National Health Council
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April 23, 2018

The Honorable Seema Verma
Administrator
Centers for Medicare & Medicaid Services,
Department of Health and Human Services,
Room 445-G, Hubert H. Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201
Attention: CMS-9924-P

RE: Proposed Rule, Short-Term, Limited-Duration Insurance
CMS-9924-P

Dear Administrator Verma:

The National Health Council (NHC) appreciates the opportunity to respond to the Proposed Rule entitled, "Short-Term, Limited-Duration Insurance," promulgated by the Internal Revenue Service (IRS); the Department of Labor, Employee Benefits Security Administration (EBSA); and the Centers for Medicare & Medicaid Services" (CMS) (the Proposed Rule). The NHC has significant concerns regarding the Proposed Rule's impact on people with chronic diseases and disabilities and requests its withdrawal.

The NHC is the only organization that brings together all segments of the health community to provide a united voice for the more than 133 million people with chronic diseases and disabilities and their family caregivers. Made up of more than 100 national health-related organizations and businesses, its core membership includes the nation's leading patient advocacy organizations, which control its governance. Other members include professional and membership associations, nonprofit organizations with an interest in health, and representatives from the pharmaceutical, generic drug, health insurance, device, and biotechnology industries.

The Proposed Rule's expansion of short-term, limited-duration (STLD) insurance plans from three months to 364 days and allowing them to become renewable will have a severe negative impact on the health and financial wellbeing of people with chronic diseases and disabilities. When combined with other actions, such as the repeal of the individual mandate, potential expansion of Association Health Plans (AHPs), non-payment of cost-sharing reductions, shortened open enrollment periods, and reduced spending on marketplace advertisement and outreach, the cumulative impact is devastating. As more fully detailed below, the NHC believes that:

- The Proposed Rule's expansion of short-term, limited-duration plans will make insurance unaffordable or unavailable for those which chronic diseases or disabilities.

- Short-term, limited-duration plan enrollees who become newly diagnosed with a serious illness, chronic condition, or disability will be at risk for catastrophic financial and/or health consequences.
- Insurance brokers will be incentivized to promote short-term, limited-duration plans.
- The Proposed Rule, if implemented, will adversely impact rural communities.

The Proposed Rule's expansion of short-term, limited-duration plans will make insurance unaffordable or unavailable for those which chronic diseases or disabilities.

The Proposed Rule acknowledges that lower-premium STLD plans are designed to draw younger and healthier individuals away from the individual marketplace. It further acknowledges that older, less healthy individuals will not have access to these "affordable" options because they must remain in more comprehensive plans with escalating premiums. STLD plans will likely charge unaffordable premiums for those with pre-existing conditions, will not cover essential products and services, will impose lifetime and annual limits on benefits, and have no annual limit on out-of-pocket costs. They are simply not an option for most people with chronic conditions.

The Proposed Rule, as well as the AHP rule, individual mandate repeal, shortened open enrollment periods, and reduced spending on advertising and outreach, will greatly reduce the amount of younger, healthier people in the ACA-compliant marketplaces. The result of these actions will be increased premiums and an escalation of issuers exiting the market.

While most current marketplace enrollees will be shielded from premium increases by a concurrent increase in premium subsidies, the non-subsidized population will feel the full weight of increasing premiums. Middle-class families struggling with chronic conditions will be required to pay the full premium increase, assuming one or more issuers even continue to participate in their area.[1] While predicting issuer participation is difficult, a number of payers who are currently operating in the ACA marketplaces have expressed concern with the Proposed Rule and have indicated that it will factor into their decision to remain in the marketplaces in 2019.

Short-term, limited-duration plan enrollees who become newly diagnosed with a serious illness, chronic condition, or disability will be at risk for catastrophic financial and/or health consequences.

The NHC has serious concerns about whether these plans would convey a substantial benefit to any enrollee who develops a condition requiring costly medical care. As an example, if a person purchases a STLD plan while he or she is healthy and is diagnosed with cancer, he or she may find that: the plan has a higher deductible and cost-sharing obligations than what's allowed by the ACA; the out-of-pocket costs limit is higher or potentially non-existent; the plan has a cap on emergency room services, surgery, and/or outpatient specialist visits; and prescription drugs are not a covered benefit. Although marketplace coverage may be available, this enrollee would not be eligible for comprehensive coverage until the next open enrollment period. While waiting for the opportunity to enroll in a comprehensive plan, he or she will be forced to either forgo needed care, leading to drastic health consequences, or go into significant debt to pay for care out-of-pocket. Because of added confusion created by this Proposed Rule, it is very likely that most consumers will be purchasing their plan without the information needed to fully understand the consequences of selecting a STLD plan instead of an ACA-compliant plan.

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[1] According to an Urban Institute Report, marketplace premiums are projected to increase by nearly 20 percent in 2019. https://www.urban.org/sites/default/files/publication/96781/2001727_0.pdf

Unlike ACA-compliant plans, STLD plans are also free to rescind coverage. While recisions are limited to instances where enrollees did not properly disclose pre-existing conditions, many potential enrollees do not fully understand the scope of required disclosures. They may believe that if they have been healthy over the previous year, they do not have a pre-existing medical condition. If an individual becomes seriously ill after the policy starts, the company can potentially rescind the coverage or refuse to later renew the plan. Either instance would result in a patient being uninsured until the next open enrollment period, leading to potentially dire health consequences.

Insurance brokers will be incentivized to promote short-term, limited-duration plans.

We are also concerned that insurance brokers have a stronger financial incentive to promote STLD plans than ACA-compliant plans, even if the ACA-compliant plan may be a more appropriate choice for an individual. This is because STLD plans will likely pay higher commissions, as they are not required to spend at least 80 percent of premium revenues on medical care, which is a requirement in the ACA marketplace.

The NHC is concerned that while brokers may be incentivized to sell these plans, consumers will not have the information about what STLD plans do and do not cover, or a clear understanding of the differences between marketplace coverage and STLD plans. This lack of transparency is inappropriate and could yield catastrophic consequences if people do not choose the plan that best meets their needs due to lack of information and inappropriate steering.

The Proposed Rule, if implemented, will adversely impact rural communities.

The Proposed Rule states that, "[t]his proposed rule will not affect small rural hospitals." The NHC strongly disagrees with this assertion. While issuer withdrawal caused by the Proposed Rule would negatively impact any community, it would be particularly catastrophic for rural families who already have few issuers from whom to purchase plans, as well as the rural hospitals and other providers who rely on razor-thin financial margins to deliver care. The NHC urges CMS to make market stabilization a priority by eliminating, or at least minimizing, the unpredictability and magnitude of risk associated with issuer participation and to pay special attention to these impacts in rural communities.

Conclusion

The NHC appreciates the opportunity to submit comments on the Proposed Rule. STLD plans are simply not an added "choice" for people with chronic conditions. The Administration recognizes this, as well as the impact its proposed action will have on marketplace issuers, the premiums they charge, and their decision to continue offering coverage. The result is that if this Proposed Rule is implemented, those with more complex health needs will find it far harder to purchase the meaningful and affordable health coverage needed to manage their conditions. Therefore, we ask that this proposal be withdrawn.

Please do not hesitate to contact Eric Gascho, Vice President of Policy and Government Affairs, if you or your staff would like to discuss these issues in greater detail. He is reachable by phone at 202-973-0545 or via e-mail at egascho@nhcouncil.org.

Sincerely,

Marc Boutin, JD
Chief Executive Officer