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

Dear Secretary Azar, Administrator Verma, Deputy Commissioner Wielobob, and Assistant Secretary Rutledge:

The American Cancer Society Cancer Action Network (ACS CAN) appreciates the opportunity to comment on the proposed rule amending the definition of short-term, limited-duration (STLD) insurance for purposes of its exclusion from the definition of individual health insurance coverage. ACS CAN is the nonprofit, nonpartisan advocacy affiliate of the American Cancer Society and supports evidence-based policy and legislative solutions designed to eliminate cancer as a major health problem. As the nation's leading advocate for public policies that are helping to defeat cancer, ACS CAN ensures that cancer patients, survivors, and their families have a voice in public policy matters at all levels of government.

ACS CAN supports efforts to reduce the number of uninsured Americans. Having adequate and affordable health insurance coverage is a key determinant in surviving cancer. Research from the American Cancer Society shows that uninsured Americans are less likely to get screened for cancer and thus are more likely to have their cancer diagnosed at an advanced stage when survival is less likely and the cost of care more expensive.¹ This not only impacts the 1.7 million Americans who will be diagnosed with cancer this year, but also the 15.5 million Americans living today who have a history of cancer.²

¹ E Ward et al, "Association of Insurance with Cancer Care Utilization and Outcomes," *CA: A Cancer Journal for Clinicians* 58:1 (Jan./Feb. 2008), <http://www.cancer.org/cancer/news/report-links-health-insurance-status-with-cancer-care>.

² American Cancer Society. *Cancer Facts & Figures 2018*. Atlanta: American Cancer Society; 2018.

We are very concerned about policies that would expand access to STLD policies because these products are exempt from important consumer protections, such as prohibitions on lifetime and annual dollar limits, limits on the use of pre-existing condition exclusions, and the prohibition on medical underwriting. These protections are key to ensuring that individuals with cancer (including those in active treatment and survivors) have access to quality health care needed to treat their disease. Without these protections, individuals could find themselves enrolled in policies that fail to provide coverage of medically necessary services. We believe this proposed rule should be withdrawn unless the needs of the patient community have been met, as discussed in more detail below.

II. Overview of the Proposed Regulations

STLD policies may discriminate against people with pre-existing conditions: STLD policies are permitted to take into account an individual's pre-existing condition or health status when issuing health insurance coverage. This means that a STLD policy issuer can choose to deny coverage, charge higher premiums, or choose not to cover certain benefits for individuals based on their health history – practices that existed and caused serious problems for cancer patients and survivors prior to 2014. A survey conducted before these exclusions were prohibited found that 36 percent of those who tried to purchase health insurance directly from an insurance company in the individual insurance market were turned down, were charged more, or had a specific health problem excluded from their coverage.³

According to recent estimates, 27 percent of non-elderly Americans have a pre-existing condition that would result in them being uninsurable if they were subject to medical underwriting.⁴ These people would not have access to STLD policies and could only obtain coverage through ACA-compliant plans, which as discussed in more detail below, will have higher premiums and fewer issuers if this proposed rule is finalized.

STLD policies are likely to attract young and healthy individuals: As noted in the preamble, the “Departments anticipate that most of the individuals who switch from individual market plans to short-term, limited duration insurance would be relatively young or healthy.”⁵ Even assuming that STLD policies are an appropriate choice for young and healthy individuals (e.g., those who do not anticipate incurring health care costs), the Departments are failing to acknowledge that individuals with serious conditions, like cancer, could be adversely affected by the proposed rule.

STLD coverage is not comprehensive: Individuals with cancer need comprehensive insurance coverage. We are concerned that the limited coverage offered by STLD policies will be insufficient to meet the needs of cancer patients and those with serious health conditions. We note that the Departments' impact analysis recognizes that STLD policies would be unlikely to include important ACA consumer protections including the preexisting condition exclusion prohibition, coverage of essential health

³ Doty MM, Collins SR, Nicholson JL et al. *Failure to Protect: Why the Individual Insurance Market is not a Viable Option for Most US Families*. The Commonwealth Fund, July 2009. Available at http://www.commonwealthfund.org/~media/Files/Publications/Issue%20Brief/2009/Jul/Failure%20to%20Protect/1300_Doty_failure_to_protect_individual_ins_market_ib_v2.pdf.

