The Chronic Illness & Disability Partnership

April 23, 2018

Centers for Medicare & Medicaid Services
Department of Health and Human Services
P.O. Box 8010
Baltimore, MD 21244
Attention: CMS-9924-P

To Whom It May Concern:

We are writing on behalf of the Chronic Illness and Disability Partnership (CIDP). CIDP consists of national organizations representing individuals living with a wide range of chronic illnesses and disabilities, including cancer, diabetes, cerebral palsy, HIV, hepatitis B and C, and mental health and substance use disorders. We represent the 117 million Americans estimated to be living with a chronic illness and/or disability, many of whom rely upon the Marketplaces to obtain needed care.[1] While our organizations are national in scope, we also affiliate with strong regional, state, and community based advocacy networks. We appreciate the opportunity to provide comments to the proposed rule, Short-Term, Limited-Duration Insurance, issued by the Departments of Health and Human Services, Labor, and Treasury ("the Departments").

Robust, federally enforced consumer protections and standards are essential for ensuring that people living with chronic illnesses and disabilities can access the medically necessary care and treatment they need through the Affordable Care Act's (ACA) Marketplaces. To provide meaningful access to care for people living with chronic illnesses and disabilities, we urge the Departments to consider the recommendations and comments detailed below.

[1] U.S. Centers for Disease Control and Prevention, Chronic Disease Overview (February 23, 2016), available at https://www.cdc.gov/chronicdisease/overview/.

The Departments Should Retain the Current Federal Definition of Short-Term Coverage

Prior to 2016, some short-term plans covered individuals for periods up to or exceeding 12 months. The Departments took regulatory action in 2016 to limit short-term plan duration to under 3 months because they found that plans were being sold in situations other than those the rules were intended to address.[2] Short-term, limited duration plans are intended as temporary coverage for individuals facing short gaps in insurance—for example, in between jobs—and are not a substitute for long-term coverage. However, consumers were purchasing these plans as a primary form of health coverage for periods up to or exceeding one year. The Departments expressed concerns that short-term, limited duration plans were not "meaningful health coverage"[3] due to limitations such as annual and lifetime benefit limits and pre-existing condition exclusions, and therefore imposed a plan duration of under three months in order to protect consumers from financial harm. In keeping with the purpose of short-term coverage, we urge the Departments to maintain the current federal standard to ensure this coverage is actually short-term.

The Rule Would Weaken Important Consumer Protection and Benefits Standards, and Would Restore Pre-ACA Practices That Harmed People with High Health Needs

The proposal to change current rules by allowing issuers to sell short-term plans with a maximum coverage period of less than 12 months would jeopardize important consumer protections. The proposal would allow plans that bypass important ACA protections, such as Essential Health Benefits (EHBs), rating restrictions, the federal medical loss ratio, and the pre-existing condition exclusion prohibition, to be marketed to consumers as a long-term alternative to ACA-compliant coverage. This proposed rule would especially harm people living with chronic illnesses and disabilities, particularly given the ways that issuers have historically designed short-term, limited duration plans to explicitly discriminate against these populations.

Short-term plans have historically engaged in post-claims underwriting in order to rescind coverage or deny claims for services that may be associated with a pre-existing condition. One analysis of popular short-term plans found that issuers have denied claims for enrollees who experienced symptoms within the prior five years "that would cause a reasonable person to seek diagnosis, care, or treatment," even if the person never received care—for example, because they were uninsured or underinsured.[4] We are concerned that this broad discretion for issuers to deny claims may lead to financial hardship for consumers who purchase short-term plans and later learn that they have an untreated medical condition. Consumers who develop chronic conditions after they enroll in short-term coverage are also unprotected under the proposed rule, which does nothing to strengthen coverage standards under short-term plans or restrict issuer discretion to rescind coverage based on post-claims underwriting.

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[2] 45 CFR Parts 144, 146, 147, and 148, Preamble to 2016 Regulations, page 6-7.

[3] Preamble to 2016 Regulations.

