Act's Limit on Age Rating,” AARP (January 2017), <https://www.aarp.org/ppi/info-2016/protecting-affordable-health-insurance-for-older-adults.html>.

¹¹ Claire Noel-Miller & Jane Sung, “In Health Reform, Stakes are High for Older Americans with Preexisting Health Conditions,” AARP (March 2017), <https://www.aarp.org/ppi/info-2017/affordable-care-act-protects-millions-of-older-adults-with-pre-existing-conditions.html>.

III. Short-Term Plans Offer Inadequate Coverage and Consumer Protections

We are also concerned about the impacts of the proposed rule on consumers who would qualify for and purchase STLDI. While being free from the ACA's coverage requirements and protection standards allows short-term plans to offer less robust—and less expensive—policies than their ACA-compliant counterparts, these plans are unlikely to protect those who buy them.¹²

Short-term plans typically exclude coverage for ACA-required benefits, and can also deny coverage or rescind policies if enrollees file claims for what the insurer deems to be a pre-existing condition, leaving many unknowingly underinsured.¹³ Additionally, people enrolled in these plans can be on the hook for substantial out-of-pocket costs if they develop high health needs while on the plan. Unlike ACA-compliant plans, which limit annual out-of-pocket costs, short-term plans are under no obligation to do so.¹⁴ At the same time, short-term plans can cap the amount of coverage enrollees receive in a year and over their lifetime—limits an individual or family could quickly reach if they have expensive health care needs or require treatment for a catastrophic medical emergency.

Accordingly, reliance on short-term plan coverage can and often does leave consumers facing major, unpredictable financial and health risks—only one diagnosis, chronic condition, or hospital visit away from extreme adversity. Examples abound of people who have been dropped from short-term policies or denied coverage after the fact, and who are left mired in debt with overwhelming medical bills.¹⁵

The Departments acknowledge the limitations of short-term policies, conceding the expanded plans “would be unlikely to include all the elements of [ACA]-compliant plans” and that consumers who switch to STLDI policies from ACA-compliant coverage “would experience loss of access to some services and providers and an increase in out-of-pocket expenditures related to such excluded services.”¹⁶

The Departments request comment on “the value of such excluded services” to those who switch coverage, claiming these are benefits “that in many cases consumers do not believe are worth their cost.” The agencies speculate that short-term plans’ less comprehensive coverage may “be one reason why many consumers...may switch to short-term, limited duration policies” rather than remain in the individual market.¹⁷

However, the agencies also point to a critical problem with STLDI, which is that consumers who purchase these plans and then develop health problems may find their coverage lacking. This could lead to “financial hardship” as these enrollees would have to pay out-of-pocket for needed—but uncovered—services until the next ACA open enrollment period, when they could purchase an ACA-compliant plan that meets their needs.¹⁸

¹² In 2017, for example, the national average monthly premium for short-term plans sold through one online broker was \$109 for individuals and \$264 for families, compared with \$378 for individuals and \$997 for families for an ACA-compliant plan. See, Harris Meyer, “Risky business: Short-term health plans could alter insurance landscape: It’s buyer beware for short-term health plans, as insurers await new HHS rule to expand them,” *Modern Healthcare* (January 13, 2018), <http://www.modernhealthcare.com/article/20180113/NEWS/180119957>.

¹³ IHC Group, “Secure Lite: Short-term medical insurance for individuals and families” (last visited April 23, 2018), https://www.ehealthinsurance.com/ehealthinsurance/benefits/ST/SSL/SecureLite_MultiState_EL_9-1-2012.pdf.

¹⁴ Karen Polliz, “Understanding Short-Term Limited Duration Health Insurance,” Kaiser Family Foundation (February 9, 2018), <https://www.kff.org/health-reform/issue-brief/understanding-short-term-limited-duration-health-insurance/>.

¹⁵ Reed Abelson, “Without Obamacare Mandate, ‘You Open the Floodgates’ for Skimpy Health Plans,” *NY Times* (November 30, 2017), <https://www.nytimes.com/2017/11/30/health/health-insurance-obamacare-mandate.html>.

¹⁶ FR 7443.