⁴ Claxton, G, Cox, C, Damico, A, Levitt, L, & Pollitz, K. *Pre-existing Conditions and Medical Underwriting in the Individual Insurance Market Prior to the ACA*. Kaiser Family Foundation, December 2016. Available at <https://www.kff.org/health-reform/issue-brief/pre-existing-conditions-and-medical-underwriting-in-the-individual-insurance-market-prior-to-the-aca/>.

⁵ 83 Fed. Reg. at 7443.

benefits without annual or lifetime limits, preventive care, maternity and prescription drug coverage, rating restrictions, and guaranteed renewability.⁶ The impact analysis goes on to note that “consumers who switch to [STLD] policies from PPACA-compliant plans would experience loss of access to some services and providers and an increase in out-of-pocket expenditures related to such excluded services.”⁷ In fact, the Departments acknowledge that “[d]epending on plan design, consumers who purchase short-term, limited-duration insurance policies and then develop chronic conditions could face financial hardships as a result, until they are able to enroll in PPACA-compliant plans that would provide coverage for such conditions.”⁸

STLD policies fail to provide coverage for Essential Health Benefits: Unlike ACA-compliant plans, STLD policies do not have to provide coverage for Essential Health Benefits (EHBs). Individuals with cancer and cancer survivors have unique health care needs and require access to a wide range of products and services, like oncology services, chemotherapy, radiation, prescription drugs, and hospital services. Consumers who enroll in health coverage expect their plan to provide coverage for these necessary products and services. Comprehensive coverage is especially important for consumers who are diagnosed with serious diseases like cancer during the middle of the plan year. Most cancer diagnoses are unexpected, and cancer patients likely did not know they would need cancer care when they initially enrolled in their plan. If cancer patients do not have access to cancer treatment services through their health insurance coverage, they face astronomical costs and disruptions and delays to their treatments or may be forced to forgo treatment entirely because of costs.

Additionally, many STLD policies do not cover preventive services or may not cover all preventive services that receive an “A” or “B” rating from the U.S. Preventive Service Task Force. Providing coverage of EHBs, like preventive services (including cancer screenings), helps to prevent some forms of cancer and can help detect other cancers at an earlier stage when the individual has a higher likelihood of more treatment options and a better overall health outcome. Including preventive services as standard benefits in health insurance has benefits to overall public health, saves lives, and can reduce healthcare spending.

STLD policies can impose lifetime and annual coverage limits: Under current law, ACA-compliant plans are prohibited from imposing lifetime and annual limits on EHB services. Since STLD policies are not required to cover EHBs, they are then free to impose lifetime and annual limits on coverage. Cancer patients and survivors often have high treatment costs and require spending that reaches the amount of typical annual and/or lifetime cap on health services. According to one study, prior to the enactment of the current protections one in ten cancer patients responding to the survey reached the limit of what their insurance plan would pay for their cancer treatment.⁹

⁶ 83 Fed. Reg. at 7443.

⁷ *Id.*

⁸ *Id.*

⁹ USA Today, Kaiser Family Foundation, Harvard School of Public Health. National Survey of Households Affected by Cancer. Kaiser Family Foundation, November 2006. Available at <https://www.kff.org/health-costs/poll-finding/usa-todaykaiser-family-foundationharvard-school-of-public-2/>.

STLD policies have higher out-of-pocket costs: ACA-compliant plans are subject to limits on the amount of out-of-pocket costs and deductibles they can impose on enrollees for covered in-network services. STLD policies are not subject to these limitations and often impose significantly higher out-of-pocket costs and deductibles than what is permitted by ACA-compliant plans.¹⁰ One analysis of the best-selling STLD plans in Georgia showed these plans had a 3-month out-of-pocket limit of \$10,000, which did not include the deductible of \$10,000, making the effective 3-month out-of-pocket maximum \$20,000.¹¹ Another analysis found caps on coverage for short-term plans in Phoenix, AZ to be as low as \$250,000.¹² ACS CAN's Costs of Cancer report showed that it is not unusual for a cancer patient who has just been diagnosed to incur expenses exceeding these amounts – meaning in the Georgia plan a cancer patient would have to pay \$20,000 out-of-pocket, and in the Arizona plan a cancer patient would have to pay the full cost of her treatments after she reached the \$250,000 cap.¹³ These out-of-pocket costs essentially render coverage meaningless, particularly given that nearly half of all American adults report being unable to cover an emergency expense costing \$400 without having to borrow or sell something to do so.¹⁴

STLD policies can have higher age rating: Under current law, issuers can charge older Americans no more than three times the premium charged to younger enrollees (a 3:1 age ratio). STLD policies are not subject to this requirement, which means that they are permitted to charge older enrollees significantly higher premiums and can even choose not to provide coverage to an individual based on age alone.

