THE ADVOCACY DIVISION OF CONSUMER REPORTS

April 20, 2018

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Baltimore, MD 21244-8010

Ms. Seema Verma, Administrator
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Mr. Preston Rutledge, Assistant Secretary
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Submitted electronically via https://www.regulations.gov

RE: CMS-9924-P (Short-Term, Limited-Duration Insurance)

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

Consumers Union, the advocacy division of Consumer Reports[1], submits these comments on proposed tri-agency rule, CMS-9924-P. The Affordable Care Act (ACA) dramatically increased the number of consumers obtaining comprehensive health coverage nationwide, yet some consumers not eligible for subsidies struggle to afford their insurance premiums and cost-sharing. Consumers Union agrees that now is the time to address lingering insurance affordability issues. However, we oppose this proposal as one that would weaken, not strengthen, the health and financial security of consumers and that would destabilize the individual insurance

[1] Founded in 1936, Consumer Reports is an expert, independent, nonprofit organization whose mission is to work for a fair, just, and safe marketplace for all consumers. Using more than 50 labs, its auto test center, and survey research center, the non-profit organization rates thousands of products and services annually. Consumer Reports has over 8 million subscribers to its magazine, website, and other publications. Its advocacy division, Consumers Union, works for health reform, food and product safety, financial reform, and other consumer issues in Washington, D.C., the states, and the marketplace.

market by expanding access to short-term policies that sharply veer from the consumer protection "rules of the road" established under the ACA.

As described more fully below, the cheaper premiums allowed by pared down, short-term, limited duration (STLD) policies mask many hidden costs to consumers including benefits that will not be covered; higher deductibles; medical underwriting that allows denial of coverage higher rates for those with pre-existing conditions; and an absence of annual and out-of-pocket limits. Consumers may learn of these deficiencies only when they need to use their coverage.[2] Moreover, by appealing to younger, healthier consumers, these policies will further weaken the individual market risk pool and thus raise premiums for those who need comprehensive policies, particularly those who are older or who have ongoing health conditions.

The Departments' own assessment of the benefits, costs, and transfers associated with this regulatory action set forth in this Notice of Proposed Rulemaking (NPRM) validates our concerns, as detailed below. Given the expected loss of coverage, consumer confusion, increased cost to consumers who maintain comprehensive ACA-compliant coverage, and increased cost to the federal treasury, we urge you to withdraw this proposal. If, notwithstanding this recommendation, you decide to go forward with it, we strongly urge you to exercise the utmost caution and to tailor the regulation as narrowly as possible, as described below, particularly in light of the extensive history of abuse and consumer confusion about these low-value products.[3]

The Impacts Analysis: a Net Negative

We first address the extensive cost-benefit analysis in the proposed regulation. STLD coverage is not "individual health insurance," pursuant to the Public Health Services Act, section 2791(b)(5). Rather, it is simply a form of alternative payment arrangement and not subject to any of the key market reforms of the ACA.[4] On the benefit side of the equation, the NPRM's Impact Analysis states that the proposed regulation would offer choice of lower cost coverage for some consumers (and increased revenue for issuers of short-term plans), but also acknowledges that these policies mean:

- pared down benefits for those who buy STLD policies;
- potential tax penalties in 2018 for those who enroll in STLDs, since these policies do not constitute "minimum essential coverage";
- reduced access to some services and providers for consumers who switch to STLD plans;
- increased out-of-pocket costs related to excluded services, and thus financial hardship for some consumers;
- worsening of States' individual market risk pools if STLD policies proliferate, with a consequent increase in premiums for comprehensive policies;

[2] "Is 'short-term' health insurance a good deal?", Consumer Reports Online Dec. 22, 2017, https://www.consumerreports.org/health-insurance/is-short-term-health-insurance-a-good-deal/

[3] "Junk health insurance: Stingy plans may be worse than none at all," Consumer Reports magazine: March 2012 **https://www.consumerreports.org/cro/magazine/2012/03/junk-health-insurance/index.htm**

