American Cancer Society
Cancer Action Network
555 11th Street, NW
Suite 300
Washington, DC 20004
202.661.5700
www.acscan.org

August 5, 2016

Sylvia M. Burwell
Secretary
Department of Health and Human Services
200 Independence Avenue, SW
Washington, D.C. 20201

John Dalrymple
Deputy Commissioner for Services and Enforcement
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

Phyllis C. Borzi
Assistant Secretary
Employee Benefits Security Administration
Department of Labor
200 Constitution Avenue, NW
Washington, D.C. 20210

Re: Expatriate Health Plans and Other Issues
CC:PA:LPD:PR (REG-135702-15)
81 Fed. Reg. 38020 (June 10, 2016)

Secretary Burwell, Deputy Commissioner Dalrymple, and Assistant Secretary Borzi:

The American Cancer Society Cancer Action Network (ACS CAN), appreciates the opportunity to comment on the proposed rule implementing changes to expatriate health plans, excepted benefit plans, and short-term, limited-duration insurance. ACS CAN, the nonprofit, nonpartisan advocacy affiliate of the American Cancer Society, 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 the regulations proposed by the Department of Health and Human Services, the Department of Labor, and the Internal Revenue Service ("Tri-Agencies"). As discussed in more detail below, we believe these proposed regulations, if implemented, will benefit consumers who are shopping for and enrolling in health insurance coverage. In addition, we urge the Tri-Agencies to require additional information to consumers who may consider purchasing these plans to disclose the nature of the specific product that is being marketed to the consumer. Such additional information will be helpful to consumers who may not be fully aware of the fact that these policies may provide limited coverage and/or fail to constitute minimum essential coverage, thus exposing a consumer to tax penalties.

Hospital Indemnity and Other Fixed Indemnity Insurance

The proposed regulations would require issuers of hospital indemnity or other fixed indemnity insurance coverage to include in application, enrollment and reenrollment materials a statement that this coverage is a supplement to, rather than a substitute for, major medical coverage and that lack of minimum essential coverage may result in a tax penalty. In addition, the proposed regulations would require that hospital indemnity or other fixed indemnity products that provide benefits for doctors'

visits, prescription drugs, or other services at a fixed amount per service to determine the amount of benefits provided without regard to the type of items or services received.

ACS CAN strongly supports the proposed regulations. Unfortunately, there have been instances where individuals have purchased hospital indemnity or other fixed indemnity insurance coverage under the mistaken belief that these products meet the minimum essential coverage requirements and therefore will meet all their healthcare needs, only to find out later that their policy does not cover everything needed and/or operate like traditional health insurance coverage. This is particularly problematic for persons with serious illness like cancer. Minimum essential coverage is an important consumer standard and requiring these disclosures will provide more notice to consumers that the product is different from traditional health insurance coverage. Consumers may erroneously believe that buying hospital indemnity or fixed indemnity policies will satisfy the individual mandate and allow them to avoid tax penalties. We believe that additional disclosures to potential enrollees will help reduce this confusion.

Specified Disease Coverage

In the preamble, the Tri-Agencies expressed concern that individuals who purchase a specific disease policy covering multiple diseases or illnesses may erroneously believe they are purchasing comprehensive medical coverage. The Tri-Agencies solicited comments on whether, if these policies are considered excepted benefits, and which protections are needed to ensure such policies are not mistaken for comprehensive medical coverage.

ACS CAN urges the Tri-Agencies to further regulate specified disease policies, such as cancer-only insurance policies. ACS CAN believes that these policies should only be sold to individuals who otherwise have a comprehensive health insurance policy that at least meets the requirements to constitute minimum essential coverage. We are concerned with the increase in the number of individual and group specified disease policies sold in recent years, including cancer-only policies. According to data from the National Association of Insurance Commissioners (NAIC) in 2014, carriers sold 7.6 million specified disease policies in the individual market and 12.5 million policies in the group market.[1] While the NAIC is currently in the process of updating its model act[2] and model regulations[3] pertaining to these policies, we believe federal regulations are needed to ensure minimum standards for individuals purchasing these policies.

