



April 23, 2018

VIA ELECTRONIC SUBMISSION

The Honorable Alex Azar
Secretary, U.S. Department of Health and Human Services
200 Independence Ave SW
Washington, DC 20201

The Honorable Steven Mnuchin
Secretary, U.S. Department of Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

The Honorable R. Alexander Acosta
Secretary, U.S. Department of Labor
200 Constitution Ave NW
Washington, DC 20210

**RE: CPR Comment Letter on Short-Term, Limited-Duration Insurance
(RIN 0938-AT48)**

Dear Secretary Azar, Secretary Mnuchin, and Secretary Acosta:

The Coalition to Preserve Rehabilitation (CPR) appreciates the opportunity to comment on the proposed rule entitled *Short-Term, Limited-Duration Insurance*¹ (the Proposed Rule) issued by the Department of Health and Human Services, Department of Treasury, and Department of Labor (collectively, “the tri-agencies”). CPR is a coalition of national consumer, clinician, and membership organizations that advocate for policies to ensure access to rehabilitative services and devices so that individuals with injuries, illnesses, disabilities and chronic conditions may regain and/or maintain their maximum level of health and independent function.

We share the tri-agencies’ goal of increasing access to affordable health care, but we are very concerned that the Proposed Rule would leave adults and children, particularly those with disabilities and chronic health conditions, with less comprehensive coverage and higher out-of-pocket costs or, in some circumstances, no coverage at all. We are particularly alarmed that expanding the availability of short-term plans would allow some insurance companies to apply

¹ Short-Term, Limited-Duration Insurance, 83 Fed. Reg. 7,437 (Feb. 21, 2018). Available at: <https://www.gpo.gov/fdsys/pkg/FR-2018-02-21/pdf/2018-03208.pdf>.

discriminatory practices to a significant number of individuals in the insurance market. We strongly resist this because we believe that insurance coverage must ensure access to timely, affordable, high-quality health care that meets the needs of individuals with disabilities and chronic conditions. Expanding access to short-term plans will move us even further away from achieving these goals. It is of utmost importance that short-term plans do not provide a false sense of health insurance coverage by offering minimal benefit coverage in exchange for lower premiums.

Short-term plans are not subject to consumer protections that have immense value for individuals with disabilities and chronic conditions. The Proposed Rule will disproportionately harm the populations we represent and limit access to quality and affordable coverage for all Americans. In addition, the benefit packages provided by these plans will likely be more restrictive than plans in the marketplaces. This will likely cause adverse selection that will place even more inflationary pressure on marketplace plans, with the net effect of driving insurance costs higher for those with plans that are required to comply with the Affordable Care Act's consumer protections and essential health benefits. The Proposed Rule will leave short-term plan enrollees with non-covered services and increased out-of-pocket costs at the very time they need health care benefits the most, as well as allow insurance companies to discriminate against individuals with disabilities and chronic conditions.

For these reasons, we urge the tri-agencies to seriously reconsider the Proposed Rule and request that it not be issued in final form. If the tri-agencies decide to move forward with this regulation, we request the tri-agencies ensure that the final rule requires these plans to comply with the same consumer protections and cover the same minimum essential health benefits as exchange-based health plans.

I. Consumer Protections, Market Reforms, and Nondiscrimination Provisions

As explained in the Proposed Rule, short-term plans are not subject to the ACA's essential health benefits coverage requirements or protections regarding discrimination based on health status, preexisting conditions, annual or lifetime caps, guaranteed issue, cost sharing limitations, risk adjustment and other nondiscrimination protections. These are essential protections for consumers, particularly individuals with disabilities and their families. Allowing renewable, short-term plans with longer durations under the Proposed Rule to operate outside of these protections could seriously impact access to affordable, comprehensive coverage for individuals with disabilities and chronic conditions.

Individuals with disabilities and chronic conditions would likely be forced to purchase higher cost plans on the small group or individual market in order to ensure that needed services are covered. Alternatively, if they are not excluded from short-term plans at the outset, individuals may find themselves enrolled in a short-term plan that does not cover the services they need, resulting in higher out-of-pocket health care costs or, worse, lack of access to needed care.