[4] Lucia, K. et al., "State Regulation of Coverage Options Outside the Affordable Care Act," The Commonwealth Fund, March 2018, p. 4. http://www.commonwealthfund.org/~/media/files/publications/fund-report/2018/mar/lucia_state_regulation_alternative_coverage_options.pdf

- reduced choice of plans for some consumers if, due to the worsened risk pool, some carriers withdraw from the individual market; and
- increased federal payments for Advance Premium Tax Credits—between $96-168 million—if, as expected, the individual market risk pool worsens and premiums rise in that market.

The problems for consumers with such limited plans are legion and longstanding, spanning a period of decades[5], and consumer dissatisfaction and confusion can be expected to intensify. Over the past 2 years, state regulators have seen an uptick in complaints about short-term products, with some consumers saying they were unaware their plan did not provide comprehensive coverage or that they could be refused a policy at the end of the contract term.[6] In a 10-state survey conducted by the Commonwealth Fund, state regulators noted an increase in complaints about brokers using deceptive practices to enroll people in short-term plans over the phone. Some states, including Alaska, Indiana, Iowa, Nebraska, Pennsylvania, and Wyoming have recently found it necessary to warn consumers to exercise caution about these products.[7] Multi-state class action lawsuits have been filed against short-term policy carriers alleging fraud and misrepresentation, not only in the manner in which this product was marketed but also because of the failure to pay claims.[8] The lawsuits allege that the named defendant short-term health insurers hired outside brokers who used dishonest sales tactics, falsely claimed to be licensed insurance agents, and preyed on the most vulnerable consumers.[9]

The Impacts Analysis estimates that 100,000-200,000 individuals will shift from ACA-compliant policies on the exchanges to STLD policies. Experts note that this figure is seriously underestimated. The Impact Analysis relies, in part, upon the data on current enrollment in STLDs from the National Association of Insurance Commissioners (NAIC). The NAIC numbers used are likely understated because some insurers provide STLD coverage through group policies, which are reported with other group business in NAIC filings. Moreover, the estimate in the NPRM is solely for individuals in the exchanges, not the full individual market inside and outside the exchanges. Wakely Consulting, looking at the impact on the whole individual market both inside and outside exchanges, estimates that under the proposed rule, 396,000-826,000 individuals will shift from ACA-compliant policies in 2019, with that number rising to 1,070,000-1,948,000 upon full implementation."[10] Urban Institute estimates that 2.6 million new STLD policy holders would switch from other insurance of some type under the proposed rule.[11]

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[5] "Hazardous health plans: Coverage gaps can leave you in big trouble", Consumer Reports Online, updated: May 2009 https://www.consumerreports.org/cro/2012/05/hazardous-health-plans/index.htm; "That Florida woman's canceled Blue Cross policy? It's a junk insurance plan. She can get a real plan for only $165 a month", Consumer Reports Online, published Oct. 29, 2013 https://www.consumerreports.org/cro/news/2013/10/florida-woman-s-canceled-blue-cross-plan-is-junk/index.htm

[6] Palanker, D., et al., "Proposed Federal Changes to Short-Term Health Coverage Leave Regulation to States", Commonwealth Fund, Feb. 20, 2018, http://www.commonwealthfund.org/publications/blog/2018/feb/short-term-health-plan-proposed-changes

[7] Goe, C., Esq., "Non-ACA Compliant Plans and the Risk of Market Segmentation," March 2018 http://healthyfuturega.org/ghf_resource/non-aca-compliant-plans-risk-market-segmentation/

[8] Id. See also California Insurance Commissioner Dave Jones announcing multi-state settlement with HCC Life Insurance Company, April 10, 2018 Press Release http://www.insurance.ca.gov/0400-news/0100-press-releases/2018/release036-18.cfm

[9] Goe, supra.