¹⁷ *Id.*

¹⁸ *Id.*

While consumers may object to paying for services they don't immediately need, as the Departments suggest, such risk is a cornerstone of any effective insurance system. That the Departments concede such consumer objections are not absolute, and that STLDI enrollees who find their plans inadequate would turn to the ACA-compliant market, is significant. In so doing, the agencies emphasize the dangers short-term plans pose to consumers, the value of the services these plans are likely to exclude, and the important role the ACA's insurance requirements and consumer protections have in ensuring all consumers have access to quality coverage. It is troubling and counterproductive, then, that the proposed rule would undermine the very ACA-compliant market that the Departments acknowledge is a key pathway to much-needed and often otherwise unavailable coverage.

IV. Further Analysis is Needed to Understand the Proposed Rule's Impact

We agree with the Departments' assertion that if finalized, the rule "would encourage more consumers to purchase short-term, limited-duration insurance for longer durations, including individuals who were previously uninsured and some who are currently enrolled in individual market plans, especially in 2019 and beyond" when the repeal of the individual mandate takes effect.¹⁹ However, we disagree with the Departments' baseline and projected impact estimates.

In the preamble, the Departments state that the short-term market "represents a small fraction of the health insurance market," relying on data from the National Association of Insurance Commissioners (NAIC) which indicates that in 2016, 160,600 individuals were covered by such plans. However, according to the American Academy of Actuaries, the NAIC report underestimates the size of the current short-term health insurance market. This, in turn, likely understates the potential for enrollment in short-term plans if the allowed coverage duration were lengthened as proposed.²⁰ Recent, more comprehensive reports signal enrollment in short-term plans may be closer to one million today.²¹

Similarly, we are concerned by the Departments' lack of certainty regarding the rule's potential to shift enrollment from the individual market to short-term plans, and the ramifications of such change. In particular, the Departments request comment on how many of the estimated three million people who are projected to drop ACA coverage in 2019 as a result of the individual mandate repeal would purchase short-term plans instead of forgoing coverage entirely.²² In addition to this unknown quantity, the Departments project that "approximately 100,000 to 200,000 additional individuals would shift from the individual market to short-term, limited duration insurance in 2019," leading to an enrollment shift that the agencies seem to suggest could fall anywhere between 100,000 and 3.2 million people.²³ It is very concerning that the Departments would advance this proposed rule without a firm understanding of its reach.

Multiple analyses conclude the proposed rule would have a much greater impact on enrollment distribution than the agencies assert. The Urban Institute estimates 4.3 million people would enroll in short-term plans in 2019, and that the proposed rule, in combination with the elimination of the individual mandate, would reduce enrollment in ACA-compliant plans next year by 18.3 percent.²⁴ Similarly, in a study commissioned by the

¹⁹ FR 7442.

²⁰ American Academy of Actuaries, "Letter" (April 6, 2018), http://www.actuary.org/files/publications/STLD_Comment%20Letter_040618.pdf.

²¹ Reed Abelson, "Without Obamacare Mandate, 'You Open the Floodgates' for Skippy Health Plans," NY Times (November 30, 2017), <https://www.nytimes.com/2017/11/30/health/health-insurance-obamacare-mandate.html>.

²² FR 7443, FN 36 (citing CBO report).

²³ FR 7443.

²⁴ Linda J. Blumberg, Matthew Buettgens, & Robin Wang, "Updated: The Potential Impact of Short-Term Limited-Duration Policies on Insurance Coverage, Premiums, and Federal Spending," Urban Institute (March 14, 2018), <https://www.urban.org/research/publication/updated-potential-impact-short-term-limited-duration-policies-insurance-coverage-premiums-and-federal-spending>.