While cancer can be diagnosed at any age, the incidence of cancer increases with age. According to the American Cancer Society, 85 percent of all cancers in the United States are diagnosed in people 50 years of age and older.¹⁵ Thus, increased age rating bands would mean that older individuals (those more at risk of developing cancer) would face significantly higher health care premiums for STLD policies or be priced out of the market completely. Prior to the enactment of the current age rating band restrictions, older adults faced significant problems accessing health insurance coverage, in large part because of age rating bands (compounded by the ability of issuers to use health status when setting premiums).¹⁶

¹⁰ In 2018, the maximum out-of-pocket limit is \$7,350 for an individual plan and \$14,700 for family coverage.

¹¹ Palanker, D, Lucia, K, and Curran, E. New Executive Order: Expanding Access to Short-Term Health Plans Is Bad for Consumers and the Individual Market. *To the Point*, The Commonwealth Fund, October, 2017. Available at <https://ccf.georgetown.edu/2017/10/13/new-executive-order-expanding-access-to-short-term-health-plans-is-bad-for-consumers-and-the-individual-market/>.

¹² Pollitz, K. Understanding Short-Term Limited Duration Health Insurance. Kaiser Family Foundation, February 2018. Available at <https://www.kff.org/health-reform/issue-brief/understanding-short-term-limited-duration-health-insurance/>.

¹³ American Cancer Society Cancer Action Network. The Costs of Cancer: Addressing Patient Costs. April 11, 2017. Available at <https://www.acscan.org/policy-resources/costs-cancer>.

¹⁴ Board of Governors of the Federal Reserve. Report on the Economic Well-Being of U.S. Households in 2015. May 2016. Available at <https://www.federalreserve.gov/2015-report-economic-well-being-us-households-201605.pdf>.

¹⁵ American Cancer Society. *Cancer Facts & Figures 2018*. Atlanta: American Cancer Society; 2018.

¹⁶ Smolka, G, Purvis, L, & Figueiredo, C. Health Care Reform: What's at Stake for 50- to 64-Year-Olds, AARP Public Policy Institute [Insight on the Issues #124], March 2009. Available at https://assets.aarp.org/rgcenter/health/i24_hcr.pdf.

STLD policies are exempt from MLR requirements: ACA-compliant plans must meet certain medical loss ratio (MLR) standards, which impose requirements on how much of the enrollee premium issuers must spend on medical claims. ACA-compliant plans in the individual and small group market are required to maintain a minimum MLR of 80 percent. STLD policies will not have to meet the MLR standards.

The MLR standard is an important tool to ensure that enrollees and businesses receive value for their premium dollar. Holding a STLD issuer to a lower MLR standard results in a reduced value of the health insurance coverage to enrollees causing enrollees to likely have to pay more out-of-pocket to access services. Thus, while issuers who offer STLD policies will likely receive higher premium revenue should the proposed rule be adopted, we note that this premium revenue would come at the cost to consumers who are enrolled in these products who will likely see higher out-of-pocket costs for their care.

Consumers prefer comprehensive coverage: We are concerned that the impact analysis suggests that consumers would be willing to switch from ACA-compliant plans that provide more robust coverage to STLD policies that provide less generous coverage because consumers do not believe the more generous benefits are worth the cost.¹⁷ The Departments offer no evidence of this belief. In fact, recent polling suggests the exact opposite. According to one poll when asked if they would like to enroll in coverage that was less generous but with a lower premium, an overwhelming 84 percent of respondents in the individual market said they would prefer to stay with their current plan rather than enroll in STLD coverage.¹⁸ Our concern (discussed in more detail below) is that consumers; when faced with cost concerns, new plan choices, non-transparent plan information, and confusing enrollment process; will not be able to tell whether they are enrolling in a comprehensive plan or not – and consequently end up with far less coverage than they thought they had.

STLD policies will wreck the individual market: As the Departments acknowledge, STLD policies would attract younger and healthier individuals, leaving older and sicker individuals in the risk pool for ACA-compliant plans. Thus, “it would result in an increase in premiums for individuals remaining in the [ACA-compliant] risk pool.”¹⁹ The American Academy of Actuaries agrees that segmenting the risk pool would result in increased premiums for ACA-compliant plans.²⁰

We are concerned that the projected premium increases could be significant. According to one estimate, expanding STLD coverage, combined with the repeal of the individual mandate penalty, could result in increases in the ACA-compliant individual market by an average of 18.2 percent in those states that do not restrict access to STLD policies.²¹ These premium increases will be particularly significant for

¹⁷ 83 Fed. Reg. at 7443.