[10] Cohen, M., et al., Wakely Consulting, "Effects of Short-Term Limited Duration Plans on the ACA-Compliant Individual Market" http://www.communityplans.net/wp-content/uploads/2018/04/Wakely-Short-Term-Limited-Duration-Plans-Report.pdf

[11] Blumberg, L. et al., "Updated: The Potential Impact of Short-Term Limited-Duration Policies on Insurance Coverage, Premiums, and Federal Spending," Urban Institute, March 2018, p. 6. An additional 1.7 million people would have previously been uninsured, for a total of 4.3 million STLD policy purchasers, under Urban's modeling. https://www.urban.org/sites/default/files/publication/96781/2001727_updated_finalized.pdf

This proposed rule would negatively affect two distinct populations: first, the individuals who buy STLD products and then later need coverage that is not included, and second the consumers who know they need, or simply want, comprehensive coverage but end up facing higher premiums than ever due to the damaged ACA-compliant risk pool.

Regarding the risk to individuals who purchase them, STLDs may provide very limited coverage since they are not required to provide Essential Health Benefits (EHBs).[12] Specific services at risk of not being covered include prescription drugs; behavioral health, including mental health and substance abuse; and maternity care. These are all likely candidates since these services were often excluded from policies prior to the ACA.[13] And these policies may also exclude coverage for entire categories of conditions, something consumers may not learn until it is too late and they try to access benefits. STLDs also are not subject to pre-existing condition protections and guaranteed issue requirements. STLD carriers would be allowed to underwrite, thus charging higher premiums or denying coverage altogether for pre-existing conditions. Importantly, STLDs usually have severe limitations in dollar maximums, which could quickly be reached in the event of a catastrophe such as a severe accident or diagnosis for a serious illness. As one expert put it, relying on STLD policies for protection is, "…from a consumer perspective,…really skating on thin ice."[14]

Moreover, these products have no requirement for a minimum medical loss ratio (MLR), unlike comprehensive, ACA-compliant policies which are required to have an MLR of at least 80% for individual and small group plans. In fact, comprehensive policies often maintain MLRs exceeding 85%, meaning that more than 85% of the premium dollars collected on comprehensive policies go toward delivering care—a proxy for having as a primary purpose maintaining, restoring or improving health.[15] In sharp contrast, STLDs often have extremely low MLRs, a characteristic which both regulators and consumer advocates deem an indicator of sub-par insurance products.[16] According to the latest available data from the National Association of Insurance Commissioners (NAIC), in 2015 the industry-wide average loss ratio for "Short-Term Medical" was 69.76%,[17] with smaller companies falling below 50% MLR for the vast majority of the total market share.[18] Health insurance products with loss ratios at or below 50% raise a red

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[12] For example, Covered California gathered samples of short-term plan brochures and summarized their features which show, e.g., that some limit physician office visits to 3 per policy term and some provide no coverage for outpatient prescription drugs. Ibid, footnote 9, slides 16-17.

[13] Lucia, supra, p. 2. http://www.commonwealthfund.org/~/media/files/publications/fund-report/2018/mar/lucia_state_regulation_alternative_coverage_options.pdf

[14] Chollet, D., Ph.D., Senior Fellow at Mathematica Policy Research, quoted in *Health Plan Weekly*, Vol. 28, No. 8, Feb. 26, 2018.

[15] Livingston, S., "How Stakeholders in the Short-Term medical Market Are Gearing Up to Attract More Customers," *Modern Healthcare*, April 19, 2018. http://www.modernhealthcare.com/article/20180419/TRANSFORMATION04/180419913/how-stakeholders-in-the-short-term-medical-market-are-gearing-up-to

[16] Low MLRs denote that the product is, at best, grossly inefficient in delivering benefits and represents a poor value for consumers, with a large profit margin for the insurer. Low loss ratios also raise questions of whether they are the result of bad faith denials of claims and policy rescissions; they may also give rise to an inference that broker commissions are unusually generous. The magnitude of commissions, in turn, as noted in text above raises concerns as to whether brokers will be tempted to promote these products as a substitute for major medical insurance even when the latter products are more suitable for a given consumer.

