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Comments of the National Consumers League

Docket No. CMS-9924-P
Short-Term, Limited-Duration Insurance
April 23, 2018

The National Consumers League (NCL) appreciates the opportunity to submit these comments on the Short-Term Limited-Duration Insurance (STLDI) Proposed Rule. The National Consumers League is the nation's pioneering consumer advocacy organization. Founded in 1899, NCL has a long history of advocating for access to quality, affordable healthcare.

NCL strongly objects to the STLDI proposed rule. The proposed rule rescinds restrictions on short-term plans, thereby allowing insurers to offer junk insurance policies to millions of consumers that fail to meet their healthcare needs. These plans exclude coverage for critically important healthcare services; vary premium rates by gender, health status, and age; and put individuals and families at significant financial risk. In addition, allowing the expansion of these types of plans will undermine the individual market by pulling healthy individuals away and leaving an older, sicker risk pool behind. Many individuals who rely on comprehensive coverage – including women, older adults, and people with chronic conditions – would be left without affordable, comprehensive coverage options.

Short-term, limited-duration insurance is intended to provide temporary insurance during unexpected coverage gaps. This type of coverage is exempt from the definition of individual health insurance coverage under the Affordable Care Act (ACA) and, therefore, does not have to comply with the law's core consumer protections such as the essential health benefits. The proposed rule will increase the take up of skimpy, junk insurance coverage that has minimal protections for consumers. Specifically, such coverage:

- Has high out-of-pocket costs;
- Has annual and lifetime caps on care;
- Discriminates against individuals; and
- Excludes essential healthcare services.

Short-term plans discriminate against individuals based on their health status. Because short-term plans are exempt from the ACA's pre-existing condition protections, plans deny coverage altogether or deny coverage of specific services based on a consumer's health status and medical history. Some insurers go as far as defining a condition to be preexisting if a member had symptoms within the prior five years "that would cause a reasonable person to seek diagnosis, care or treatment," even if he was not aware of the condition and did not receive care for it. For example, two months after Kevin and Linda Conroy purchased a short-term insurance policy, Kevin suffered a heart attack which required triple bypass surgery. He was left with $900,000 in medical bills. Their insurer dug through Mr. Conroy's medical records and used his undiagnosed alcoholism and back pain as a pretext for rescinding their coverage and refusing to pay any of the claims.[i]

Short-term plans are not required to cover the essential health benefits. In addition to being able to exclude coverage for pre-existing conditions, these plans are also allowed to categorically exclude certain benefits, such as routine maternity and newborn care, prescription drugs, mental health and substance use disorder services, and preventive services such as cancer screenings, birth control, and tobacco cessation. A recent Kaiser Family Foundation analysis[ii] of 24 distinct short-term insurance products currently marketed in 45 states and the District of Columbia through eHealth or Agile Health Insurance found:

- 43 percent do not cover mental health services;
- 62 percent do not cover substance abuse treatment;
- 71 percent do not cover outpatient prescription drugs; and
- None of the plans cover maternity care.

Without these essential health benefits, consumers will lack adequate coverage. Insurers who sell short-term plans also frequently discriminate based on gender, including charging women higher premiums than men (gender rating). ACA protections prohibit plans from basing premiums on anything other than age (within a 3:1 ratio for adults), tobacco use, family size, and geography. Before the ACA took effect, 92 percent of best-selling plans on the individual market practiced gender rating. These predatory practices used to cost women approximately $1 billion a year[iii] and are still commonplace among insurers selling short-term plans. Health questionnaires are also often used by short-term plans to identify and deny coverage to people with preexisting conditions, like pregnancy. The application process includes explicit language excluding applicants who are pregnant or an expectant father.

Short-term plans also impose annual and lifetime limits. An individual or family could quickly meet their annual and lifetime limit with expensive healthcare costs and treatment for a catastrophic medical emergency. The impact to individuals and families could be financially devastating and leave them without coverage. One insurer, for example, caps covered benefits, including treatment, services, and supplies at just $750,000 per coverage period. At least one insurer provides per-service limits such as $1,000 per day for hospital room and board, $500 per day for emergency room services, $250 per trip for ambulance, and $10,000 for AIDS treatment.[iv] These limits amount to woefully inadequate coverage for consumers and their families.

Short-term plans are also not subject to out-of-pocket maximums, which can leave consumers facing major, unpredictable financial risk. The ACA limits out-of-pocket maximums to $7,350 for individual coverage for the entire year, but some short-term plans may require out-of-pocket costs in excess of $20,000 per individual per policy period.[v] In some cases, out-of-pocket maximums for short-term plans are misleading and appear to be smaller than they are because the deductible does not count toward the maximum.

Furthermore, expanding the availability of short-terms plans creates an uneven playing field. Due to discriminatory, predatory practices, short-term plans are able to offer low premiums and attract younger and healthier individuals, thereby leaving older, sicker, and costlier risk pools behind in the ACA-compliant market. If healthier individuals are syphoned off from the individual market, costs will increase and plan choices will decrease for individuals remaining in those markets. Consumers who need comprehensive coverage, including those with pre-existing conditions, and middle-class consumers with incomes too high to qualify for subsidies, would face rising premiums and potentially fewer plan choices.