¹⁸ Kaiser Family Foundation. Poll: Survey of the Non-Group Market Finds Most Say the Individual Mandate Was Not a Major Reason They Got Coverage in 2018, And Most Plan to Continue Buying Insurance Despite Recent Repeal of the Mandate Penalty, April 2018. Available at <https://www.kff.org/health-reform/press-release/poll-most-non-group-enrollees-plan-to-buy-insurance-despite-repeal-of-individual-mandate-penalty/>.

¹⁹ 83 Fed. Reg. at 7443.

²⁰ American Academy of Actuaries, Comment Letter on Short-Term, Limited Duration Insurance (CMS-9924-P), April 2018. Available at: http://www.actuary.org/files/publications/STLD_Comment%20Letter_040618.pdf.

²¹ Blumberg, L, Buettgens, M, & Wang, R. The Potential Impact of Short-Term Limited-Duration Policies on Insurance Coverage, Premiums, and Federal Spending, The Urban Institute, February 2018. Available at https://www.urban.org/sites/default/files/publication/96781/stld_draft_0226_finalized_0.pdf.

individuals with pre-existing conditions who need comprehensive coverage and who do not qualify for any advance premium tax credits.

As the Departments acknowledge: “Allowing [young and healthy] individuals to purchase policies that do not comply with PPACA, but with term lengths that may be similar to those of PPACA-compliant plans with 12-month terms, could potentially weaken States’ individual market single risk pools.”²² As discussed above, individuals with pre-existing conditions, such as those in active cancer treatment or who have a history of cancer, would likely be unable to purchase STLD coverage due to medical underwriting, leaving the ACA marketplace as their only option for coverage. However, as the Departments acknowledge, the ACA marketplace coverage may not be an option in all areas of the country as a direct consequence of this proposed rule. Individuals in these areas with pre-existing conditions would once again be denied coverage, leaving them to incur significant personal cost for their care. Some individuals may be able to shoulder the burden, leaving them vulnerable to medical bankruptcy. Other individuals will unfortunately be unable to access coverage at all.

STLD policies could result in bare counties: We appreciate the Departments’ acknowledgement that enacting this proposed rule “could potentially weaken States’ individual market single risk pools” and as a result “individual market issuers could experience higher than expected costs of care and suffer financial losses, which might prompt them to leave the individual market.”²³

However, we are concerned that notwithstanding this acknowledgement, the Departments’ proposed rule does not seek to address these concerns. The Centers for Medicare & Medicaid Services has been concerned about the number of marketplace options available to consumers, often referencing the number of counties in which consumers shopping for coverage in the individual market have only one issuer from which to choose.²⁴ We share the Departments’ concern regarding limited plan choices and are also concerned that if issuers leave the market – particularly in markets in which there is only one insurer – individuals with serious health conditions, like cancer, who would not pass the medical underwriting imposed by STLD policies would have no coverage options available to them.

Expiration of STLD coverage is not a qualifying event: The expiration of STLD coverage does not constitute a qualifying event for purposes of an individual being able to obtain a special enrollment period (SEP) to obtain coverage on the marketplace. This occurs because STLD policies are not considered minimum essential coverage. Thus, an individual who chooses to enroll in STLD will have to wait until the next annual election period before being able to enroll in coverage in the marketplace. This could leave the individual exposed to a significant gap in coverage. For example, if an enrollee’s STLD coverage ends in March of a given year and is not renewed, absent some other qualifying event, the individual would be unable to enroll in an ACA-compliant policy until November of that year, with coverage beginning January of the following year.

²² 83 Fed. Reg. at 7443.

²³ *Id.*

²⁴ Centers for Medicare and Medicaid Services. County by County Analysis of Current Projected Insurer Participation in Health Insurance Exchanges. [Press Release], June 2017. Available at <https://www.cms.gov/Newsroom/MediaReleaseDatabase/Press-releases/2017-Press-releases-items/2017-06-13.html>.

