April 18, 2018

The Honorable Alex Azar  
Secretary  
U.S. Department of Health and Human Services  
P.O. Box 8010  
Baltimore, MD 21244-8010

Mr. David Kautter  
Acting Commissioner, Internal Revenue Service  
U.S. Department of the Treasury  
1111 Constitution Avenue, NW  
Washington, DC 20224

Ms. Seema Verma  
Administrator, Centers for Medicare & Medicaid Services  
U.S. Department of Health and Human Services  
P.O. Box 8010  
Baltimore, MD 21244-8010

Mr. Preston Rutledge  
Assistant Secretary, Employee Benefits Security Administration  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Washington, DC 20210

RE: Comments on Short-Term, Limited-Duration Insurance Proposed Rule (CMS-9924-P; RIN 0938-AT48)

Dear Secretary Azar, Administrator Verma, Acting Commissioner Kautter, and Assistant Secretary Rutledge:

On behalf of the American Academy of Nursing (Academy), we appreciate the opportunity to comment in response to the proposed rule on short-term limited-duration health insurance plans.

While the Academy strongly supports efforts to expand healthcare coverage and to stabilize the individual health insurance market and American healthcare system overall, we write with strong objection to the proposed rule on short-term limited-duration insurance. The proposed rule rescinds restrictions on short-term plans, thereby allowing insurers to offer inadequate insurance policies to millions of consumers. These plans exclude coverage for critically important health care services; vary premium rates by gender, health status, and age; and put individuals and families at significant financial risk. In addition, expanding 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 options.

The Academy serves the public and the nursing profession by advancing health policy and practice through the generation, synthesis, and dissemination of nursing knowledge. The Academy's more than 2,500 fellows are nursing's most accomplished leaders in education, management, practice, and research. We are on record supporting universal access to evidence-
based essential health services, including preventive health services, for all citizens and residents.¹

This proposed rule seeks to expand the sale and use of short-term, limited duration health insurance plans by extending the maximum duration of such plans from three months to twelve months; it also seeks to modify the disclaimer required under current regulations for these types of health insurance plans. The Academy is concerned that this proposed rule, combined with the repeal of the individual mandate in December 2017, will result in a higher rate of uninsured Americans, increased individual health insurance premiums in the ACA individual market, and a two-class individual insurance market which makes it more difficult for individuals with complex and chronic health conditions to access affordable health insurance coverage, discriminates based on gender, and excludes basic health care services.

The Urban Institute recently published a report which details the potential impacts of expanding the sale and use of short-term, limited duration health insurance plans. This study found that the expansion of short-term, limited duration health insurance plans would increase the number of people without minimum essential health benefits coverage by 2.6 million in 2019. The study also found that the expansion of such plans would increase 2019 ACA-compliant individual insurance premiums by 18% in the 45 states that do not prohibit or limit such plans. Furthermore, the expansion of these plans would increase federal government spending in 2019 (as a result of increased premiums in the individual market).²

The Academy is concerned that these proposed changes to the short-term plans will pull millions away from the ACA individual market and will not help the millions of people who do not qualify for premium subsidies. The Urban Institute 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. The American Academy of Actuaries reaffirms the argument that short-term plans will attract healthy individuals, causing the potential for market segmentation and adverse selection, and therefore increase premiums in the ACA-compliant market. Essentially, the effect will undermine and weaken the ACA-compliant market – leaving people with higher premiums and fewer plan options.

*The Academy’s major concern is that the proposed short-term policies offer inadequate insurance that fails to meet the needs of consumers.*

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

http://www.nursingoutlook.org/article/S0029-6554(12)00140-6/fulltext

health insurance coverage under the Affordable Care Act (ACA) and, therefore, does not have to comply with the law’s core consumer protections. The proposed rule, therefore, promotes and will increase skimpy insurance coverage with minimal protections for consumers.

**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 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 she did not receive care, and even if she was not aware of the condition. For example, a woman between jobs in Atlanta bought a short-term plan in 2014 unaware that she had breast cancer. The insurer considered the disease a pre-existing condition refused to cover it. She was left with $400,000 in medical bills.

67 million non-elderly women and girls have preexisting conditions that would be excluded by short-term plans. Prior to the ACA protections, many people had their short-term plans rescinded after filing an expensive claim or had claims for cancer treatments denied as a preexisting condition even when the enrollee did not know she had cancer. Some plans also specifically exclude services that disproportionately affect women, such as depression, autoimmune conditions, chronic fatigue, chronic pain, and arthritis.

**Short-term plans are not required to cover 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 care, substance use services, and preventive services like birth control and tobacco cessation. Without these essential benefits consumers will lack adequate coverage. For example, in some of the brochures from insurance plans:

- Emergency care will be excluded; “Charges for use of hospital emergency due to illness.” (See, for example, UnitedHealthOne)
- Essential women’s reproductive health care will be excluded; “Expenses for the treatment of normal pregnancy or childbirth, except for complications of pregnancy and normal newborn care; expenses for voluntary termination of normal pregnancy or contraception; infertility treatments or sterilization.” (See, for example, IHC Secure Lite)
- Mental health care will be excluded: “Treatment of mental health conditions, substance use disorders; and outpatient treatment of mental and nervous disorders, except as specifically covered.” (See, for example, National General)

While some pregnancy related complications might be covered, such as preeclampsia or gestational diabetes, it is up to the insurer to define what constitutes a “complication” of pregnancy. Clinical decisions, especially those related to life-threatening complications, should not be made by insurance companies.

**Insurers who sell short-terms plans frequently discriminate based on gender, including charging women higher premiums.**
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 (charging women higher premiums than men). These predatory practices used to cost women approximately $1
billion a year 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 discriminate based on gender identity by excluding coverage for transition-related services, such as surgery.

**Short-term plans also impose lifetime and annual limits.**
An individual or family could quickly meet their annual and lifetime limit with expensive health care 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 $1000 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. 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. 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.

**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. Leaving older, sicker and costlier risk pools behind in the ACA-complaint market. If healthier individuals are syphoned 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.

**The American Academy of Nursing strongly objects to the proposed rule on short-term limited-duration insurance since such coverage**
- Has high out of pocket costs,
- Limits the coverage people can receive each year and over their lifetime,
- Discriminates against individuals, and
- Excludes basic health care services.

The Academy specifically and respectfully recommends that the proposed rule be rescinded in its entirety.
Thank you for the opportunity to comment on the Short-Term, Limited-Duration Insurance Proposed Rule (CMS-9924-P). We once again urge the Departments to preserve and fully implement the Affordable Care Act as the most effective strategy to promote affordable consumer choice for health coverage. Should you have any questions about our comments and recommendations, please contact Cheryl Sullivan, CEO, American Academy of Nursing at Cheryl_Sullivan@AANnet.org.

Sincerely,

Cheryl G. Sullivan, MSE, CAE
Chief Executive Officer
American Academy of Nursing

ENDNOTES:
2 The IHC Group. "Secure Lite: Short-term Medical Insurance for Individuals and Families."
5 The IHC Group. "Secure Lite: Short-term Medical Insurance for Individuals and Families."