Association for Community Affiliated Plans (ACAP), the Wakely Consulting Group modeled three different scenarios and found that over time, individual market enrollment would decrease by up to 26.3 percent.²⁵ Even Wakely’s low-end estimates—which theorize enrollment in ACA non-group plans would initially decrease by between 400,000 and 790,000—indicate a much more dramatic impact on enrollment than the Departments put forth.²⁶

The Departments also underestimate the impact this shift of young, healthy individuals to STLDI products would have on premiums in the ACA-compliant market. Their estimate—that premiums would increase between 0.3 to 0.9 percent in 2019—is far lower than other analysis, which predicts an immediate average premium increase of up to 1.7 percent, climbing to 6.6 percent over time.²⁷ The Departments do consider the cumulative effects of the proposed rule and the repeal of the individual mandate penalty. With respect to the latter, they assume a 10 percent premium increase next year, based on a Congressional Budget Office analysis.²⁸ However, even this combined maximum increase of 11 percent²⁹ is well below other estimates, which project increases as high as 22 percent in some states.³⁰

We appreciate that the Departments concede there is “significant uncertainty” in their estimates and that it was “difficult to predict how consumers and issuers would react to the proposed policy changes.”³¹ However, that multiple analyses run counter to much of the Departments’ data and projections suggests that the proposed rule—combined with the repeal of the individual mandate and other policy changes—would have a greater impact than the federal government estimates.

Given the proposed rule’s potential impact on the health coverage of millions of Americans, we strongly encourage the Departments to further study and fully consider the effects of this proposed regulation on consumers and market stability before moving forward with the rulemaking process.

Specific Recommendations

For the reasons discussed above, the proposed expansion of short-term plans is a troubling development in the effort to ensure the availability of affordable health coverage for older adults and people with pre-existing conditions. We encourage the Departments to abandon its proposed approach, in favor of policy solutions that prioritize the health and well-being of all Americans. However, in the event that the Departments do move forward, we respectfully submit the following recommendations for consideration.

I. Short-term limited-duration plans should not be expanded to more than three months (§54.9801-2 / §2590.701-2 / §144.103).

²⁵ Wakely Consulting Group, “Effects of Short-Term Limited Duration Plans on the ACA-Compliant Individual Market,” Association for Community Affiliated Plans (last visited April 23, 2018), <http://www.communityplans.net/wp-content/uploads/2018/04/Wakely-Short-Term-Limited-Duration-Plans-Report.pdf>.

²⁶ *Id.*

²⁷ *Id.*

²⁸ Congressional Budget Office “Repealing the Individual Health Insurance Mandate: An Updated Estimate” (November 2017), <https://www.cbo.gov/system/files/115th-congress-2017-2018/reports/53300-individualmandate.pdf>.

²⁹ 11% is derived from the Departments estimate of a 10% premium increase due to the individual mandate repeal, and a maximum 0.9% premium increase due to the STLDI expansion.

³⁰ Linda J. Blumberg, Matthew Buettgens, & Robin Wang, “Updated: The Potential Impact of Short-Term Limited-Duration Policies on Insurance Coverage, Premiums, and Federal Spending,” Urban Institute (March 14, 2018), <https://www.urban.org/research/publication/updated-potential-impact-short-term-limited-duration-policies-insurance-coverage-premiums-and-federal-spending>.

³¹ FR 7444.

Short-term plans are designed to fill temporary gaps in coverage and should not exceed three months in duration. Allowing extensions of these policies expands the period of time in which people may be underinsured, leaving consumers with inadequate coverage and at financial risk if they fall ill. Year-long short-term plans would also create consumer confusion about whether the coverage is the same as that available through ACA-compliant one-year plans. Moreover, consumers could be left with uncovered bills and/or find themselves “uninsurable.” Because short-term insurers can deny a new contract if the enrollee becomes sick or injured during the coverage term, consumers may unexpectedly find themselves without coverage—a serious event, but not one that triggers a special enrollment period. Accordingly, consumers who lose their STLDI coverage or find it inadequate would have to wait until the next annual open enrollment period to select an ACA-compliant plan. This would likely lead to significant coverage gaps and out-of-pocket costs.

Additionally, allowing short-term policies longer than three months undermines the risk pools in the individual market by encouraging healthy people to purchase short-term plans as an alternative to ACA-compliant coverage. This would drive up premiums in the individual market, making comprehensive coverage with pre-existing condition protections less affordable for consumers, particularly those who are ineligible for premium tax credits.³²

We strongly oppose the proposed changes to the regulation at §54.9801-2 / §2590.701-2 / §144.103. The existing definition limiting the duration of short-term limited-duration insurance to “less than 3 months” should remain, as should the language “taking into account any extensions that may be elected by the policyholder with or without the issuer’s consent.”