Gaps in coverage are particularly harmful to cancer patients. Individuals in active cancer treatment need regular access to care and when that access is disrupted, the effectiveness of the treatment could be jeopardized and the individual's chance of survival could be significantly reduced. Evidence-based protocols for chemotherapy and other cancer treatments often require treatment delivery on a prescribed timeline. Interruptions to this timeline because of coverage gaps can be detrimental. A gap in coverage can also cause a fatal delay in initiation of a treatment protocol. Recent research shows that delays in the initiation of chemotherapy for breast cancer patients result in adverse health outcomes.²⁵

Notice requirements are inadequate: It is well known that health insurance may be complicated for many consumers.²⁶ We are concerned that many consumers may not understand that STLD policies may have limitations that do not exist in ACA-compliant plans. Indeed, this concern is also shared by state insurance regulators who have “concerns that consumers may be misled into buying short-term, limited duration insurance that do not provide adequate protection.”²⁷ The preamble recognizes this fact: “The Departments are concerned that short-term, limited-duration insurance policies that provide coverage lasting almost 12 months may be more difficult for some individuals to distinguish from PPACA-compliant coverage, which is typically offered on a 12-month basis.”²⁸

We are afraid that some consumers choose to enroll in STLD policies simply because of the lower premium and are unaware of the limitations of the coverage.²⁹ We strongly urge the Departments to conduct extensive focus group testing, surveys, and meetings with actual consumers to determine whether consumers would affirmatively choose to enroll in a STLD policy if presented with meaningful and understandable information about its limitations.

²⁵ Chavez-MacGregor M, Clarke CA, Lichtensztajn DY, Giordano SH. Delayed Initiation of Adjuvant Chemotherapy Among Patients With Breast Cancer. *JAMA Oncol.* March 2016;2(3):322-329. doi:10.1001/jamaoncol.2015.3856.

²⁶ Parragh, ZA & Okrent, D. Health Literacy and Health Insurance Literacy: Do Consumers Know What They Are Buying? Alliance for Health Policy, January 2015. Available at http://www.allhealthpolicy.org/wp-content/uploads/2017/01/Health-Literacy-Toolkit_163.pdf.

²⁷ National Association of Insurance Commissioners. Comment Letter on Expatriate Health Plans, Expatriate Health Plan Issuers, and Qualified Expatriates; Excepted Benefits; Lifetime and Annual Limits; and Short-Term, Limited-Duration Insurance. August 2016. Available at http://www.naic.org/documents/government_relations_160809_hhs_reg_short_term_dur_plans.pdf.

²⁸ 83 Fed. Reg. at 7439.

²⁹ Pollitz, K. Understanding Short-Term Limited Duration Health Insurance. Kaiser Family Foundation, February 2018. Available at <https://www.kff.org/health-reform/issue-brief/understanding-short-term-limited-duration-health-insurance/>; 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>.

One way the Departments propose to address this concern is to require STLD policies to contain a notice, which would be prominently displayed (in at least 14 point type) in the contract and any application materials provided in connection with enrollment:

THIS COVERAGE IS NOT REQUIRED TO COMPLY WITH FEDERAL REQUIREMENTS FOR HEALTH INSURANCE, PRINCIPALLY THOSE CONTAINED IN THE AFFORDABLE CARE ACT. BE SURE TO CHECK YOUR POLICY CAREFULLY TO MAKE SURE YOU UNDERSTAND WHAT THE POLICY DOES AND DOESN'T COVER. IF THIS COVERAGE EXPIRES OR YOU LOSE ELIGIBILITY FOR THIS COVERAGE, YOU MIGHT HAVE TO WAIT UNTIL AN OPEN ENROLLMENT PERIOD TO GET OTHER HEALTH INSURANCE COVERAGE. ALSO, THIS COVERAGE IS NOT "MINIMUM ESSENTIAL COVERAGE". IF YOU DON'T HAVE MINIMUM ESSENTIAL COVERAGE FOR ANY MONTH IN 2018, YOU MAY HAVE TO MAKE A PAYMENT WHEN YOU FILE YOUR TAX RETURN UNLESS YOU QUALIFY FOR AN EXEMPTION FROM THE REQUIREMENT THAT YOU HAVE HEALTH COVERAGE FOR THAT MONTH.³⁰

While we appreciate the Departments' interest in providing consumers with additional information regarding the limitations of coverage for these plans, we do not believe the proposed notice is sufficient to meet this objective. We note that the notice provided to transitional policies provides consumers with more explicit information regarding which health plan protections and standards are not applicable.³¹

At the same time, we believe that notices can serve an important need to consumers, so long as they are provided in a consumer-friendly manner. This includes ensuring that the limitations of coverage are specifically called out to the consumer. We urge that the issuer be required to obtain the consumer's signature acknowledging that this notice has been provided and that the consumer understands the limitations of coverage. We also urge the notice to include the contact information – including a phone number and website – where enrollees can obtain non-biased information about these plans and be provided additional information regarding alternative sources of coverage.

