

August 12, 2020

The Honorable Russell Toal  
Superintendent, Office of the Superintendent of Insurance  
P.O. Box 1689  
Santa Fe, NM 87504-1689

**Re: NMAC MINIMUM STANDARDS FOR SHORT-TERM PLANS**

Dear Superintendent Toal:

Thank you for the opportunity to submit comments on the Office of the Superintendent of Insurance's (OSI) proposed new rule 13.10.3, MINIMUM STANDARDS FOR SHORT-TERM PLANS.

Our organizations serve thousands of individuals facing serious, acute and chronic health conditions across New Mexico. We have an informed perspective on what people with pre-existing conditions and their families need to prevent disease, cure illness, and preserve health and well-being over their lifetimes. Substandard health coverage products have significant limitations, and we appreciate OSI's efforts to set fair and responsible standards and to foster a health insurance market that meets patients' and consumers' needs.

Short-term plans were originally meant to be a temporary stop-gap option for people who had lost their regular coverage. However, they have become significantly more available since federal rules were finalized in 2018 to extend the duration for which they can be offered. Research has demonstrated that carriers often market these plans aggressively and with misleading messages, depriving consumers of the transparency needed to know what they are actually purchasing.<sup>i,ii</sup>

The premiums for short-term plans are often cheaper compared to comprehensive health plans, but the benefits are so narrow in scope that these plans can trigger severe financial and medical consequences for consumers who wind up with major medical issues. This is because short-term plans are not required to comply with the Affordable Care Act's (ACA's) patient protection standards, including coverage for the ten essential health benefit categories, guaranteed issue, age and gender rating, prohibitions on discrimination against people with pre-existing conditions, annual out of pocket maximums, prohibitions on annual and lifetime coverage limits, and many other critical patient and consumer protections. In fact, two separate studies found that a majority do not cover all of the essential health benefits – particularly prescription drugs and mental health.<sup>iii,iv</sup>

According to a 2020 study commissioned by The Leukemia & Lymphoma Society (LLS), a patient newly diagnosed with lymphoma while covered by a short-term plan could pay up to \$45,800 in out-of-pocket expenses, while a patient with an ACA-compliant bronze plan could pay \$6,300, on average. And a patient newly diagnosed with lung cancer who has a short-term plan risks facing out-of-pocket expenses of more than \$100,000 in six months.<sup>v</sup>

The risks of these plans extend to the wider health coverage market, as well. The 2020 LLS study reported that states with unrestricted access to short-term plans saw a four percent increase in premiums associated with federal regulatory actions in 2019. These premium increases historically have been associated with decreased enrollment in the individual market: LLS reported that extrapolating its findings to the expected impact of deregulated short-term-plan markets "would lead to enrollment deterioration of approximately 6% by 2021 in the ACA individual market."<sup>vi</sup>

The overwhelming majority of healthcare groups share our concerns about deregulation of this market. Out of 340 healthcare groups who commented on the federal government’s 2018 short-term rule proposal, more than 98 percent issued critical comments, including every patient, physician, nurse and hospital organization that commented on the proposal.<sup>vii</sup>

The OSI’s proposed rule builds effectively upon the requirements already set forth in law through the enactment of 2019’s House Bill 285. We recommend this rule’s swift adoption, and we look forward to supporting OSI’s efforts to appropriately regulate the marketing, availability, and terms of short-term plans.

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 Dana Bacon, Regional Director, Government Affairs, The Leukemia & Lymphoma Society, at [dana.bacon@lls.org](mailto:dana.bacon@lls.org) or 612.308.0479.

Sincerely,

American Cancer Society Cancer Action Network  
American Diabetes Association  
American Heart Association  
American Kidney Fund  
American Lung Association  
Arthritis Foundation  
Cystic Fibrosis Foundation  
Epilepsy Foundation  
Health Action New Mexico  
Hemophilia Foundation of America  
The Leukemia & Lymphoma Society  
National Hemophilia Foundation  
National Multiple Sclerosis Society  
National Organization for Rare Disorders  
National Psoriasis Foundation  
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<sup>i</sup> S. Corlette, K. Lucia, D. Palanker, O. Hoppe, “The Marketing of Short-Term Health Plans: An Assessment of Industry Practices and State Regulatory Responses.” *Urban Institute*, January 2019. [https://www.urban.org/sites/default/files/publication/99708/moni\\_stldi\\_final\\_0.pdf](https://www.urban.org/sites/default/files/publication/99708/moni_stldi_final_0.pdf).

<sup>ii</sup> C. L. Young, K Hannick, “Misleading marketing of short-term health plans amid COVID-19.” *USC-Brookings Schaeffer on Health Policy*, March 24, 2020. <https://www.brookings.edu/blog/usc-brookings-schaeffer-on-health-policy/2020/03/24/misleading-marketing-of-short-term-health-plans-amid-covid-19/>.

<sup>iii</sup> D. Hansen, G. Dieguez, “The impact of short-term limited-duration policy expansion on patients and the ACA individual market.” *Milliman*, February 2020. <https://www.lls.org/sites/default/files/National/USA/Pdf/STLD-Impact-Report-Final-Public.pdf>.

<sup>iv</sup> U.S. House of Representatives Committee on Energy and Commerce, “E&C INVESTIGATION FINDS MILLIONS OF AMERICANS ENROLLED IN JUNK HEALTH INSURANCE PLANS THAT ARE BAD FOR CONSUMERS & FLY UNDER THE RADAR OF STATE REGULATORS.” June 25, 2020. <https://energycommerce.house.gov/newsroom/press-releases/ec-investigation-finds-millions-of-americans-enrolled-in-junk-health>.

<sup>v</sup> D. Hansen et al.

<sup>vi</sup> Ibid.

<sup>vii</sup> N. Levey, “Trump’s new insurance rules are panned by nearly every healthcare group that submitted formal comments.” *The Los Angeles Times*, May 30, 2018. <https://www.latimes.com/politics/la-na-pol-trump-insurance-opposition-20180530-story.html>.