In addition, we strongly urge the Tri-Agencies to require additional disclosures to consumers before the policies can be sold to ensure that consumers are aware these policies fail to meet the minimum essential coverage requirements. We encourage the Tri-Agencies to consider requiring: statements that the policy is intended to supplement comprehensive coverage; a statement describing whether or not the coverage would apply to the specific condition if the condition pre-existed the start of the policy (even if the enrollee did not know whether she had the condition); guidance as to whether conditions or diseases caused or aggravated by the specific condition (or by its treatment) would be covered; and a

---

[1] National Association of Insurance Commissioners, 2014 Accident and Health Policy Experience Report, available at http://www.naic.org/prod_serv/AHP-LR-15.pdf.

[2] National Association of Insurance Commissioners, Accident and Sickness Insurance Minimum Standards Model Act (#170), available at http://www.naic.org/store/free/MDL-170.pdf.

[3] National Association of Insurance Commissioners, Model Regulation to Implement the Accident and Sickness Insurance Minimum Standards Model Act (#171), available at http://www.naic.org/store/free/MDL-171.pdf.

statement that such a policy is unnecessary if the enrollee has Medicaid coverage (or is eligible to enroll in Medicaid coverage). This disclosure language should be specifically designed and tested to ensure that consumers fully understand the limitations of these specified-disease policies.

Short-Term, Limited Duration Insurance

The preamble notes that in some cases short-term, limited duration insurance policies are being purchased as an individual's primary form of health coverage. The Tri-Agencies propose to limit short-term, limited duration coverage to be less than three months in duration and would require a prominently displayed notice that the policy does not constitute minimum essential coverage.

ACS CAN strongly supports the Tri-Agencies' proposed regulations limiting the availability of short-term, limited duration policies. As noted in the preamble, short-term, limited-duration policies are exempt from important consumer protections such as lifetime and annual dollar limits, limits on the use of pre-existing condition exclusions, and a 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 are also concerned that, because these policies can be medically underwritten, carriers may target these policies to healthier individuals, thus negatively impacting the risk pool for ACA-compliant coverage. Finally, these policies are not sufficient to constitute minimum essential coverage, thus subjecting enrollees to the individual responsibility penalties.

While we strongly support the Tri-Agencies proposed regulations, we note that some individuals may use limited duration policies during a waiting period for an employer plan, which could extend into a fourth month if the plan includes an orientation month. In this limit instance we could support an extension of the policy to cover a fourth month so that the individual does not experience a gap in coverage.

In addition, we support the Tri-Agencies proposal to provide a notice to individuals that these policies do not constitute minimum essential health coverage. The preamble proposes the following language: "THIS IS NOT QUALIFYING HEALTH COVERAGE ("MINIMUM ESSENTIAL COVERAGE") THAT SATISFIES THE HEALTH COVERAGE REQUIREMENT OF THE AFFORDABLE CARE ACT. IF YOU DON'T HAVE MINIMUM ESSENTIAL COVERAGE, YOU MAY OWE AN ADDITIONAL PAYMENT WITH YOUR TAXES."[4] We believe this notice is a step in the right direction, though we are concerned that the proposed notice may not be fully understood by the average consumer. We suggest the Tri-Agencies consider beginning the notice describing the requirement for individuals to have coverage that meets a minimum standard or else pay a monthly fine. The disclosure should then note that the plan would not meet that standard, and therefore, the purchaser would be subject to the fine. The disclosure could even include a chart showing the purchaser the amount of the potential fines.

In addition, we suggest that the carrier be required to obtain the consumer's signature acknowledging that this notice has been provided and that the consumer understands the consequences for not having a plan that meets the minimum essential coverage requirements. We also suggest the notice include a phone number and website the consumer can use to obtain more information and ask questions.

[4] 81 Fed. Reg. at 38032.

Given that these policies are intended to be short-term and limited-duration, we urge the Tri-Agencies to go a step further and 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, short-term policies as a way around the proposed requirements.

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,

Kirsten Sloan
Senior Policy Director
American Cancer Society Cancer Action Network