Because these plans will be able to mimic or be inaccurately marketed as "major medical coverage" that lasts for a full year, consumers may be unaware that they are enrolling in a policy that will not cover certain medical needs until after they become ill or injured. In addition,

because these plans would be renewable under the Proposed Rule, individuals would likely face an additional round of discriminatory medical underwriting standards and practices that may affect the type and quality of coverage that they are offered on reapplication (or may result in the rejection of their application).

The tri-agencies specifically requested comments on the value of these excluded protections to consumers. The immense importance of several specific consumer protections for individuals with disabilities and their families is outlined in the following sections.

a. Essential Health Benefits

As described in the Proposed Rule, short-term plans are not subject to the ACA's requirement to cover all ten categories of essential health benefits (EHBs). This would have a significant impact on the disability community, as plans could decide not to cover, among other things, rehabilitative and habilitative services and devices, prescription drugs, behavioral and mental health services, chronic disease management, and other important benefits.

Under the ACA, the Secretary must take into account the impact that this would have on diverse segments of the population, including children, persons with disabilities, and other groups. People with disabilities and chronic conditions would indeed be negatively impacted by the availability of health plans that are not bound to cover essential health benefits. We would expect unreasonably restrictive coverage policies and arbitrary benefit exclusions that hinder the ability of enrollees with disabilities and chronic conditions to achieve the best outcomes through appropriate treatment.

We are particularly concerned that short-term plans could decide not to cover rehabilitative and habilitative services and devices or significantly limit the scope of these benefits. The inclusion in the ACA of the category of rehabilitative and habilitative services and devices was a major milestone for the disability community in that Congress recognized the importance of these benefits to improve the health and functioning of the American people.

In the February 2015 Notice of Benefit and Payment Parameters Final Rule, the Centers for Medicare and Medicaid Services (CMS) defined in federal regulation coverage of "habilitation services and devices" and "rehabilitation services and devices":

Habilitation services and devices—Cover health care services and devices that help a person keep, learn, or improve skills and functioning for daily living. Examples include therapy for a child who is not walking or talking at the expected age. These services may include physical and occupational therapy, speech-language pathology, and other services for people with disabilities in a variety of inpatient and/or outpatient settings.

Rehabilitation services and devices—Rehabilitative services, including devices, on the other hand, are provided to help a person regain, maintain, or prevent deterioration of a skill or function that has been acquired but then lost or impaired due to illness, injury, or disabling condition.

For the first time, these definitions established a uniform, understandable federal definition of rehabilitation and habilitation services and devices that became a standard for private insurance coverage. This definition has become a floor for both individual and small group health plans. It was also adopted by States that chose to expand their Medicaid programs. Importantly, the definition includes both services *and* devices. The adoption of a federal definition of rehabilitation and habilitation services and devices minimized the variability in benefits across States and the uncertainty in coverage for children and adults in need of medical rehabilitation, habilitation services and devices, and overall post-acute care.

Individuals and families have come to rely on this federal standard for coverage. To retreat now from this expanded coverage by promoting access to short-term, bare bones health plans that have no requirement to offer these necessary benefits would negatively impact patient access to comprehensive care. Again, it is of utmost importance that short-term plans do not provide a false sense of health insurance coverage by offering minimal benefit coverage in exchange for lower premiums.

Discriminatory insurance practices are often driven by a desire to reduce short-term costs. However, limiting access to health care for people with disabilities or chronic conditions is not cost-effective in the long term as it often results in further complications and avoidable hospital admissions and readmissions. In addition, reducing coverage is not likely to significantly reduce the cost of coverage in the first place. This is particularly true for coverage of rehabilitative and habilitative care which accounts for just 2% of total premium dollars. Reducing coverage of these services would not significantly decrease the cost of insurance packages overall, but would lead to very high increases in out-of-pocket costs for children, families, and adults who need these services.

Both habilitation and rehabilitation services and devices are highly cost-effective. They decrease the downstream costs of unnecessary disability and dependency, not only for the health care system but for society at large. For these reasons, it is essential that any regulatory change to the individual or small group markets—including expanding access to short-term plans—maintain appropriate access to rehabilitation and habilitation care, as well as many other benefits that persons with disabilities rely upon. We therefore urge the tri-agencies to rewrite the Proposed Rule to ensure continued access to and coverage of essential health benefits.

b. Protections for Individuals with Preexisting Conditions and Nondiscrimination Provisions

By expanding access to short-term plans, the Proposed Rule would turn back the clock on protections for individuals with disabilities or preexisting conditions. Under the ACA, insurers are required to cover individuals regardless of preexisting conditions. Short-term plans, however, are not subject to this requirement. In addition, short-term insurers are allowed to refuse to sell applicants a policy altogether simply based on their health status. This kind of explicit discrimination is devastating for individuals with disabilities and their families.