[4] Dania Palanker, Kevin Lucia, and Emily Curran, *New Executive Order: Expanding Access to Short-Term Health Plans Is Bad for Consumers and the Individual Market*, THE COMMONWEALTH FUND (Oct. 11, 2017), http://www.commonwealthfund.org/publications/blog/2017/aug/short-term-health-plans.

Short-term plans also often exclude important EHBs such as prescription drug coverage, mental health and substance use services, and it is not always apparent to consumers which benefits are covered and which are excluded. A recent report from the Kaiser Family Foundation examining existing short-term plans found that 71% do not cover prescription drugs, a key EHB for people living with chronic illnesses and disabilities.[5] Furthermore, short-term plans have historically placed annual and lifetime limits on coverage, including condition-specific caps for chronic illnesses, and tend to have higher consumer cost sharing without annual out-of-pocket maximum caps. Consumers may not know the limits of their plan until after they develop a medical condition or otherwise require a higher level of services. Since health status is not static, enrolling in a deficient plan can be devastating for someone diagnosed with a serious condition or disability after enrolling in a short-term plan.

Expanding the Short-Term Market Will Increase Fraud and Other Deceptive Practices
Short-term plans also have a long history of fraud and misrepresentation. Insurance brokers have historically engaged in deceptive sales tactics, leading consumers to purchase short-term coverage because it was falsely represented as being ACA-compliant. Consumers only learned that this was not true after their claims were denied, leaving patients and providers with substantial unpaid claims. Expanding the short-term market could lead to increased consumer confusion about coverage and substantial risk for fraudulent practices to market sub-par plans as ACA-compliant plans. We appreciate the Departments' proposal to revise the required notices that must appear in insurance contracts and application materials, specifically the addition of language clarifying that "short-term, limited duration" plans are not considered minimum essential coverage and that consumers who lose such coverage must wait until the next Open Enrollment to enroll in an ACA-compliant plan. However, we do not feel that this revised notice is sufficient to warn consumers of the value of excluded services or the financial risks associated with such plans. This lack of notice can be especially harmful to people living with chronic illnesses and disabilities, for whom ACA protections such as EHBs, limits on rescission, and bans on lifetime or annual limits are crucial.

Issuers Should Not Be Allowed to Renew Short-Term Plans
The Departments seek comment on their proposal to allow issuers to renew or extend short-term coverage beyond 12 months, as well as on a proposed streamlined application process that would expedite plan renewals or extensions. We do not believe that the ability to renew or extend coverage is sufficient to make short-term plans a consumer-friendly product. This only encourages longer enrollment in these plans and further undermines the stability of the individual market. We strongly urge the Departments to support policies that encourage consumers to use short-term plans as they were intended, not as a long-term coverage option, but as an option to fill short gaps in coverage. Streamlining the reapplication process is in direct conflict with the entire purpose of a short-term plan, and it does not protect consumers from medical underwriting or pre-existing condition exclusions based on health conditions that

[5] Politz, Karen et. al. Understanding Short-Term Limited Duration Health Insurance. April 2018. Available at https://www.kff.org/health-reform/issue-brief/understanding-short-term-limited-duration-health-insurance/.

began during the prior coverage period.[6] Additionally, federal legislative proposals that would make short-term plans renewable would similarly fail to protect consumers with health conditions. Renewability does not prevent insurers from engaging in medical underwriting and increasing premiums or denying claims for consumers who incur high costs.[7] Policies requiring renewability or streamlined application would therefore yield the same result: consumers with health conditions would be denied coverage or priced out of the short-term market and would have no choice but to enroll in ACA-compliant plans, leading to higher costs in the ACA-compliant market.

