AMERICAN ACADEMY *of* ACTUARIES

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April 6, 2018

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

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

To Whom It May Concern,

On behalf of the Individual and Small Group Markets Committee of the American Academy of Actuaries[1] Health Practice Council, I would like to offer comments in response to the departments of the Treasury, Labor, and the Health and Human Services proposed rule that would lengthen the maximum period of short-term, limited-duration (STLD) insurance through amending the definition of STLD. In particular, the maximum duration of STLD plans would be lengthened from three months to less than 12 months. This comment letter focuses on policy implications of the proposed rules and highlights the potential effects of expanded STLD insurance on the stability and sustainability of the existing Affordable Care Act- (ACA-) compliant individual market.

Comparison of ACA and STLD Coverage Requirements and Implications for the ACA Markets

STLD coverage traditionally has been used by healthy people who know they will only have a short-term gap in coverage, for instance between jobs. Under the proposed rule, the duration of STLD plans would be lengthened from three months to less than 12 months. We understand that considerations are also being made for STLD coverage to be renewable.

STLD plans are exempt from many of the rules applicable to ACA plans. In particular, STLD plans are not be required to follow the issue and rating rules or benefit coverage requirements applicable to ACA plans. As a result, STLD plans likely would be more attractive to lower-cost individuals, who could pay lower premiums for STLD plans compared with ACA plans. Market

[1] The American Academy of Actuaries is a 19,000-member professional association whose mission is to serve the public and the U.S. actuarial profession. For more than 50 years, the Academy has assisted public policymakers on all levels by providing leadership, objective expertise, and actuarial advice on risk and financial security issues. The Academy also sets qualification, practice, and professionalism standards for actuaries in the United States.

segmentation and adverse selection for ACA plans could result if healthier individuals purchase STLD plans instead of ACA plans, leading to higher premiums for ACA plans. These effects could be dampened in states that implement additional rules limiting the availability of short-term policies or requiring that they meet rules governing ACA plans.

Issue and rating rules. Unlike ACA plans, STLD plans would not be subject to guaranteed issue requirements and would not have to provide pre-existing condition protections. STLD plans would be allowed to underwrite, exclude coverage for pre-existing conditions, and charge higher premiums or deny coverage altogether for individuals with pre-existing conditions (table 1). These differences would allow some consumers, especially younger individuals and those without pre-existing health conditions, to face lower premiums for short-term plans when compared to their ACA alternatives. Individuals with higher expected health costs would more likely remain in the ACA market. Because the short-term policies would not be part of the single risk pool and would not be part of the risk adjustment program, there would be no transfer of funds from short-term plans to the ACA market to reflect the different underlying risks between these segments.[2] Premiums for ACA plans would increase as a result.

Table 1. Comparison of ACA and STLD Plans: Issue and Rating Rules

	ACA Plans	Short-Term Plans
Issue Rules		
Guaranteed issue	Yes	No
Underwriting prohibited	Yes	No—insurers can underwrite at time of enrollment and/or at time of claim
Pre-existing condition exclusions prohibited	Yes	No
Renewability	Guaranteed renewable: Renewable at option of insured	Proposed rules would allow renewal at option of insurer
Open enrollment periods	Limited annual open enrollment period outside of which enrollment is available only for those meeting special enrollment period eligibility	No open enrollment period; individuals can apply throughout the year
Rating Rules		
Premium variations by health conditions prohibited	Yes	No
Premium variations by age limited	Age variations limited to 3:1 ratio	No
Premium variations by gender prohibited	Yes	No
Geographic rating areas are defined	Yes	No

[2] While including STLD plans in risk adjustment is not currently being proposed, we note that it would be difficult to effectively risk adjust between the ACA market and STLD plans because of the large differences in rating rules and underlying benefits.

Benefit coverage requirements. Whereas ACA plans must adhere to essential health benefit (EHB) and other plan design requirements, short-term plans are exempt from these requirements (table 2). ACA plans must include coverage for the 10 EHB categories, including maternity care, preventive services at zero cost sharing, pediatric dental and vision care, mental health and substance abuse services, prescription drugs, and rehabilitative and habilitative services. Unless required by state rules, short-term plans are not subject to these requirements. Although short-term coverage can be somewhat comprehensive, it usually excludes or limits coverage for certain benefit categories, such as maternity care, physical therapy, and mental health and substance abuse treatment. Short-term plans also usually have overall coverage limits, for instance $1 million.