[17] NAIC 2016 Accident and Health Policy Experience Report, dated 2017, p. 79. 2016 Accident and Health

[18] Id. Twelve of the 17 non-Blue Cross Blue Shield companies in the NAIC's STLD data category had loss ratios below 50%. The companies with loss ratios exceeding 50% represented only about 1/6 of total market share. Given that it is unclear whether Blues companies will continue to sell short-term policies, we can anticipate products with less than 50% loss ratios dominating this market.

flag because when a majority of the company's revenue is not devoted to actual medical services, it renders consumer health a secondary part of its business.

Those consumers attracted to STLD policies are more likely to be young or healthy, as the NPRM acknowledges. In fact, we can expect the marketing to be directed at the healthy consumers since these products are medically underwritten, thus creating what one expert calls "an extreme form of cherry picking that governs both entry and exit."[19] Carriers selling STLD products do not generally sell to those with pre-existing conditions, and even members of the underwritten population without any preexisting conditions who buy this insurance product have some likelihood of developing costly health problems through an accident or illness. Explains that expert, "These plans don't price for that risk, but create a virtual trapdoor through which they drop these unfortunate customers back into the guaranteed issue market at the next available opportunity."[20] Moreover, the Urban Institute estimates that the introduction of expanded short-term, limited-duration policies, consistent with the proposed regulations, would draw 2.6 million consumers from other insurance coverage in 2019.[21] Healthy consumers being diverted from the guaranteed issue market in the first instance, and sicker ones dropping back in, will result in a weakened individual market risk pool.

Thus, premiums in the individual market will rise more than under current law. The Urban Institute estimates that expanding short-term limited-duration policies, combined with elimination of the individual-mandate penalty, would increase 2019 ACA-compliant nongroup insurance premiums 18.3 percent on average in the 45 states (including the District of Columbia) that do not currently prohibit or limit short-term plans.[22] Wakely Consulting places the premium increase of these two policy changes at 20.5% to 26.3% higher than it otherwise would have been.[23] Over time, this could leave the individual market resembling a high-risk pool, with unaffordable rates.

Without an MLR requirement to constrain administrative spending, and with a history of aggressive marketing, it is expected that companies selling STLD products will offer agents bigger commissions than those offering ACA-compliant products.[24] This is likely to further undermine the individual market, with agents tempted to promote these products as a substitute for major medical insurance even when the latter products are more suitable for a given consumer. We are already hearing of high pressure tactics and misleading representations by some agents in pushing limited benefit policies,[25] and seeing the increased marketing of short-

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[19] Hempstead, K., "Reducing the Externalities Caused by Limited Benefit Plans," Health Affairs Blog, October 5, 2017. https://www.healthaffairs.org/do/10.1377/hblog20171021.343210/full/
[20] Id.
[21] Blumberg, supra, p. 6.
[22] Blumberg, Id., p. 16.
[23] Cohen, M., et al. Wakely Consulting Group, "Effects of Short-Term Limited Duration Plans on the ACA-Compliant Individual Market," for Association for Community Affiliated Plans. http://www.communityplans.net/wp-content/uploads/2018/04/Wakely-Short-Term-Limited-Duration-Plans-Report.pdf
[24] Goe, supra. According to the California exchange, producer commissions for short-term plans can be 6-8 times greater than for ACA-compliant plans. Covered California Plan Management and Delivery System Reform Advisory Committee, March 8, 2018 PowerPoint, slide 18. http://hbex.coveredca.com/stakeholders/plan-management/PDFs/March-8-2018-Plan-Management/Plan_Management_Advisory_Group_Slides_3-8-2018_FINAL.pdf
[25] Last month, the U.S. Department of Justice obtained a plea agreement in a fraudulent scheme involving a company selling limited benefit policies bundled with other benefits and products, grounded in "rampant misrepresentations." https://www.justice.gov/opa/pr/former-ceo-tennessee-based-telemarketing-company-pleads-guilty-misrepresenting-health

term policies on broker websites. Moreover, some traditional commercial carriers that stopped medical underwriting for ACA-compliant policies may turn back to it in order to maintain market share, notwithstanding the reputational risk of providing such limited and confusing products.[26] So, the threat STLDs pose to the stability of the individual market is grave.

