

April 23, 2018

Honorable Alex Azar
Secretary
Department of Health and Human
Services
P.O. Box 8010
Baltimore, MD 21244-8010

Ms. Seema Verma
Administrator, Centers for Medicare
& Medicaid Services
Department of Health and Human
Services
P.O. Box 8010
Baltimore, MD 21244-8010

Mr. David Kautter
Acting Commissioner, Internal
Revenue Service
Department of the Treasury
1111 Constitution Avenue, NW
Washington, DC 20224

Mr. Preston Rutledge
Assistant Secretary, Employee
Benefits Security Administration
Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

RE: Comments on Short-Term, Limited-Duration Insurance Proposed Rule (CMS-9924-P)

Dear Secretary Azar, Administrator Verma, Acting Commissioner Kautter, and Assistant Secretary Rutledge:

HealthyWomen appreciates the opportunity to comment on the proposed rule on short-term limited-duration insurance. HealthyWomen is the nation's leading independent, nonprofit health information source for women. For nearly 30 years, millions of women have turned to HealthyWomen for answers to their most personal health care questions. HealthyWomen provides objective, research-based health information, and advocates on behalf of women to ensure that women's health is a primary focus by policy makers and others. Our mission is to educate and empower women to make informed health choices for themselves and their families about access to care, and the safety of health care products and services.

HealthyWomen is writing today to strongly object to the proposed rule concerning short-term limited-duration insurance. The proposed rule would extend insurers' ability to offer short-term policies – that don't meet the current definition of health insurance – to millions of consumers. This is troubling because these policies could discriminate based upon age and gender, be medically underwritten, and exclude preventive and maternity services. This situation would put many women, men, families, and communities at significant financial and health risk. Expanding the availability of short-term plans will

undermine the individual market by segregating currently healthier individuals from older and sicker individuals. Because of the market altering effects of the proposed rule (should it be implemented), many individuals who rely on comprehensive coverage – including women, older adults, and people with chronic conditions – would be left without affordable, comprehensive options. Those policies would also resurrect the problems of “job lock” and undermine job growth in the freelance (a.k.a. “gig), and entrepreneurial economy.

Short-term policies fail consumers’ true needs of reliable, affordable insurance

Short-term, limited-duration insurance has historically been to provide temporary insurance during unexpected coverage gaps. That is why current regulations allowing short term plans of up to three months were developed for a transitional market niche within the framework of the evolving U.S. market for individual health insurance under current law – which is supported by most Americans.

Selling insurance plans with limited benefits was a predatory practice that existed before the Patient Protection and Affordable Care Act (ACA). Those plans were specifically designed to avoid anyone with a pre-existing health condition or high expected health care utilization – such as the expectation of pregnancy – from enrolling. This was one of the long-standing problems in the individual insurance markets that the ACA sought to improve or constrain. Specifically, before the ACA, only 12 percent of plans in the individual market covered maternity care benefit.ⁱ Even among plans that covered maternity services, the coverage was not always comprehensive or affordable. One study found that several plans charged a separate maternity deductible that was as high as \$10,000, and some plans had waiting periods of up to a year before maternity care would be covered.ⁱⁱ

Moreover, short-term plans have historically resulted in significant financial problems leaving patients and their families with unexpected medical bills because they do not cover many services and benefits that American expect to be part of their coverage when they buy health insurance. In addition, short term plans can deny a new contract (or decline the renewal), or institute a dramatically higher premium – and possibly new pre-existing condition exclusions – if the enrollee becomes sick or injured during the coverage term.

Essential health benefits are – *Essential*

In addition to being able to exclude coverage for pre-existing conditions, short-term plans are not required to cover certain benefits, such as routine maternity and newborn care, prescription drugs, mental health care, substance use services, and preventive services like tobacco cessation. All those services and benefits have been shown to be important not only for chronic conditions, but also preventing many health problems as well as important for public and community health. As we are certain you all know, tobacco use remains the number one preventable cause of death and disease in the United States. And such coverage exclusions are not hypothetical: A current short-term health plan (IHC Secure Liteⁱⁱⁱ) excludes coverage for women’s reproductive health, including

treatment of normal pregnancy or childbirth, and infertility.

Discrimination based on gender in premiums and pricing is now un-American

Current law prohibits real health insurance from basing premiums on anything other than age (within a 3:1 ratio for adults), tobacco use, family size, and geography. That is, women cannot be charged more for the same insurance as a man – but the proposed rule would allow short-term plans of any length to do just that. As you very likely know, before the ACA took effect, 92 percent of best-selling plans on the individual market charged women more than men, which cost women approximately \$1 billion a year.^{iv} Such gender-based discriminatory pricing is still commonplace among insurers selling short-term plans – but as you know, those family unfriendly plans can only be sold for a maximum of 3 months and not be renewed.