Table 2. Comparison of ACA and STLD Plans: Benefit Coverage Requirements

	ACA Plans	Short-Term Plans
EHB requirements	Yes	No
Maximum out-of-pocket limits required	Yes	No
Lifetime and/or annual dollar limits prohibited	Yes	No
Specified actuarial value requirements	Yes	No
Network adequacy requirements	Yes	No

To the extent that coverage under short-term plans is more narrow than that available under ACA plans, it will be more attractive to individuals in good health. Similar to the implications of differences in issue and rating rules, such benefit coverage differences would result in market segmentation, leading to higher ACA premiums.

It is unclear how insurers would react to the new short-term market rules. Insurers could decide to offer new short-term products that are more comprehensive than those in the existing short-term market to provide individual coverage at a lower cost while avoiding ACA requirements. Nevertheless, the comprehensiveness of short-term coverage can be misleading; individuals who are expected to need expensive services because of pre-existing conditions would likely either have services for those conditions excluded from coverage or be denied coverage altogether.

Other characteristics. In addition to differences in issue and rating rules and benefit coverage requirements, other differences between short-term plans and ACA plans can affect enrollment in those plans and have an impact on ACA premiums (table 3). Short-term plans do not meet the individual mandate requirements, which would lessen the demand for those plans. However, the financial penalty for not having coverage is eliminated beginning in 2019, thus reducing the barriers to short-term plans. The combination of increased availability of short-term plans and the elimination of the mandate penalty could exacerbate adverse selection in the ACA market. On the other hand, premium and cost-sharing subsidies are available only for ACA plans, providing incentives for healthy lower-income individuals to remain in ACA plans. This could provide a backstop on the deterioration of the ACA market. Nevertheless, adverse selection in the ACA markets would cause premiums to increase. Individuals eligible for premium subsidies would be shielded from the premium increases as federal premium subsidies would increase. Unsubsidized individuals would not and, among the healthy, higher ACA premiums would increase the attractiveness of lower-premium short-term plans.

Table 3. Comparison of ACA and STLD Plans: Other Characteristics

	ACA Plans	Short-Term Plans
Satisfy individual mandate ($0 financial penalty beginning in 2019)	Yes	No
Eligible for premium and cost-sharing subsidies	Yes, for eligible enrollees	No

STLD Renewability

Under current federal regulation, STLD plans are limited to less than three months of coverage, including any extensions (renewal). The proposed rule would increase the allowable duration to less than 12 months of coverage. The proposed rule asks for comments about reapplication. The implications of reapplication or guaranteed renewability would depend on how these terms are defined.

Reapplication would make the STLD policies available for a longer duration for those who need them. Under a reapplication process, the enrollee would likely be subject to underwriting, possibly simplified from the initial application. In the past, when STLD policies were re-underwritten at reapplication, coverage could be denied or re-priced at significantly higher rates based on health conditions. This was a benefit to individuals who were healthy and could pass underwriting at renewal. Being able to reapply was particularly beneficial to healthy individuals who only needed coverage until they found a job with health coverage and did not know how long that would take. On the other hand, individuals who could not pass re-underwriting would face coverage denials or high premium increases.

Potentially, pre-existing condition exclusions would begin again upon reapplication, meaning any conditions that began in the prior coverage period would not be covered in the next period. Pre-existing conditions may be identified by the insurer during the underwriting process or based on claims submitted by the enrollee, if related to a pre-existing condition that was not identified during underwriting. In this case, premiums would likely not increase substantially at reapplication due to any worsening health status; instead, existing health conditions would be subject to pre-existing condition exclusions (or coverage could be denied altogether). However, out-of-pocket expenses for the uncovered services could be high and the premium could increase for other factors, such as for age and trends in health care costs.

Separately, legislation has been introduced in Congress to make STLD guaranteed renewable. Under a typical guaranteed renewability provision, the insurer must accept enrollees for renewal; coverage could not be denied due to health conditions. But guaranteed renewability does not typically prohibit premium increases at renewal due to health conditions. Unlike current short-term policies, generally guaranteed renewable coverage cannot reset the pre-existing conditions exclusion for conditions that develop after the enrollee's initial application. As a result, the underwriting process at initial application would likely be more thorough under a guaranteed renewability environment than currently done for STLD. However, if a new serious medical condition is found during renewal underwriting, the insurer would likely be able to increase the rates accordingly.