Finally, the dollar cost to the federal Treasury of expanding the availability of short-term policies is substantial. The Impacts Analysis estimates an *annual increase* in APTC payments of between $96 million and $168 million. However, this estimate is based on what many experts believe to be an extreme under-estimate of the number of people that would switch from an ACA-compliant policy to a STLD one.

Consumers Union recommendation: The Executive Order 13813 directs the tri-agencies to consider allowing STLD policies to cover longer periods than the current 3 months and to be renewed by the consumer "[t]o the extent permitted by law and supported by sound policy…." In light of the severely negative policy implications described above, we believe the proposed regulation is not, in fact, supported by sound policy and should be rejected.

Consumers Union urges you to withdraw the proposed regulation, leaving in place the current federal regulation limiting STLD policies to three months of non-renewable coverage. Should you go forward with changes to the current regulation, however, we offer the following narrower suggestions on specific topic areas below.

A. The Definition of Short-Term Limited-Duration Plans Should Not Be Extended Beyond Three Months (45 C.F.R. §54.9801-2[27])

The concern expressed in the preamble to the proposed regulation about potential challenges for consumers in distinguishing STLD policies from comprehensive one-year ACA policies is well-founded. As the preamble notes, the STLD policies were meant to be transitional, for short periods between comprehensive coverage, for example consumers who need coverage outside the open enrollment period and do not meet a special enrollment period trigger. After several years of comprehensive, individual market policies (both on and off the exchanges) with a one-year term and without most of the limitations and consumer pitfalls of the prior individual market, a potential 364-day duration for far more limited STLD policies poses a serious risk of creating consumer confusion.

Consumers Union recommendation: Maintain the 3-month duration to ensure a clear distinction from ACA policies, and to make the label "short-term" meaningful. Executive Order #1381 only directed the Departments to consider alternative time periods; the potential for confusion, combined with the net negative of the NPRM's cost-benefit analysis, provide ample reasons to retain the current 3-month period.

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[26] Corlette, S., et al., Urban Institute, "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

[27] Our comments throughout this letter on specific provisions of the proposed rule are cited to the Treasury Dept. regulations at 26 CFR, but apply equally to the identical proposed revisions to the Department of Labor regulations at 29 CFR and Department of Health and Human Services regulations at 45 CFR.

B. The Notice to Consumers Must Prioritize Information on the Product's Shortcomings and Meet Readability Standards (45 C.F.R. §54.9801-2 (2))

A clear and prominently placed warning is essential to minimize misleading consumers, whatever duration is in the final regulation. We support the concept in the proposed rule to create a notice that aims to fully inform consumers of the scope of coverage they are buying and its limitations. Research in psychology, marketing, and behavioral economics has highlighted the limitations of disclosure, noting that even the clearest notice cannot overcome a poor value product. However, such research does provide some helpful guidance concerning notice design.

Consumers Union strongly supports retaining the 14-point font requirement. Regarding the proposed notice, telling consumers to "check the policy to understand what it does and does not cover" is necessary but insufficient, since insurance policies are impossibly difficult to understand.[28] Testing conducted by Consumers Union found participants so stymied by health insurance products that, we concluded, "In essence, we are asking the vast majority of consumers to buy a very expensive product, yet to do their shopping blindfolded."[29] Many health experts, including the National Institutes of Health, recommend providing health information at no more than a sixth grade reading level,[30] though for health insurance and financial disclosures a lower grade level or readability score should be preferred.[31]

In terms of formatting for better consumer understanding, the Federal Reserve has extensively studied how to craft the most effective consumer notices on financial products generally. It notes that, "Elements such as titles, tables, charts, typographic styles, and use of shading can help consumers move through a document and aid their comprehension of products and services…."[32] For example, in the case of privacy notices the Federal Reserve found that consumers who saw their rights related to the product outlined in table format performed substantially better than those who saw the same content laid out in prose. Regarding STLD policies, as noted below consideration should be given to whether a table of exclusions and limits should be required to highlight for consumers precisely what is *not* covered.

