



Charles N. Kahn III
President and CEO

April 23, 2018

The Honorable Seema Verma
Administrator
Centers for Medicare & Medicaid Services
Hubert H. Humphrey Building
200 Independence Avenue, S.W.
Washington, DC 20201

Re: CMS-9924-P; Short-Term, Limited-Duration Insurance; 83 *Fed. Reg.* 7437 (February 21, 2018)

Submitted electronically to www.regulations.gov

Dear Administrator Verma:

The Federation of American Hospitals (FAH) is the national representative of more than 1,000 investor-owned or managed community hospitals and health systems throughout the United States. Our members include teaching and non-teaching hospitals in urban and rural parts of the United States, as well as inpatient rehabilitation, psychiatric, long-term acute care, and cancer hospitals. Many of our members contract with health insurers in the individual market for health insurance. As such, we strongly support regulatory changes that would increase access to meaningful coverage for individuals and caution against regulations that would undermine the stability or availability of meaningful coverage in those markets. We believe that it is important for the Centers for Medicare & Medicaid Services (CMS) and the three Departments that issued the proposed rule (The Departments of Labor, Health and Human Services, and the Treasury; hereinafter referred to as the Departments) to consider the concerns of direct providers of patient care. To that end, we are pleased to provide CMS with our views in response to the above referenced notice of proposed rulemaking (Proposed Rule), which was published in the *Federal Register* on February 21, 2018 (83 *F.R.* 7437).

The FAH urges CMS to withdraw the proposed amendment to the definition of short-term, limited-duration (STLD) insurance. The proposed definition would put consumers at increased risk of inadequate and insufficient coverage and would destabilize the individual health insurance markets. These impacts would be particularly felt in states that do not restore reasonable limits on the duration of such coverage through state insurance regulation.

Under the proposed rule, the definition of a STLD plan would be changed from a plan with an expiration date (taking into account all extensions) that is less than 90 days after the effective date to one with an expiration date (taking into account extensions elected by the policyholder without the issuers' consent) that is less than 12 months after the original effective date. If finalized, the proposed definition would revert to the same definition of STLD plans in effect prior to 2016. In 2016, the definition was amended because the Departments became aware that STLD plans were sometimes being used as a person's primary form of coverage instead of as a stop-gap for brief periods when they would otherwise go uninsured. At that time, the Departments were appropriately concerned that insurers were providing STLD plan renewals that extended their duration beyond 12 months. Because such plans are not required to cover minimum essential benefits nor to limit lifetime or annual cost-sharing, are allowed to exclude pre-existing conditions, and may be medically underwritten, the Departments believed that too often, STLD plans did not provide meaningful health coverage and were adversely impacting the risk pool for other plans offered in the individual market for insurance.¹

Consumer Harm

The FAH recommends that the Departments not finalize the proposed amended definition of STLD plans by reverting to a prior definition that the same Departments concluded, in 2016, threatened to result in inadequate coverage and market instability. We agree with the Departments' earlier concerns that this definition, if reinstated, would put consumers at increased risk of purchasing plans that do not offer meaningful coverage. We also believe, as did the Departments in 2016, that this definition would place health insurance markets at greater risk of instability because of the increased opportunities and incentives for risk segmentation.

Under current rules, STLD plans are available for three months and cannot be renewed beyond that – helping to ensure that they are truly for “short-term” needs. As discussed, the duration limits were put in place in 2016 to protect consumers in response to reports that short-term plans were being abused by insurance companies. We believe that the amendments, if finalized, would result in many people replacing comprehensive Affordable Care Act (ACA)-regulated plans with STLD coverage. They would be attracted to the lower premiums that STLD plans can offer because they provide much more limited coverage than ACA-regulated individual market insurance and because they are not subject to important consumer protections. Instead of the current three-month limit, insurance companies would be allowed to provide coverage under the plans for up to 364 days, and possibly longer. This change effectively makes them almost identical *in duration* to plans that are required to comply with the ACA.

¹ 81 F.R. 75316 (75317-75318).