The Summary of Benefits and Coverage, as required under the ACA, have been helpful to provide consumers with information regarding coverage provided under their plan. We urge the Departments to work with stakeholders to develop a similar notice that will be more effective in informing consumers about the limitations about this type of coverage.

The Departments note that the individual mandate penalty remains for 2018 and thus consumers who are enrolled in STLD policies for more than three months would be subject to the penalty for not having minimum essential coverage (MEC) during the year. We are concerned that if STLD policies are allowed to proliferate, notwithstanding the proposed notice, consumers may be confused regarding their potential individual mandate responsibilities for 2018.

³⁰ 83 Fed. Reg. at 7440.

³¹ Centers for Medicare & Medicaid Services, "Insurance Standards Bulletin Series – INFORMATION – Extension of Transitional Policy through Calendar Year 2018" (Fed. 23, 2017), available at <https://www.cms.gov/ccio/Resources/Regulations-and-Guidance/Downloads/Extension-Transitional-Policy-CY2018.pdf>.

Some STLD policies have a history of fraud: In addition, some STLD issuers have engaged in unscrupulous practices and denied coverage for benefits alleging that the enrollee should have known of a pre-existing condition prior to enrolling in coverage.³² States have also handled complaints from consumers who either enrolled in STLD policies without being made aware of their limitations or in some cases had their coverage rescinded.³³ Litigation is also pending against some STLD issuers alleging the use of dishonest sales tactics and brokers who preyed on the most vulnerable consumers.³⁴ ACS CAN is extremely concerned that despite all of these problems, the Departments are proposing to expand the use of these plans.

Effective Date and Applicability Date: The Departments are proposing that the applicability date for this proposed rule, if finalized, would be 60 days after publication of the final rule. We are deeply concerned about the proposed applicability date of the final rule. Issuing a final rule in the summer or fall of 2018 will likely cause havoc for state regulators given that this timeframe will be after the close of many states' rate filing processes.

The timeframe also falls after the end of most state legislative sessions. Several states have begun debating legislative proposals that seek to prepare for changes to its individual market to address the potential for proliferation of STLD policies. A recent study has found that states that limited or curtailed the availability of STLD policies were more likely to see limited premium increases in their individual and small group market, relative to states without such limitations.³⁵ Thus, if the Department chooses not to withdraw this rule, as we have suggested, we strongly urge you to give states additional time to determine how best to respond to the implications imposed by this rule and change the applicable date of any final rule until at least after January 1, 2020.

Finally, we are concerned that a 60-day applicable date fails to give sufficient time to educate consumers about the limitations of these policies. Absent this important consumer education, individuals may enroll in this coverage without being made aware that it will not provide the same level of comprehensive coverage that is currently required of coverage offered in the individual and small group market.

Length of coverage: The proposed rule would extend the length of STLD policies to be less than one year. However, in the preamble, the Departments seek comment on whether the length of short-term, limited-duration insurance should be some other duration.

As previously noted, we have serious concerns about these products. We strongly urge the Departments not to extend the length of coverage. These policies are intended to be short-term and limited-duration as acknowledged by the Departments in the preamble and as their name implies. Allowing these policies to be sold for extended periods of time would cause confusion to consumers who may be misled into

³² Larson, E and Tracer, Z. The Health Plans Trump Backs Have a Long History of Disputes. Bloomberg, October 2017. Available at <https://www.bloomberg.com/news/articles/2017-10-16/trump-s-insurance-directive-renews-preexisting-conditions-fight>.

³³ Goe, C. Non-ACA Compliant Plans and the Risk of Market Segmentation. Georgians for a Healthy Future, March 2018. Available at http://healthyfuturega.org/ghf_resource/non-aca-compliant-plans-risk-market-segmentation/.

³⁴ *Id.*

³⁵ Blumberg, L, Buettgens, M, & Wang, R. The Potential Impact of Short-Term Limited-Duration Policies on Insurance Coverage, Premiums, and Federal Spending, The Urban Institute, February 2018. Available at https://www.urban.org/sites/default/files/publication/96781/stld_draft_0226_finalized_0.pdf.

believing these products to be comprehensive in nature, and prevent them from actually enrolling in more comprehensive plans.