Moreover, if these products are marketed in a language other than English, the notice and policy documents should be provided in the language of the solicitation.

Consumers Union recommendation: Consumer testing for comprehension and reading ease should be undertaken to achieve optimal consumer understanding. The additional recommendations, below, are based on consultation with health literacy and consumer notices experts.

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[28] "What's Behind the Door: Consumers' Difficulties Selecting Health Plans", Consumers Union Jan. 2012 http://consumersunion.org/wp-content/uploads/2013/03/Consumer_Difficulties_Selecting_Health_Plans_Jan2012.pdf
[29] Id., p. 4.
[30] Badarudeen, S., et al., "Assessing Readability of Patient Education Materials: Current Role in Orthopaedics," https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3049622/
[31] See, e.g., Joint Comment letter by Consumers Union et al. to federal financial agencies on alternative forms of privacy notices on financial products, March 29, 2004, suggesting a Flesch reading ease score of at least 50. https://www.sec.gov/rules/concept/s73003/interagency032904.pdf
[32] Hogarth, Jeanne M. et al., Designing Disclosures to Inform Consumer Financial Decisionmaking: Lessons Learned From Consumer Testing," Federal Reserve Bulletin, August 2011, p. 12. https://mail.google.com/mail/u/0/#search/from%3Abrenda/162731328f1fa305?projector=1&messagePartId=0.1

1. Reorder the proposed notice to place the information that the product is not qualifying coverage under the ACA first, followed by stating that having it as one's only coverage may result in a penalty, as in the currently required notice. This is critical information, and the second piece about the penalty can be dropped when no longer applicable for 2019.
2. Ensure that the notice is literacy tested to a sixth grade reading level.
3. Require that the notice be offered in the language of the solicitation.
4. Explicitly retain the 14-point type requirement; since all capitalized letters are often hard to read, we suggest a modification in the draft notice below.
5. Require that the notice be written in dark color type, but in a different color than the rest of the surrounding text to ensure that it stands out for the reader.
6. Use bullets to break up the prose and make the points more readable.
7. Placement of the notice will be critical; the rule should require it be prominently placed on marketing materials, the application, any web pages where it is previewed or described, and policy contract itself.
8. Require a table of excluded benefits and other limitations to be placed just below the notice to enhance the possibility of consumer understanding and call out the distinction between this product and ACA-compliant products, which STLD purchasers might have had in the past.
9. To grab the potential purchaser's attention, we suggest requiring a title, as shown on our suggested notice set forth below:

CAUTION: Read This Before You Buy This Policy

- This insurance is **not comprehensive "Minimum Essential Coverage"** required under the Affordable Care Act. Minimal Essential Coverage is comprehensive and gives you important consumer protections.
- If you do not have Minimum Essential Coverage for any month in 2018, **you might owe additional money** on your 2018 taxes.
- Check this policy carefully to make sure you understand what the policy does and **doesn't cover**. There are exclusions and limits, so ask questions.
- When this coverage expires, or if you lose this coverage, **you might have to wait until an open enrollment period** to get other health insurance coverage. Open enrollment is once a year.