Other ways that short-term plans place women and families at financial risk are by imposing annual and lifetime limits on what they will pay. As you again know, such limits are prohibited under current law for insurance that has more than 3 months of coverage since such policies must comply with the rules of the ACA.

Discrimination against individuals based on their health status does not improve choice or competition.

Choice and competition for health insurance^v that will support American families and U.S. economic growth can only occur within a marketplace that is a level playing field fair to all Americans seeking to purchase individual health insurance, i.e., a well-functioning market based upon adequate, transparent, and responsible information about costs, quality, and covered benefits and services.

The proposed regulations would increasingly divide and segregate people into subgroups based upon pre-existing conditions, gender, age, and other factors doesn't promote such a market but rather destroys it. An analogy might be that auto companies can compete on features, colors, and other characteristics of their products, but they cannot offer less expensive versions without seat belts, bumpers, mufflers, or tempered windshields.

Because short-term plans are exempt from the ACA's pre-existing condition protections, plans can decline to enroll people on a case by case basis, deny coverage of specific services based on health status and medical history, or specifically exclude services that disproportionately affect women, such as maternity care, autoimmune diseases, chronic pain, and arthritis, or even diverticulitis (i.e., infections affecting people with the chronic condition of diverticulosis), a disease for which older women are hospitalized at a higher rate than men^{vi} – and if not properly treated in a timely manner can be fatal.

We are particularly concerned that short-term health plans that are not required to cover maternity care will both discriminate against women and families, and unduly burden communities. Specifically, if insurance can be sold without maternity benefits, those that do include such coverage will be more expensive for young women and families. This

could lead some women and families to forego maternity coverage, and it has been widely shown that lack of coverage for maternity services leads to less prenatal care and worse clinical outcomes.^{vii} Such worse outcomes (with the United States already lagging behind its peer countries^{viii}), are more than just public health statistics, but place real burdens on communities' schools and social services – which can then require increased taxation. In addition, as the Black Women's Health Imperative's chief executive officer highlighted at a briefing HealthyWomen organized in October 2017, black women in the United States are three to four times more likely to die from pregnancy complications.^{ix} And from a community and economic development perspective, poor childbirth outcomes impede women from being productive and consistent workers, further constraining local economic growth.

Further, segregating individuals into healthier and less healthy risk pools, will promote discriminatory, predatory practices, with companies selling short-term plans offering lower and lower premiums to attract younger and healthier individuals. This practice will leave older, sicker and costlier risk pools behind in the ACA-complaint market, creating a cost-spiral that will hit middle-class working people particularly hard since they do not get subsidies for their insurance. The result may be what economists call a “death spiral” with insurance premiums continuing to rise as more and more people cannot afford the rising premiums. Several states (before the ACA) experienced this phenomenon before they rectified it through regulatory adjustments. However, the ACA's interlocking (albeit imperfect) set of provisions were designed to account for and prevent such a death spiral phenomenon. Unfortunately, decisions by the Federal government and many states have driven great uncertainty into the individual insurance markets, resulting in dramatic increases in premiums. Because insurance companies abhor uncertainty – and need to make their business decisions for an entire year several months before that year starts – such uncertainty encourages them to either build in extra-large margins for error (presumably always in their favor), or to leave the business altogether. This is not a prescription for a well-functioning, competitive market. Government programs – such as Medicare Part D – have accomplished such marketplaces with level playing fields for plans and consumers. Destroying the individual markets with uncertainty doesn't benefit, patients, plans, or the Federal government, and a recent analysis of the proposed rule projects that it would result in Federal government spending being 9.3 percent higher than under current law, while fewer people would have health insurance.^x

This result will be worse health outcomes, higher health care costs for the country, and a strain on local economies facing higher rates of preventable health conditions with potential workers unable to meet labor demands.

Transparency in marketing and information about benefits is necessary

Because short-term plans do not have to provide potential enrollees with information about their benefits and costs in the transparent and clear ways required for real insurance plans that must meet the ACA's requirements, we are very concerned that consumers will be duped into buying plans that they do not adequately understand, leaving them uncovered for many services and benefits the policy holder expects, and patients being responsible for thousands of dollars in medical bills they had expected their “insurance”

to cover. The proposed rule would expand the scope and reach of short-term plans, and thus leave many, many more Americans in such dire straits, i.e., in worse clinical and financial health than if they had adequate insurance. Such physical, mental, and financial impairment will also undermine local and community economic viability and prosperity.