Specific Recommendations

I. **Short-term limited-duration plans should not be expanded to more than three months** (§54.9801-2 / §2590.701-2 / §144.103).

Short-term plans are designed to fill temporary gaps in coverage. These policies should not exceed three months.

The proposed rule would allow short term plans to enroll individuals for as long as 364 days. Allowing extensions of these policies expands the period of time in which people may be underinsured, leaving consumers with inadequate coverage and at financial risk if they get sick or injured. Yearlong short-term plans would create consumer confusion about whether the coverage is the same as that available through ACA-compliant one-year plans. Moreover, consumers could be left with uncovered bills and/or find themselves "uninsurable." Because insurers can deny a new contract if the enrollee becomes sick or injured during the coverage term, consumers may believe they can extend or renew coverage until rejected by the issuer. If their short-term plan ends before Marketplace open enrollment, their loss of coverage would not qualify for a special enrollment period, leaving them to wait until the next annual open enrollment period to select a new plan. This will lead to a gap in coverage for many consumers.

Consumers seeking coverage for three months or longer can get covered through the Marketplaces. Allowing short-term plans longer than three months undermines the ACA and the risk pools in the individual market by encouraging healthy people to use short-term plans as an alternative to ACA plans. This would drive up premiums in the individual market, making comprehensive coverage with pre-existing condition protections less affordable for consumers, particularly those that are ineligible for premium tax credits.[vi]

NCL strongly opposes the proposed changes to the regulation at §54.9801-2 / §2590.701-2 / §144.103. The existing definition limiting the duration of short-term limited-duration insurance to "less than 3 months" should remain, as should the language "taking into account any extensions that may be elected by the policyholder with or without the issuer's consent."

II. **Consumer notices should be explicit, in multiple languages, about ACA requirements that do not apply to short term plans** (§54.9801-2 / §2590.701-2 / §144.103).

NCL supports efforts in the proposed rule to help consumers who purchase short-term, limited-duration policies to understand the coverage they are purchasing. We believe notice is vital for consumers to understand the limits of short-term plans and that they are not comprehensive coverage. We appreciate the specific language that clarifies that the plan does not comply with federal requirements and that enrollees might have to wait until an open enrollment period to get other health insurance coverage.

However, NCL recommends that the notice be made clearer in order to be more easily understood by consumers and that it be available in multiple languages. As the preamble notes, allowing short-term plans to provide coverage for just under one year will make it more difficult for consumers to distinguish between short-term plans and ACA plans. The notice must make clear how short-term plans differ from ACA plans. We recommend listing specific examples of ACA protections in the notice, including preexisting conditions and essential health benefits. The draft notice language also does not make it clear enough that loss of eligibility or coverage in a short-term plan does not trigger a special enrollment period

The Departments should adjust the proposed notices at §54.9801-2 / §2590.701-2 / §144.103 to the following language:

> THIS COVERAGE IS NOT REQUIRED TO COMPLY WITH FEDERAL REQUIREMENTS FOR HEALTH INSURANCE, PRINCIPALLY THOSE CONTAINED IN THE AFFORDABLE CARE ACT, SUCH AS COVERAGE OF PREEXISTING CONDITIONS AND ESSENTIAL HEALTH BENEFITS. BE SURE TO CHECK YOUR POLICY CAREFULLY TO MAKE SURE YOU UNDERSTAND WHAT THE POLICY DOES AND DOESN'T COVER. EXPIRATION OR LOSS OF ELIGIBILITY FOR THIS COVERAGE DOES NOT TRIGGER A SPECIAL ENROLLMENT PERIOD. YOU MIGHT HAVE TO WAIT UNTIL AN OPEN ENROLLMENT PERIOD TO GET OTHER HEALTH INSURANCE COVERAGE.

III. **The effective date of the rule should be delayed** (§ 54.9833–1/§2590.736/§146.125).

NCL recommends that the proposed rule be rescinded in its entirety. However, if the proposed rule is finalized, then insurers will need time to appropriately design and price plans. Allowing expanded short-term plans to be offered in 2019 creates risk and uncertainty for health insurers in the individual market.[vii] Insurers may have to build in rate increases associated with uncertainty if expanded short-term plans are allowed in

2019. Delaying implementation until 2020 will give insurers time to adjust to the insurance market without the individual mandate penalty and allow them to see which insurers are expanding or entering the short-term market. A delay would also allow states time to respond, through legislative or regulatory changes, to the impact of expanded availability of short-term plans on their markets.

NCL strongly opposes the proposed effective and applicability date of this rule. If the rule is finalized, the effective date should be delayed until the 2020 plan year.