C. Extending or Renewing STLD Policies Should Be Barred

Short-term plans are intended to provide protection when a person experiences a temporary gap in comprehensive coverage, such as when transitioning from one plan to another, or between jobs. The NPRM preamble raises the question of whether such plans should be renewable. It should be noted, though, that allowing renewability would be one-sided: because these plans can be medically underwritten, it would be up to the carriers to decide whether a consumer will have the option to renew. If new medical conditions arise for the enrollee, a plan may decide not to cover the enrollee or may price the product differently in recognition of the new condition.

Moreover, even if renewals were legally permissible, allowing them would run counter to the very definition of "short-term"— especially if the duration of the original plan is increased

beyond the current 3-month period. At the extreme end, if a plan is 364 days in duration it would strain credulity to allow such plans to be renewed and still deem the label "short-term" valid. Furthermore, for the reasons noted above, we believe that STLD plans can be detrimental to the individuals who buy them and to the stability of the individual market as a whole. Extending the life of a poor value product, even if legally permissible, simply multiplies and extends the harm.

Consumers Union recommendation: Since these plans are medically underwritten and thus at the end of the policy term carriers may either not issue a new policy or may offer a policy with increased premium, they are not renewable by law. Consumers Union recommends that STLD plans not be extendable at either the carrier's or consumer's behest.

D. The Effective Date Should Be Delayed and State Regulatory Authority Confirmed (45 C.F.R. §54.9833-1)

We recommend that the proposed rule be withdrawn as contrary to law and sound public policy. But, if the proposed rule or substitute amendments to it are finalized, the effective date should be delayed for two reasons.

First, implementation of the rule in 2018 or 2019 would create upheaval and serious uncertainty in the entire individual market. Rates for 2018 are already in effect based on the current STLD regulation. If the effective date of this proposed rule were set in 2018, it could mean the 2018 individual market rates are understated. Mid-year adjustments of rates are not permitted. But even if midyear changes were allowed, as the American Academy of Actuaries notes, "Resource constraints for insurers and regulators could make it difficult to simultaneously develop and approve revised rates for 2018, especially on a compressed timeline, alongside the 2019 rate filing process. State laws and regulations typically require rates and coverage to be effective for a period of 12 months."[33] Moreover, rates are being developed now for 2019 ACA-compliant products, and if expanded use of STLDs is either unsettled or expected in 2019, carriers will build into 2019 individual market rates the increased cost for that uncertainty or assume the worst from their perspective, i.e. the likelihood of diminished numbers of buyers of comprehensive products.

A second reason to delay the effective date is that the extremely short time frame implied in the proposed rule will not allow states sufficient time to make state law adjustments, including establishing any limitations states may wish to impose on STLDs. As the American Academy of Actuaries notes, the market segmentation and adverse selection STLD policies are expected to create in the individual market could be mitigated if states implement additional rules limiting the availability of short-term policies or requiring that they meet rules governing ACA plans.[34] Several states have expressed interest in taking such steps, but state legislative calendars and effective dates will not permit action that can become effective in the time frame implied in the proposed regulation, i.e. in 2018 for the 2019 policy year.

[33] American Academy of Actuaries, Comment Letter on CMS–9924–P—Short-Term, Limited-Duration Insurance, April 6, 2018 http://www.actuary.org/files/publications/STLD_Comment%20Letter_040618.pdf
[34] Id.

While the preamble to the proposed regulation notes an expectation of the continued application of state laws regarding STLDs, to avoid any confusion in the States, Consumers Union urges making continued State authority explicit in the text of the rule.

Consumers Union recommendation: Implementation of any revisions to the rule on STLDs should be delayed until 2020 in order to give both state regulators and carriers time to adjust and respond to any increased presence of STLDs in their markets. Moreover, the text of the final rule should explicitly state that States retain their traditional role in regulating STLD policies in the context of the final rule.

Thank you for this opportunity to comment. Consumers Union reiterates its strong recommendation to withdraw the proposed regulation and instead to work to stabilize the individual market and address affordability in ACA-compliant, comprehensive coverage with the range of critical consumer protections.

Sincerely,

Elizabeth M. Imholz
Special Projects Director