The Rule Would Make Comprehensive ACA-Compliant Coverage More Expensive
Current rules limiting contract length of short-term, limited duration plans to no more than three months are in place to prevent insurers from siphoning healthy enrollees from the individual market. The Departments took regulatory action in 2016 to limit short-term plan duration to under three months based on findings that these plans adversely impacted the risk pool for ACA-compliant coverage.[8] The justification for reversing these rules now, just two years later, is not evinced in the record. In fact, the Departments acknowledge that the proposed rule could weaken states' individual market single risk pools, increase costs to consumers and issuers, and reduce consumer choice by causing issuers to exit the individual market, but do not propose policies that would mitigate these consequences.

If the proposed rule were finalized in its current form, short-term plans could essentially function as long-term coverage that bypasses important ACA protections. These plans would be competing in the same market as ACA-compliant individual plans, but would be subject to different rules. Issuers could structure eligibility rules, benefit designs, and marketing practices in ways that encourage enrollment by healthier individuals while discouraging less healthy individuals, thus enabling issuers to charge lower-than-average premiums. Additionally, short-term plans are medically underwritten, meaning that individuals with pre-existing conditions or known health risks can be denied coverage or charged higher premiums. This would create an uneven playing field and lead to adverse selection because short-term plans could siphon healthy individuals from the ACA-compliant plans and leave the individual market with higher risk enrollees. People that want comprehensive coverage in the individual market could find their options dwindling or that the premiums are unaffordable. This is especially harmful to people living with chronic illnesses and disabilities who may not be able to find affordable individual coverage that is adequate to meet their health needs.

The Department predicts that the proposed rule would result in 100,000 to 200,000 young and healthy individuals leaving the ACA-compliant market and purchase short-term plans. However, we believe that plan enrollment in these short-term plans would likely be much higher. Researchers predict that as many as 4.3 million individuals would enroll in expanded short-term

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[6] AM. ACAD. OF ACTUARIES, COMMENTS RE: CMS-9924-P—SHORT-TERM, LIMITED DURATION INSURANCE 4-5 (APR. 6, 2018), http://www.actuary.org/files/publications/STLD_Comment%20Letter_040618.pdf.
[7] *Id*.
[8] Excepted Benefits; Lifetime and Annual Limits; and Short-Term, Limited-Duration Insurance, 81 Fed. Reg 75,316, 75,318 (Oct. 31, 2016).

plans if the proposed rule is finalized in its current form.[9] Additionally, research shows that the combined effect of the proposed rule and the elimination of the individual shared responsibility payment would increase ACA-compliant individual insurance premiums by 18.3 percent on average.[10] We are concerned that the Departments' predictions are too conservative, and that the proposed rule could result in a mass exodus of healthy individuals from the ACA-compliant market.

The Departments Should Focus on Ways to Stabilize the Market

We share the Departments stated concern that policy interventions are necessary to stabilize the individual market, particularly for individuals not eligible for federal subsidies. We believe that a federal reinsurance program is the best way to stabilize the market. Instead of policies that segment the market, we urge the Departments to focus instead on policies that shore up the individual market, protecting people living with chronic illnesses and disabilities. In addition to an adequate reinsurance program, we also support increased investment in outreach, education, and enrollment to ensure robust participation by both healthy and sick individuals in the ACA's Marketplaces. We welcome the opportunity to work with the Departments on these efforts.

Thank you, again, for the opportunity to comment. We urge the Departments to continue its commitment to implementing the ACA in ways that ensure that people living with chronic and complex conditions have access to quality, affordable health care coverage. Please contact Robert Greenwald with the Treatment Access Expansion Project (rgreenwa@law.harvard.edu), Amy Killelea with the National Alliance of State & Territorial AIDS Directors (akillelea@nastad.org), or Jean McGuire at Northeastern University (j.mcguire@neu.edu) if we can be of assistance.

Respectfully submitted by the co-chairs of the Chronic Illness and Disability Partnership

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[9] Linda J. Blumberg, Matthew Buettgens, and Robin Wang, *Updated: The Potential Impact of Short-Term Limited Duration Policies on Insurance Coverage, Premiums, and Federal Spending*, THE URBAN INST. (Mar. 2018), https://www.urban.org/sites/default/files/publication/96781/2001727_updated_finalized.pdf.

[10] Id.

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