

April 23, 2018

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

Re: Short-Term, Limited-Duration Insurance CMS-9924-P

To Whom It May Concern:

Thank you for the opportunity to comment on the proposed regulations on *Short-Term, Limited Duration Insurance* published in the *Federal Register* on February 21, 2018. These comments are submitted on behalf of the members of the National Association of Insurance Commissioners (NAIC), which represents the chief insurance regulators in the 50 states, the District of Columbia, and the 5 United States territories.

As state insurance regulators we have the primary responsibility of regulating our insurance markets and ensuring consumers are protected and the markets are competitive. As we stated in our comments on the current short-term, limited duration regulation, “Federal interference can, and often does, have unintended consequences and may not be effective in addressing the underlying issues.” We argued that the arbitrary 3-month limitation set by the Federal government could harm some consumers and limit choices. Returning the Federal definition to “less than 12 months,” as proposed, is consistent not only with longstanding federal law but also with how this term has been long defined by most states.

In the analysis of Economic Impact and Paperwork Burden related to federalism, the proposed rule states:

Federal officials have discussed the issue of the term length of short-term, limited duration insurance with State regulatory officials. This proposed rule has no federalism implications 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.

Consistent with this statement, any further requirements, including but not limited to restrictions related to the sale, design, rating or duration of these plans, must be left to the States, which have the primary authority under our federal system to regulate the business of insurance, so that they can address the unique conditions and needs of their respective insurance markets. It is critical that state regulators maintain the flexibility to determine whether, and under what conditions, these plans are appropriate for their state. We urge continued state flexibility on this issue.

We also agree that educating consumers and ensuring that they are aware of the limitations of these plans is paramount. Some of these plans may provide significantly less coverage and consumer protections than comprehensive plans. We supported the disclosure requirements in the current regulations and support the expansions in this proposed rule.

States have received several consumer complaints about confusion and misinformation regarding their short-term or excepted benefit plans. Because of the real risk that consumers may confuse short-term policies with comprehensive health insurance that complies with the Affordable Care Act (ACA), it is important that they be

made aware of any limitations to these policies during the sales process. We are pleased that the proposed rule retains these important disclosure requirements and adds valuable additional disclosures.

As drafted, this rulemaking does not address the impact of Section 1557 of the ACA on the issuance of short-term, limited duration plans. Specifically, it is unclear whether or not these plans will be considered to be a "health program or activity" under 45 C.F.R. §92.4. This distinction is critical.

If these plans are not exempt from the definition of "health plan or activity," the implication would be that carriers could not offer these plans and also participate on the Marketplace, Medicare, or Medicaid. In many states throughout the country, carriers are deciding whether or not to participate in the ACA-compliant marketplace, and if clarifying language is not included carriers will be forced to choose either to offer short-term, limited duration plans or participate in the Exchange. We would ask for clarification on this issue, and specifically advise that CMS include language in the proposed definition of "short-term, limited duration insurance" providing that such insurance is "not a health program or activity as defined in 45 C.F.R. § 92.4."

As to the issue of renewability, the members of the NAIC concur that any decision over whether and when these plans should be renewable should be left up to the States, not dictated by the Federal government.

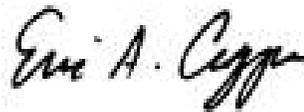
Finally, states are concerned about the timing of this rule, and some states may want to modify existing laws and regulations to protect consumers and state markets. Therefore, we recommend that the final regulation allow states, if they so choose, to begin enforcing the new rules in 2020, thus giving them time to review their rules and seek statutory or regulatory changes to facilitate a smooth transition.

Thank you for this opportunity to comment. We are available to discuss these or other issues as the Short-Term, Limited Duration Proposed Rule is finalized.

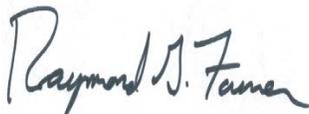
Sincerely,



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