

June 26, 2018

The Honorable Mike Kreidler Washington State
Office of the Insurance Commissioner
P.O. Box 40255
Olympia, WA 98504-0255

Dear Commissioner Kreidler:

Thank you for the opportunity to submit comments on Washington's short-term limited-duration medical plan rulemaking stakeholder draft, R 2018-01.

The undersigned organizations represent millions of individuals facing serious, acute, and chronic health conditions across the country. Our organizations have a unique perspective on what consumers, their families, and providers need to prevent disease, treat illness, and manage and improve health over a lifetime. The diversity of our groups and the people we represent enable us to draw upon a wealth of knowledge and expertise and serve as an invaluable resource regarding decisions affecting health insurance marketplaces. We urge your office to make the best use of the recommendations, knowledge, and experience our organizations offer as you move through the rulemaking process.

Our organizations are pleased to support your office's efforts to appropriately regulate short-term limited-duration (STLD or short-term) plans. While we acknowledge these plans may be appropriate for some consumers during times of transition, we believe if left unregulated, they could pose significant risk to those who enroll in them, particularly those with pre-existing conditions, and threaten the overall stability of the marketplace. In light of recent proposed and finalized federal regulations to significantly expand availability of substandard insurance products, we are pleased by the state's ongoing efforts to protect patients and consumers in Washington.

Definition of short-term limited duration plan

Overall, our organizations support the draft's STLD plan definition. We applaud the proposal of a three-month policy duration limit, non-renewability (including the provision barring the issuance of consecutive STLD plans to the same consumer), and the prohibition on the issuance of STLD plans during the open enrollment period. These important protections will help ensure that STLD plans remain available as transitional, limited coverage for people between jobs or in other extenuating circumstances, while also making clear that these plans do not constitute true health care coverage.

However, we would like to draw your attention to two areas we feel could be strengthened. The current draft refers to the definition of "major medical expense coverage" in WAC 284-50-350, which, in part, defines a policy as having an aggregate maximum payment threshold of not less than \$10,000. While this amount may have made sense when the regulation was written in 1976, we are concerned it is woefully outdated and will fail to meet the burden of cost in today's healthcare environment. In fact, in 2016, the national health expenditure average for an American rose to \$10,348.¹ Because individual

¹ Centers for Medicare and Medicaid Services. National health Expenditure Data. Available at <https://www.cms.gov/research-statistics-data-and-systems/statistics-trends-and-reports/nationalhealthexpenddata/nhe-fact-sheet.html>.

healthcare needs and costs are so widely varied, we recommend that the office remove the reference to what is now an arbitrary dollar threshold. We recommend that the office instead set a medical loss ratio (MLR) standard and remove any type of maximum spending threshold, as it could be used as a cap in coverage amount, to ensure these plans provide sufficient value to their enrollees.

The Affordable Care Act (ACA) set an MLR standard, known as the '80-20 rule', so that individual and small group health plans must spend at least 80 percent of premium income on health care and quality improvement activities, or rebate amounts in excess of this payout requirement back to the policyholder. The MLR requirement represents a major advance in the transparency and value of health insurance coverage and places a curb on marketing and overhead expenditures. Absent this requirement for STLD products, insurers choosing to issue them will be more likely to spend more resources on marketing short-term products and offering higher commissions to their brokers compared to comprehensive ACA-compliant plans. This creates a perverse incentive for brokers to aggressively market these plans, and consumers may purchase them without understanding what they are buying.

In 2007, more than 60 percent of all bankruptcies were the result of serious illness and medical bills.² Patients who undergo heart transplants, use specialty medications, have complicated pregnancies, receive a cancer diagnosis, or are diagnosed with rare and complex conditions could easily meet or exceed lifetime and annual caps within a short period of time. For these reasons, we strongly urge the office to consider the financial implications for our patients and secure their financial wellbeing by eliminating any type of payment threshold or cap.

Additionally, we have concerns about the look-back period for pre-existing conditions. Because short-term plans are exempt from the ACA's pre-existing condition protections, these plans can deny coverage of specific services based on health status and medical history of an individual or deny coverage altogether. According to one estimate, approximately 25 percent of non-elderly Washingtonians (roughly 1,095,000 people) have a pre-existing condition that would result in them being uninsurable if they were subject to medical underwriting.³ We firmly believe that consumers should never be discriminated against because of a pre-existing condition and strongly encourage you to ban the pre-existing condition exclusion all together.

Standard disclosure, Commissioner oversight, and cancellation sections

Our organizations are pleased the draft rule requires clear and comprehensive disclosure to consumers and requires their signed acknowledgement before buying a plan. For patients with pre-existing conditions, unintentionally signing up for a short-term plan can limit access to life-sustaining treatment or leave them with no insurance at all if they are denied coverage – and with no recourse. It is critical consumers are provided a clear explanation of the basic elements of health insurance that may not be covered by these plans. We also commend the inclusion of sections requiring the Commissioner's prior approval of plans before they are sold and offering strong consumer protections against cancellation and rescission. We strongly support these sections of the draft and do not have any concerns or suggested changes.

² Himmelstein DU, Throne D, Warren E, Woolhandler S, Medical bankruptcy in the United States, 2007: results of a national study. *Am J Med* 2009 Aug; 122(8): 741-6. Doi.

³ Claxton, G, Cox, C, Damico, A, Levitt, L, & Pollitz, K. Pre-existing Conditions and Medical Underwriting in the Individual Insurance Market Prior to the ACA. Kaiser Family Foundation, December 2016. Available at <https://www.kff.org/health-reform/issue-brief/pre-existing-conditions-and-medical-underwriting-in-the-individual-insurance-market-prior-to-the-aca/>.

Conclusion

Our organizations represent millions of patients, individuals, caregivers, and families who need access to quality and affordable health care regardless of their income or geographic location. We appreciate the opportunity to provide our recommendations on the proposed rule and are pleased to support your office's efforts to appropriately regulate STLD plans. We stand ready to work with you on this issue in the coming months.

If we can be of further assistance, please do not hesitate to contact any of our organizations. For questions or to discuss our comments further, please contact Lucy Culp, American Heart Association State Advocacy Advisor, at lucy.culp@heart.org or 360-870-4016.

Sincerely,

American Cancer Society Cancer Action Network
American Diabetes Association
American Heart Association
American Liver Foundation
American Lung Association
Arthritis Foundation
Bleeding Disorder Foundation of Washington
Crohn's & Colitis Foundation
Cystic Fibrosis Foundation
Epilepsy Foundation
Hemophilia Federation of America
Leukemia & Lymphoma Society
Lutheran Services in America
March of Dimes
National Multiple Sclerosis Society
National Organization for Rare Disorders
National Psoriasis Foundation
Susan G. Komen Puget Sound