April 20, 2018

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

Submitted electronically via http://www.regulations.gov

RE: Proposed Rule, CMS-9924-P

Dear Secretary Azar and Administrator Verma:

The Pennsylvania Insurance Department (PID) appreciates the opportunity to submit these comments on the notice of proposed rulemaking titled, "Short-Term, Limited-Duration Insurance." (83 F.R. 7437 et seq., Feb. 21, 2018). We appreciate the Trump Administration's goal to make coverage more affordable for more people. However, as with earlier proposed rules, this proposed rule would increase potential for consumer harm and market destabilization both immediately and long-term, as the ripple effects of the proposed changes inevitably impact premium prices and market stability, insurer commitment to participating in the individual market, and the availability of comprehensive coverage for millions of Americans.

As the primary regulator of health insurance in Pennsylvania's commercial market, the PID works to ensure consumers are protected and that insurers can compete in a stable, predictable market. In that vein, we urge the Trump Administration to abstain from imposing requirements and restrictions on state regulators with respect to short-term, limited-duration plans and allow state regulators to govern as necessary. With that said, I would be remiss if I did not take this opportunity to briefly identify the significant negative impacts this proposed rule would have on Pennsylvania's health insurance market.

Consumer Confusion

As indicated in the Background section of the proposed rule, "[s]hort-term, limited-duration insurance is a type of health insurance coverage that was *designed to fill temporary gaps in coverage* that may occur when an individual is transitioning from one plan or coverage to another plan or coverage" (83 F.R. 7438, emphasis added). Its temporary nature makes it exempt from the Public Health Service Act's individual market requirements because it is not individual insurance.

By proposing to extend the duration and renewability of short-term, limited-duration insurance, the federal Administration seeks to make short-term plans look and act like individual insurance. If there is effectively no difference in duration between "short-term, limited-duration" insurance and comprehensive individual insurance, it should be subject to the same rules as all other individual insurance, particularly those consumer protections that ensure value and meaningful coverage for individuals who purchase the product.

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In Pennsylvania, we are currently working with a consumer who applied for short-term, limited-duration insurance during the individual marketplace's open enrollment season. Her application for short-term, limited-duration insurance was denied due to a pre-existing condition, but the denial came after the individual marketplace's open enrollment season ended. For this consumer, pursuing the "more affordable alternative" left her with no coverage at all.

We have also received numerous complaints from consumers whose short-term, limited-duration plans failed to reimburse for services that were excluded based on the fine print of those policies. In fact, in the past two years, the PID has suspended the licenses of eight producers who misrepresented the coverage available to consumers who purchased short-term, limited-duration insurance. While the proposed rule contemplates written notice to inform the consumer of the plan's limitations, we remain concerned that consumers will nonetheless not be fully informed at the time of purchase, or will be swayed by producers quoting the October 12, 2017 Executive Order: short-term, limited duration insurance is "an appealing and affordable alternative to government-run exchanges for many people."

Lack of Transparency

While the proposed rule would include enhanced notice requirements which encourage consumers to check their policies carefully, the notice requirement has limited effect when not coupled with access to provider directories, formularies, sample coverage documents, summaries of benefits and coverage, and a uniform glossary – all of which are required by the Affordable Care Act (ACA) for comprehensive insurance, but none of which are required of short-term, limited-duration insurance.

We urge the Departments to couple the enhanced notice with transparency requirements that would allow consumers access to important documents to allow shoppers to see what their plan would and would not cover.

Affordability

The PID rejects the notion that short-term, limited-duration insurance is an affordable alternative to ACA-compliant insurance. Consumers may experience an upfront savings in premiums, but the "affordability" of the expanded duration short-term plans will likely prove to be illusory: those who need health care will run up against exclusions and limitations on coverage that render any notion of "affordability" to actually be a trade-off for benefit coverage and provider access. One stroke survivor, for example, told us that her coverage had a maximum payout of $40,000, but the costs for emergency and immediate follow-up care for her stroke totaled over $250,000. This consumer's experience with short-term limited duration insurance demonstrates how the less comprehensive coverage provided by the plans may prove insufficient for consumers who require access to care.

Market Destabilization

As the healthiest individuals are pulled into short-term, limited duration insurance, the ACA-compliant risk pool becomes an *ad hoc* high-risk pool. In the Summary of Impacts of the Proposed Rule, "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. This estimate, however, is based on an analysis of enrollment trends from before October 2016, when this rule change was the only factor being considered (83 F.R. at 7443). However, taking into account the recent mandate repeal and other federal policies, a projected shift of 2.1 million enrollees from the individual market appears more likely.[1] The enormous disparity demands further study.

Further impacting those decisions will be the disparity in medical loss ratios between ACA-compliant plans, with mandated 80% loss ratios, and short-term, limited-duration insurance, with average medical loss ratios as low as 50 or 60 percent.[2]

Insurance companies will have to make business decisions about which markets they will participate in, what products they will sell, and how to charge sufficient premiums to account for such changes. Facing a deteriorating risk pool, and accounting for changing federal policies, insurers remaining in the individual insurance market may be forced to set drastically higher rates, with some projections indicating that rates in the Commonwealth will require a 20 percent increase.[3]

Finally, given the fact that the timeline of this rule as proposed would result in implementation shortly after Plan Year 2019 rates are finalized, we strongly encourage the Departments to delay implementation of this rule. Not only will insurance companies need the time to adjust their business models and rates, but state regulators, legislatures, providers, and other stakeholders will need additional time to make changes to account for the market impact of these policies.

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In sum, if this rule is finalized as proposed, it will add to the destabilizing effects of previous policies released by the Trump Administration. Consumers will be harmed as they face confusing products and less transparency; insurers will be forced to raise rates to continue to offer individual coverage and will have to make business decisions about whether or not participation is worth the cost. Instead of providing more options at lower cost, this rule would actually increase premiums for consumers who have health care needs, while removing many options for coverage that would help people when they need it. If the Departments choose to finalize this rule as proposed, we encourage delayed implementation to 2020 at the earliest.

We appreciate your consideration of our comments. If you have any questions or would like more information, please do not hesitate to contact me.

Sincerely,

Jessica K. Altman
Commissioner

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[1] Linda J. Blumberg, Matthew Buettgens, & Robin Wang. Potential Impact of Policies on Coverage, Premiums, Federal Spending, The Urban Institute (Feb. 2018).
[2] Sabrina Corlette, JoAnn Volk, & Justin Giovannelli. Short-Term, Limited-Duration Insurance Proposed Rule: Summary and Options for States (Feb. 23, 2018). Available at https://www.shvs.org/short-term-limited-duration-insurance-proposed-rule-summary-and-options-for-states/.
[3] Linda J. Blumberg, Matthew Buettgens, & Robin Wang. Potential Impact of Policies on Coverage, Premiums, Federal Spending, The Urban Institute (Feb. 2018).