Recommendations

Below are HealthyWomen's recommendations concerning the proposed rule:

- The proposed rule should not be finalized or implemented.
- If the proposed rule is finalized, it should prohibit short-term policies from exceeding the currently allowed period of three months and such policies should not be eligible for renewal.
- Consumer notices and information about such plans should be consistent with existing requirements for ACA insurance policies. Specifically, the information plans provide to potential purchasers should be explicit as to how the plan compares to ACA Marketplace plans – including listing what benefits and services the short-term plan does not cover, and how the costs and cost-sharing differs. And such information should be in large type at the beginning of every document and adjacent to – and on the same page – as any required signatures. And for on-line enrollment, such notification should be required in a mandatory pop-up window or other affirmative notification indicating that the person has recognized the information;
- The effective date of the proposed rule – should it ever be finalized – should be for plans available to start coverage no sooner than January 1, 2020. As noted above, insurance companies abhor uncertainty. Similarly, consumers need time to understand markets and product choices. The availability of the new policies that the proposed rule would permit before January 2020 would throw the insurance planning process for 2019 into significant disarray. Similarly, it would add another layer to consumer confusion about what their options and requirements are for purchasing health insurance.

With the removal of the penalties for not having health insurance starting in 2019, there is less financial imperative for consumers to have more choices in 2019. If the goal is to promote a better functioning market, that can only happen with well-informed consumers and reputable insurance companies that have time to plan for their new products and market dynamics. Instability in insurance is almost as bad as instability in one's personal health, but appropriate planning and prevention can minimize both. Allowing short term plans to be sold that would be effective under any modified rules in or during 2019 (i.e., before January 1, 2020), would be a shock to the individual insurance markets resulting in financial strains for both legitimate insurance companies and existing (and potential) policy holders. Delaying implementation until 2020 will give insurers 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 exercise their Constitutional authority to regulate intrastate commerce through legislative or regulatory changes so that the impact of expanded availability of short-term plans on their citizens and markets would not be abruptly imposed upon them

from Washington DC.

Thank you for the opportunity to comment on the Short-Term, Limited-Duration Insurance Proposed Rule (CMS-9924-P). We urge the Departments to preserve and fully implement the current law – which is supported by most Americans – since it is a market-based, consumer-oriented approach for providing access to more health insurance that should be built upon to benefit the U.S. economy and all Americans regardless of their sex, income, state of residence, or health status.

If you have any questions or concerns about our comments or recommendations, please contact me at 732-530-3425 or beth@healthywomen.org.

Sincerely,

Beth Battaglino, RN

Elizabeth Battaglino, RN
Chief Executive Officer
HealthyWomen

ⁱ National Women’s Law Center. (2012). Turning to Fairness: Insurance Discrimination against Women Today and the Affordable Care Act. Retrieved 14 December 2016, from

http://www.nwlc.org/sites/default/files/pdfs/nwlc_2012_turningtofairness_report.pdf

ⁱⁱ National Women’s Law Center. (2012). Turning to Fairness: Insurance Discrimination against Women Today and the Affordable Care Act. Retrieved 14 December 2016, from

http://www.nwlc.org/sites/default/files/pdfs/nwlc_2012_turningtofairness_report.pdf

ⁱⁱⁱ The IHC Group. “Secure Lite: Short-term Medical Insurance for Individuals and Families.”

^{iv} National Women’s Law Center. (2012). Turning to Fairness: Insurance Discrimination against Women Today and the Affordable Care Act. Retrieved 14 December 2016, from

http://www.nwlc.org/sites/default/files/pdfs/nwlc_2012_turningtofairness_report.pdf

^v “Presidential Executive Order Promoting Healthcare Choice and Competition Across the United States,” October 17, 2017

^{vi} “Diverticular disease: Epidemiology and management,” Weizman et al., *Can J Gastroenterol*. 2011 Jul; 25(7): 385–389 (<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3174080/>)

^{vii} Chang J, Elam-Evans LD, Berg CJ, Herndon J, Flowers L, Seed KA, et al. Pregnancy-related mortality surveillance – United States, 1991–1999. *MMWR Surveill Summ*. 2003 Feb 21;52(2):1–8. pmid:

^{viii} Central Intelligence Agency World Fact Book – Infant Mortality (<https://www.cia.gov/library/publications/the-world-factbook/rankorder/2091rank.html>), and Bulletin of the World Health Organization 2015;93:135,

“Maternal mortality and morbidity in the United States of America” (<http://dx.doi.org/10.2471/BLT.14.148627>)

^{ix} CDC PUBLIC HEALTH GRAND ROUNDS “Meeting the Challenges of Measuring and Preventing Maternal Mortality in the United States,” November 17, 2017

(<https://www.cdc.gov/cdcgrandrounds/archives/2017/november2017.html>)

^x Blumberg, L., Buettgens, M., Wang, R. (February 2018). *The Potential Impact of Short-Term Limited-Duration Policies on Insurance Coverage, Premiums, and Federal Spending*. Retrieved 26 March, 2018), from

https://www.urban.org/sites/default/files/publication/96781/2001727_updated_finalized.pdf