Renewability: The Departments also seek comment on the conditions under which issuers should be able to allow short-term, limited-duration insurance to continue for 12 months or longer with the issuer's consent. Short-term, limited-duration coverage is intended to offer consumers a policy that is intended to fill a short-term gap in coverage and thus we do not believe it is appropriate for such coverage to be continuously renewed.

We are also concerned that STLD issuers can require enrollees to undergo medical underwriting again in order to have their coverage renewed. Individuals who develop a chronic condition during the STLD policy contract or who develop a re-occurrence of a chronic condition – will likely be unable to renew coverage at the time of renewal.

We urge the Departments prohibit a carrier from selling short-term coverage to any individual who has had short-term coverage in the preceding three months. This requirement will prohibit the sale of back-to-back, STLD policies as a way around the proposed requirements.

Expedited renewal process: The preamble suggests an example that an expedited process could involve setting minimum federal standards for what must be considered as part of the streamlined reapplication process while allowing issuers to consider additional factors in accordance with contract terms. We are concerned that this policy would further exacerbate the harms caused by these policies.

If finalized, this policy would permit issuers to require individuals who wish to renew policies to respond to extensive and intrusive questions related to their health status (or, presumably, even respond to questions beyond health status). Issuers could design questionnaires in an effort to hinder the enrollment of individuals with less than perfect health status. We urge the Departments not to permit an expedited renewal process.

Premiums alone are not a viable proxy for determining the value of coverage: The Department's impact analysis argues that consumers who purchase STLD coverage would benefit from increased insurance options at lower premiums, referencing a National Public Radio broadcast report that found that average monthly premiums for STLD policies in the fourth quarter of 2016 were \$124 versus \$393 for unsubsidized ACA-compliant plans.³⁶

While premiums for STLD policies will likely be lower relative to ACA-compliant plans, using premiums as the sole measure of a benefit to consumers provides an incomplete analysis. As discussed in more detail above, STLD policies fail to provide comprehensive coverage and thus expose consumers who have a serious medical condition, like cancer, to significant out-of-pocket costs. In addition, the analysis fails to take into account that premiums for STLD policies can age rate beyond the current 3 to 1 ratio, thus exposing even relatively healthy older individuals to significant premiums.

³⁶ 83 Fed. Reg. at 7442, citing Andrews, M. "Sales of Short-Term Insurance Plans Could Surge if Health Law is Relaxed," NPR, Jan. 31, 2017. Available at <https://www.npr.org/sections/health-shots/2017/01/31/512518502/sales-of-short-term-insurance-plans-could-surge-if-health-law-is-relaxed>.

Finally, premiums for STLD insurance cannot be a viable proxy for determining the benefit of the policy if STLD policies are permitted to medically underwrite because individuals with prior pre-existing conditions would likely be denied coverage or charged significantly higher premiums due to their health conditions. In addition, by siphoning off young and healthy individuals into STLD policies, premiums for ACA-compliant plans will increase significantly. We strongly urge that any impact analysis that is conducted by the Departments takes into account the premium impact for all potential enrollees and not only the young and healthy enrollees.

II. Economic Impact and Paperwork Burden

B. Executive Orders 12866 and 13563 – Department of Labor and Department of Health and Human Services

2. Summary of Impacts

a. Benefits

STLD policies do not improve health outcomes: The Departments’ impact analysis states that “[i]ndividuals who purchase short-term, limited-duration insurance as opposed to being uninsured would potentially experience improved health outcomes and have greater protection from catastrophic health care expenses.”³⁷

We believe the Departments’ assertions are incorrect for a number of reasons. STLD policies do not have to cover essential health benefits – including prescription drugs or even preventive services. Even if the policy were to cover some preventive service, like a cancer screening that lead to a cancer diagnosis, if it does not cover prescription drugs or chemotherapy then the enrollee who is diagnosed with cancer is left with significant out-of-pocket costs for these treatments. It is also worth noting again that the lifetime and annual limit protections only apply to EHB services, and thus without EHB coverage these protections do not apply to STLD policies. Thus, we do not share the Departments’ assertion that these policies provide protection from catastrophic health care expenses.

We also question the Departments’ comparison of STLD policies to being uninsured for purposes of determining whether the enrollee is more likely to experience improved health outcomes. Rather, the Departments should compare coverage provided under STLD policies to that provided by ACA-compliant plans. As noted throughout the preamble, STLD policies are primarily intended for younger and healthier individuals, and are able to medically underwrite people with serious conditions like cancer. Any analysis undertaken by the Departments should examine the benefits of policy changes to all consumers and not just younger and healthier individuals.