Specifically, STLD plans are exempt from many important ACA consumer protections (although some states may now have or may in the future adopt laws that restore such protections):

- STLD plans do not have to cover ACA’s essential health benefits requirements. Typically they exclude certain categories of benefits such as maternity, physical therapy, and mental health and substance abuse treatments. Some may not cover prescription drugs. They are also exempt from requirements to cover pre-existing conditions and typically do exclude such coverage.
- They are not required to abide by ACA issue and rating rules and are subject to medical underwriting, which means that only healthy people are likely to be able to purchase them. Issuers can price their plans in ways that discourage people with health conditions from obtaining such coverage or can simply not offer STLD plans to people with health conditions. There are no federal limitations on rating based on age or on other risk factors such as occupation. The plans are not guaranteed renewable.
- The plans often include overall annual coverage limits. Individuals suffering serious and unexpected health care condition could be left uncovered after quickly reaching such a cap, resulting in financial hardship for them and uncompensated care for their providers.
- Preexisting condition exclusions restart upon each renewal, meaning that any conditions that began in the prior coverage period would not be covered under a renewed or new plan in the next coverage period.
- STLD coverage could be subject to rescission – in which a person’s health plan is cancelled retroactively. In addition to rescissions, there is a record of litigation against such plans for their failure to pay claims for health conditions that their enrollees did not even know they had at the time of application, a practice known as post-claims underwriting.²

Consequently, under the proposed rule, it is likely that many consumers may be attracted to the lower costs offered by STLD plans and/or misunderstand their limitations, only to find that their coverage is riddled with gaps, leaving them without coverage for needed services and exposed to significant out-of-pocket costs. Moreover, FAH members and the health care providers that care for these individuals are concerned that the result will be increased uncompensated care, particularly for patients who need uncovered services or treatment for pre-existing conditions.

As the Departments acknowledge in the preamble of both the 2016 rule and the 2018 proposed rule, STLD coverage is designed to fill temporary gaps in coverage.³ The long-term availability of such plans is likely to increase the level of confusion that has already been sown in the individual market. Further, STLD plans already have a history of lawsuits and complaints filed by short-term policyholders around the country involving hundreds of thousands of dollars in unpaid bills.⁴

² R. Abelson, “Without Obamacare Mandate, ‘You Open the Floodgates’ for Skimpy Health Plans,” *New York Times*, November 30, 2017, <https://www.nytimes.com/2017/11/30/health/health-insurance-obamacare-mandate.html>

³ 81 *F.R.* 75316 (75316); 82 *F.R.* 7437, (7437).

⁴ H. Meyer, “Risky business: Short-term health plans could alter insurance landscape,” *Modern Healthcare*, January 13, 2018, <http://www.modernhealthcare.com/article/20180113/NEWS/180119957>.

Increasing Instability and Risk Segmentation in Individual Health Insurance Markets

Because STLD plans can avoid the minimum benefit standards and other rules that apply to coverage for individuals, they often offer bare bones benefit plans that attract only the healthiest of consumers. As discussed, STLD plans can be offered without coverage for prescription drugs, maternity care, cancer care, or services for mental illness and therefore are expected siphon off individuals from the ACA-regulated individual insurance market. Individuals most in need of those services or needing more comprehensive coverage more generally remain in the traditional individual health insurance market, driving up premiums.

By allowing the STLD plans to be available for the same duration as ACA-regulated products, more people are expected to enroll in such plans. Those who enroll, however, would likely be only those with the lowest likelihood of health needs and expensive treatment. Older adults and people with preexisting conditions would remain in the ACA-regulated individual health insurance market, creating additional instability in that market. Coverage of hospital services could be greatly compromised, leading to increasing numbers of underinsured individuals and rising hospital bad debt. This outcome explicitly undercuts the critical public health goals that were embodied in existing ACA market regulations.