If insurers are allowed to increase premiums at renewal based on an individual's health conditions, individuals with new conditions will receive higher rate increases than enrollees without new conditions. If there are no limits on the allowable rate increases, premiums for some individuals could exceed those in the ACA market. In such a case, the enrollee would be incented to move back to the ACA pool, increasing the health care costs of the ACA pool.

If rating rules are put in place that prohibit basing renewal rates on health evaluations at an enrollee level, the premiums for the block of business with the unhealthy enrollees will be higher than a similar STLD block of new business or blocks that may be able to charge based on health status. Insurers may be incented to provide lower rates to newly underwritten enrollees by using multiple risk pools for products. Healthy enrollees may be able to move to new products where they can pass underwriting.

Guaranteed renewable STLD would be more similar to pre-ACA individual market coverage than to current STLD products. This product may be more attractive to ACA enrollees than a non-guaranteed renewable STLD plan due to a perception that it is a product designed for longer-term use. Because of medical underwriting at issue, STLD is expected to attract healthier individuals with a lower premium and could put upward pressure on ACA rates as healthier enrollees leave the ACA pool. Enrollees could move back to the ACA market if they develop health conditions and face large premium increases on their short-term policy and then move back to the short-term market if the condition is resolved. Guaranteed renewable STLD may not be as attractive for people with short-term needs because the premiums could be higher than non-guaranteed renewable coverage.

Potential Enrollment in STLD

Although currently a relatively small share of the market, enrollment in short-term plans has been growing, and could grow faster if the rules expand availability further. The National Association of Insurance Commissioners (NAIC) reports that as of Dec. 31, 2016, just over 160,000 individuals had short-term medical coverage in the individual market, up from 148,000 in 2015.[3] These numbers are believed to be understated because some insurers provide STLD coverage through group policies, which are reported with other group business in NAIC filings. Using these coverage numbers likely understates the potential enrollment in STLD plans, perhaps significantly, if the allowed coverage duration is lengthened. Lengthening the coverage duration, especially if coverage is required to be guaranteed renewable, would result in STLD plans that are more akin to pre-ACA individual market coverage. And the ability to move back into an ACA plan (albeit at the next open enrollment period, if ineligible for a special enrollment period) reduces the risk of enrolling in a short-term plan.

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[3] National Association of Insurance Commissioners, *2016 Accident and Health Policy Experience Report*, July 2017, and *2015 Accident and Health Policy Experience Report*, 2016.

Rate Filing Considerations

The proposed rule does not include an effective date. Premiums for 2018 ACA-compliant plans are finalized and in effect. These premiums were developed assuming current STLD rules. If the effective date occurs at any time during 2018, premiums for ACA-compliant plans could be understated to the extent that healthier ACA plan enrollees switch to STLD plans, worsening the risk profile of the ACA-compliant markets. Insurers are not allowed to submit midyear premium changes in the individual market. ACA premiums could be inadequate as a result.

However, even if midyear rate changes were allowed, such changes would be extremely difficult to implement. Resource constraints for insurers and regulators could make it difficult to simultaneously develop and approve revised rates for 2018, especially on a compressed timeline, alongside the 2019 rate filing process. State laws and regulations typically require rates and coverage to be effective for a period of 12 months. An additional complication is that if midyear rate changes are allowed, a midyear open enrollment period or special enrollment periods might need to be provided so that individuals could reassess their options. Like midyear rate changes, an additional open enrollment period or special enrollment periods would be very difficult to implement.

If the rule is not finalized before insurers must finalize rates for 2019, we suggest that insurers should be given an opportunity to adjust 2019 individual rates to reflect the impact of the expansion of STLDs. Insurers are already beginning the process of developing ACA market premiums for 2019; initial rates will likely need to be filed during the spring or early summer of 2018 depending on the state.[4]

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We appreciate the opportunity to provide these comments and would welcome the opportunity to speak with you in more detail and answer any questions you have. If you have any questions or would like to discuss further, please contact David Linn, the Academy's senior health policy analyst, at 202-223-8196 or linn@actuary.org.

Sincerely,

Barbara Klever, MAAA, FSA
Chairperson, Individual and Small Group Markets Committee
American Academy of Actuaries

[4] Samara Lorenz, "DRAFT Bulletin: Proposed Timing of Submission of Rate Filing Justifications for the 2018 Filing Year for Single Risk Pool Coverage Effective on or after January 1, 2019," Center for Consumer Information and Insurance Oversight, Nov. 27, 2017.