STLD policies provide limited coverage: The Departments’ impact analysis states that “[I]ndividuals purchasing short-term, limited-duration policies could obtain broader access to health care providers compared to those PPACA-compliant plans that have narrow provider networks.”³⁸ In support of this claim, the Departments cite to a Wall Street Journal article.³⁹ However, the article itself offers no

³⁷ 83 Fed. Reg. at 7442.

³⁸ Id.

³⁹ Id., citing Wilde Mathews, A. “Sales of Short-Term Health Policies Surge.” Wall Street Journal, April 10, 2016. Available at <https://www.wsj.com/articles/sales-of-short-term-health-policies-surge-1460328539>.

evidence to support the Departments' claim. The closest reference that could be found is this paragraph:

Many ACA plans offer narrow choices of health-care providers as a way to keep down costs. A recent promotional email to insurance brokers from UnitedHealth Group Inc. touted its short-term policies' broad access to doctors, compared with limits found in "most major medical plans." In addition, if consumers develop health problems they can move to ACA plans that cover pre-existing conditions.⁴⁰

We are concerned that the Departments would rely on promotional material provided by an issuer of STLD policies as evidence that such policies provide broader network coverage. Such justification seems self-serving to say the least. In addition, we remind the Departments that federal and state network adequacy standards represent a "floor" and plans are permitted to provide greater access to providers.

Second, we are concerned that the industry marketing materials used by the Departments to suggest that STLD policies have broader access to providers, also contains a rather misleading statement that consumers can move to ACA-complaint plans when health problems arise. It is important to note that a consumer's ability to enroll in an ACA-compliant plan is limited to the annual enrollment period, absent very limited qualifications for a special enrollment period.

It is also interesting to note the Departments' citation of this article given that it also raises a number of concerns with STLD policies. The article features a Ms. Robin Herman who is enrolled in a STLD policy that "caps total benefits at \$1 million" and "doesn't cover most prescription drugs." The article goes on to note that "[i]nsurers typically pay little in claims" for STLD policies.⁴¹

b. Costs and Transfers

STLD policies will increase federal expenditures: The Departments' impact analysis estimates that because premiums will likely increase for marketplace coverage, federal expenditures for advance premium tax credits (APTCs) will also increase by an estimated \$96 million to \$168 million annually.⁴²

For many reasons discussed above, we have grave concerns about the proliferation of STLD policies. However, from a fiscal perspective alone we are unsure why the Departments would want to provide more limited coverage to individuals and incur significant federal expenditures to do so.

C. Regulatory Alternatives

The impact analysis notes that one alternative would be to set the maximum duration for STLD policies to a six-month or nine-month period. However, the Departments failed to explore either of these options, choosing instead to simply state that "this alternative would not adequately increase choices for individuals unable or unwilling to purchase PPACA-compliant plans."⁴³

⁴⁰ Wilde Mathews, A. "Sales of Short-Term Health Policies Surge." Wall Street Journal, April 10, 2016. Available at <https://www.wsj.com/articles/sales-of-short-term-health-policies-surge-1460328539>.

⁴¹ *Id.*

⁴² 83 Fed. Reg. at 7443.

⁴³ *Id.*

Given the concerns discussed with STLD policies, it would be helpful for the Departments to engage in a more robust discussion of regulatory alternatives that could address the Departments' concerns while at the same time address those raised by the patient community.

F. Federalism – Department of Labor and Department of Health and Human Services

The preamble suggests that "to the extent that current State law requirements for short-term, limited-duration insurance are the same as or more restrictive than the Federal standard proposed in this proposed rule ... States may continue to apply such state law requirements."⁴⁴

We appreciate the Departments' recognition of the role of state regulators and strongly urge the Departments to continue to affirm that they will defer to States with respect to any limitations the State chooses to impose on STLD policies.

Conclusion

On behalf of the American Cancer Society Cancer Action Network we thank you for the opportunity to comment on the proposed rule. If you have any questions, please feel free to contact me or have your staff contact Anna Schwamlein Howard, Policy Principal, Access and Quality of Care at Anna.Howard@cancer.org or 202-585-3261.

Sincerely,



Christopher W. Hansen
President
American Cancer Society Cancer Action Network

⁴⁴ 83 Fed. Reg. at 7445.