Realistically estimating the potential impact of the rules on the number of people purchasing such plans and on premiums in the individual market is essential to understanding our concerns. We believe that the Departments' projections of the number of people impacted by the rule may be significantly underestimated. The Departments estimate that only 100,000 to 200,000 individuals would shift to STLD plans in 2019 under the proposed rule change and that the impact on premiums would be negligible. On the other hand, a recent Urban Institute analysis estimates that the number of people who would be without minimum essential coverage due to the change in the STLD rule would be 2.5 million in 2019. The Urban analysis also examines the impact of the STLD proposed change combined with the elimination of the individual mandate penalty and estimates that premiums would increase by an average of 16.6 percent in 2019 — even as high as 22 percent in some states — or upwards of \$2,000 for a typical 60-year-old with silver plan coverage.⁵

Improvements Necessary Should the Rule Be Finalized

If the Departments move forward to finalize an amended definition of STLD insurance, we urge the following changes be made to reduce the potential harmful impact of the rule on the individual market for health insurance:

Shorten the time period for which plans are available. The proposed amendments would allow for STLD plans to be available for up to 12 months and leaves open the possibility that

⁵ J. Sung and L. Walker, "Warning: Short-Term Health Plans=Higher Premiums for Older Adults," AARP Thinking Policy Blog, <https://blog.aarp.org/2018/03/21/warning-short-term-health-plans-higher-premiums-for-older-adults/>; L. Blumberg, et. al., The Potential Impact of Short-Term Limited-Duration Policies on Insurance Coverage, Premiums, and Federal Spending, *Urban Institute*, February 2018, <https://www.urban.org/research/publication/updated-potential-impact-short-term-limited-duration-policies-insurance-coverage-premiums-and-federal-spending>.

such plans could be renewed – effectively enabling them to be available for periods that exceed 12 months. We believe a shorter duration is more appropriate.

In addition to the coverage and market instability concerns described above, we believe that the long-term availability of plans that are described in the proposed rule as “short-term” is likely to raise considerable confusion among enrollees. States have already been active in identifying STLD plan issuers and those who market their products while taking advantage of this confusion to enroll consumers who believe they are in ACA-protected plans that satisfy the individual responsibility requirements. For example, Pennsylvania has recently revoked the licenses of seven agents and brokers for deceptive marketing of such plans and a number of states have received complaints about STLD plans refusing coverage once an enrollee becomes ill.⁶

Clarify that STLD plans cannot be renewed. We urge that the Departments not provide for STLD plans to be renewed and not establish expedited renewal processes for issuers of such plans. People who are experiencing longer gaps in coverage should be able to obtain ACA-regulated insurance through the many special enrollment periods that are available under existing rules. We expect that many of those individuals may even qualify for premium subsidies that could make ACA-regulated plans more affordable.

Strengthen notification requirements. The FAH appreciates that the Departments would require a revised notification to appear in the STLD’s policy contract and in any application materials for enrollment in such plans to ensure that enrollees and potential enrollees understand that the STLD plan is not required to comply with federal requirements of the ACA. We do not, however, believe that the required notification language is sufficient for an average individual to understand the kinds of insurance requirements and protections that are not available to them if they were to purchase an STLD plan. We recommend that the Departments require the notice to make those gaps in standards and protections more evident. For example, we suggest the Departments consider requiring a notice similar to that required for policyholders of plans affected by the “transitional relief” for non-grandfathered coverage in the small group and individual health insurance markets (the so-called “grandmothered” health plans.)⁷ That notice makes it explicit which of the ACA’s health plan protections and standards are not applicable.

⁶ N. Metcalf, “Is ‘Short-Term’ Health Insurance a Good Deal?,” *Consumer Reports*, December 22, 2017, <https://www.consumerreports.org/health-insurance/is-short-term-health-insurance-a-good-deal/>; S. Lueck, “Health Care Executive Order Would Destabilize Insurance Markets, Weaken Coverage,” *Center on Budget and Policy Priorities*, November 29, 2017, <https://www.cbpp.org/research/health/health-care-executive-order-would-destabilize-insurance-markets-weaken-coverage>.

⁷ J. Wu, Acting Director, “Insurance Standards Bulletin Series – Extension of Transitional Policy through Calendar Year 2018,” Center for Consumer Information and Insurance Oversight, Centers for Medicare & Medicaid Services, February 23, 2017, <https://www.cms.gov/ccio/Resources/Regulations-and-Guidance/Downloads/Extension-Transitional-Policy-CY2018.pdf>

Thank you for the opportunity to comment on the Proposed Rule. Should you have any questions regarding these comments please do not hesitate to contact me or my staff at (202) 624-1500.

Sincerely,

A handwritten signature in cursive script, appearing to read "Michael R. Smith". The signature is written in black ink and is positioned below the word "Sincerely,".