IV. Short-term plans should never be allowed to continue for 12 months or longer.

Short-term limited-duration insurance is, by name, meant to be for a short, limited duration of time. As noted above, allowing these plans to continue for 12 months or longer places people in plans with limited coverage and at significant financial risk. Allowing renewals would suggest clear intent to circumvent the ACA and undermine the risk pools in the ACA-compliant individual market. States are the primary regulators of insurance and should maintain authority to regulate the renewability of these plans and the application and reapplication process. NCL strongly opposes any consideration of allowing short-term health plans to exceed three months, much less 12 months or longer.

V. Short-term Plans Will Pull Millions Away from the ACA Individual Market

The estimates in the fiscal impact statement on the number of people enrolled undercounts the individual insurance market. The NAIC report on which the estimate was based fails to include short-term plans sold by discretionary associations or similar arrangements. Recent reports have suggested enrollment in short-term plans may be closer to one million today.[viii] The Urban Institute has estimated that, as a result of this proposed rule, 4.3 million people would enroll in short-term plans in 2019.[ix] The Urban Institute also estimated that the effect of the proposed rule, in combination with the elimination of the individual mandate penalty, would reduce enrollment in ACA-compliant plans by 18.3 percent.[x] The American Academy of Actuaries reaffirms the argument that short-terms plans will attract healthy individuals, causing the potential for market segmentation and adverse selection, thereby increasing premiums in the ACA-compliant market. As noted throughout these comments, this rule will have the effect of undermining and weakening the ACA-compliant market – leaving people with higher premiums and fewer plan options.

Thank you for the opportunity to comment on the Short-Term, Limited-Duration Insurance Proposed Rule (CMS-9924-P). Rather than implementing this proposal, NCL urges the Departments to preserve and fully implement the Affordable Care Act as the most effective strategy to promote affordable consumer choice for health coverage. If you have any questions about our comments and recommendations, please contact Karin Bolte, Senior Director, Health Policy, at (202) 207-2824 or karinb@nclnet.org.

[i] Abelson, Reed. (2017, November 30). *Without Obamacare Mandate, 'You Open the Floodgates' for Skimpy Health Plans*. Retrieved 20 April, 2018, from https://www.nytimes.com/2017/11/30/health/health-insurance-obamacare-mandate.html

[ii] Pollitz, Karen. (2018, April 23). *Understanding Short-Term Limited Duration Health Insurance*. Kaiser Family Foundation. Retrieved 23 April, 2018, from https://www.kff.org/health-reform/issue-brief/understanding-short-term-limited-duration-health-insurance/?utm_campaign=KFF-2018-April-Health-Reform-Short-Term-Health-Plans&utm_source=hs_email&utm_medium=email&utm_content=2&_hsenc=p2ANqtz-_HkrN2xY47qFRWURlb5SMFV9PLCRtl8OxZ2d-QYVdNq2SV72ocpQ2wtWBx7vmn61Uf4QxFtUpyJ84geR-kbGTqOCxYFQ

[iii] National Women's Law Center. (2012). Turning to Fairness: Insurance Discrimination against Women Today and the Affordable Care Act. Retrieved 14 December 2016, from http://www.nwlc.org/sites/default/files/pdfs/nwlc_2012_turningtofairness_report.pdf

[iv] The IHC Group. "Secure Lite: Short-term Medical Insurance for Individuals and Families."

[v] Pollitz, Karen. (2018, February 09). *Understanding Short-Term Limited Duration Health Insurance*. Kaiser Family Foundation. Retrieved 26 March, 2018, from https://www.kff.org/health-reform/issue-brief/understanding-short-term-limited-duration-health-insurance/

[vi] American Academy of Actuaries. (2017, November 7) (http://www.actuary.org/files/publications/Executive_Order_Academy_Comments_110717.pdf)

[vii] Robert Wood Johnson Foundation (March 2018) Insurers Remaining in Affordable Care Act Markets Prepare for Continued Uncertainty in 2018, 2019. Retrieved 26 March 2018, from https://www.rwjf.org/content/dam/farm/reports/issue_briefs/2018/rwjf444308

[viii] Abelson, Reed. (2017, November 30). *Without Obamacare Mandate, 'You Open the Floodgates' for Skimpy Health Plans.* Retrieved 20 April, 2018, from https://www.nytimes.com/2017/11/30/health/health-insurance-obamacare-mandate.html

[ix] Blumberg, L., Buettgens, M., Wang, R. (February 2018). *The Potential Impact of Short-Term Limited-Duration Policies on Insurance Coverage, Premiums, and Federal Spending.* Retrieved 26 March, 2018), from https://www.urban.org/sites/default/files/publication/96781/2001727_updated_finalized.pdf

[x] Blumberg, L., Buettgens, M., Wang, R. (February 2018). *The Potential Impact of Short-Term Limited-Duration Policies on Insurance Coverage, Premiums, and Federal Spending.* Retrieved 26 March, 2018), from https://edit.urban.org/sites/default/files/publication/96781/2001727_0.pdf