II. Consumer notices should be explicit, in multiple languages, about ACA requirements that do not apply to short-term plans (§54.9801-2 / §2590.701-2 / §144.103).

We support efforts in the proposed rule to help consumers who purchase short-term, limited-duration policies understand the limitations of the coverage they are purchasing. Accurate notice is vital for consumers to appreciate the scope of coverage short-term plans offer, in particular that they are not comparable to or a replacement for ACA-compliant coverage. We support the proposed language clarifying that STLDI does not comply with federal requirements and that short-term plan enrollees might have to wait until an open enrollment period to access other, more comprehensive health insurance coverage.

However, we believe the notice could be more easily understood and culturally competent, in part by being available in multiple languages. As the preamble notes, allowing short-term plans to provide coverage for just under one year will make it more difficult for consumers to distinguish between short-term plans and ACA plans. Accordingly, the notice should clarify how short-term plans differ from ACA plans. We recommend listing specific examples of ACA protections that do not apply to short-term coverage, including protections for pre-existing conditions and access to the essential health benefits. The draft notice language should also more clearly explain that loss of eligibility or coverage in a short-term plan does not trigger a special enrollment period that would allow a consumer to seamlessly purchase an ACA-compliant plan.

The Departments should adjust the proposed notices at §54.9801-2 / §2590.701-2 / §144.103 to the following language:

THIS COVERAGE IS NOT REQUIRED TO COMPLY WITH FEDERAL REQUIREMENTS FOR HEALTH INSURANCE, PRINCIPALLY THOSE CONTAINED IN THE AFFORDABLE CARE ACT, SUCH AS COVERAGE OF PRE-EXISTING CONDITIONS AND OTHER ESSENTIAL HEALTH BENEFITS. BE SURE TO CHECK

³² American Academy of Actuaries, “Letter” (November 7, 2017), http://www.actuary.org/files/publications/Executive_Order_Academy_Comments_110717.pdf.

YOUR POLICY CAREFULLY TO MAKE SURE YOU UNDERSTAND WHAT THE POLICY DOES AND DOESN'T COVER. EXPIRATION OR LOSS OF ELIGIBILITY FOR THIS COVERAGE DOES NOT TRIGGER A SPECIAL ENROLLMENT PERIOD, NOR DOES THE NEED TO ACCESS A SERVICE NOT COVERED BY YOUR PLAN. YOU MIGHT HAVE TO WAIT UNTIL AN ANNUAL OPEN ENROLLMENT PERIOD TO GET OTHER HEALTH INSURANCE COVERAGE. THIS COULD RESULT IN A GAP IN COVERAGE AND/OR SIGNIFICANT OUT-OF-POCKET COSTS.

III. The effective date of the rule should be delayed (§ 54.9833–1/§2590.736/§146.125).

If the Departments finalize the proposed rule, insurers and consumers will need adequate time to anticipate and adjust to the changed landscape. Allowing expanded short-term plans to be offered in 2019 creates risk and uncertainty for health insurers in the individual market and increases the likelihood of substantial consumer confusion.³³ Insurers may have to build in rate increases associated with uncertainty if expanded short-term plans are allowed next year. Delaying implementation until 2020 would give insurers more time to adjust to the insurance market without the individual mandate penalty and allow them to see which insurers are expanding or entering the short-term market. A delay would also allow states time to respond, through legislative or regulatory changes, to the impact of expanded availability of short-term plans on their markets. Further, as discussed above, the Departments need additional time to fully assess and inform the public as to the impact of the proposed rule.

Thank you for the opportunity to provide comment. We again urge the Departments to rescind the rule as proposed, and to instead offer solutions that support pathways to affordable, comprehensive coverage for all Americans. If you have any questions about our comments and recommendations, please contact Lindsey Copeland, Federal Policy Director at LCopeland@medicarerights.org or 202-637-0961 or Julie Carter, Federal Policy Associate at 202-637-6244 or JCarter@medicarerights.org.

Sincerely,



Joe Baker
President
Medicare Rights Center

³³ Robert Wood Johnson Foundation, “Insurers Remaining in Affordable Care Act Markets Prepare for Continued Uncertainty in 2018, 2019” (March 2018), https://www.rwjf.org/content/dam/farm/reports/issue_briefs/2018/rwjf444308.