By allowing short-term plans with longer durations to operate outside of these protections, the Proposed Rule seriously jeopardizes the stability of the health insurance marketplace. If

individuals are denied enrollment in a short term plan for discriminatory reasons and then try to move back into the small group or individual markets, they may encounter major barriers to continuous coverage. For instance, they may have to wait until an open enrollment period to enroll and thus face a gap in coverage, higher out-of-pocket costs, and higher premiums once enrolled due to short-term plans' effects on the small group and individual markets, discussed below.

Short-term plans are similarly not subject to the ACA's community rating rules under the Proposed Rule. This means that insurance companies would be able to charge premiums that could make coverage unaffordable for many. The combination of these changes could dramatically reduce access to essential care for Americans with disabilities and chronic conditions.

c. Annual or Lifetime Caps

Short-term plans are not subject to the prohibition on annual and lifetime dollar limits on the amount of a plan's coverage. Even if a service is covered by a short-term plan, policies will likely include low dollar limits on what they will cover, leaving policyholders with significant uncovered expenses. Prior to the ACA's implementation, this practice was particularly prevalent in the area of rehabilitative and habilitative services and devices. Plans often instituted arbitrary dollar caps on certain rehabilitative and habilitative services and devices, as well as many other benefits relevant to the disability community. Allowing short-term health plans to return to these discriminatory insurance practices is a major step backward that we hope will not be adopted in the Final Rule.

However, if the tri-agencies move forward with this rule, we request that the final rule include a prohibition on annual and lifetime dollar limits or "caps" in short-term plans. If plans do impose caps or other limitations on rehabilitative or habilitative services and devices, plans must not rely on disability-based distinctions and any such caps must be justified by legitimate actuarial data or actual or reasonably anticipated experience. In addition, there should be an exceptions process—similar to the Medicare program—to meet the needs of individuals who require more therapy than the cap allows for a person with average therapy needs.

We urge the tri-agencies to consider the importance of protecting families from potentially-bankrupting out-of-pocket costs and the toll that such benefit caps takes on enrollees with disabilities and chronic conditions. Enrollment in a short-term plan not subject to the prohibition of annual and lifetime limits on the cost of benefits could financially overwhelm an individual who requires extensive health care services or medications.

d. Benefit Plan Design

In addition to explicit discrimination against individuals with disabilities and preexisting conditions, under the Proposed Rule short-term plans can design their plans in such a way as to make them unattractive to individuals with greater health needs or preexisting conditions in order to keep overall premiums low. To not require benefit packages to reflect the typical employer plan is detrimental to individuals and families who have come to rely on the availability of

benefits that meet the health care needs of a wide range of individuals with disabilities and their families.

We believe it is necessary to prohibit short-term plans from discrimination that can occur due to restrictive benefit designs, limited drug formularies and narrow provider networks. Discriminatory benefit design often occurs in the area of rehabilitative and habilitative services and devices, prescription drug coverage, and other benefits on which persons with disabilities rely. The Proposed Rule opens the door to health plan benefit and provider network design that could serve as disincentives for individuals with significant health conditions to enroll in those health plans. Limiting plan benefits was a predatory and discriminatory individual market insurance practice that existed before the ACA as a way to discourage anyone with a pre-existing health condition or high expected health care utilization from enrolling in coverage.

Unfortunately, plans may erect financial incentives to limit coverage of people with disabilities and pre-existing conditions through narrow benefit packages, narrow provider networks and through other means. A clearly articulated framework for short-term plan benefit design, cost-sharing, other key consumer protections, and network standards can provide financial protection for plans, as well as families, and help individuals with disabilities obtain the health care services they need to fulfill their potential.

II. Impact on Small Group and Individual Markets

As a result of lower costs and skimpier coverage, short-term plans tend to skew toward younger and healthier enrollees. As a result, these individuals would be removed from the risk pool of the traditional individual and small group markets. Known as “adverse selection,” this depletion of the individual and small group markets would result in higher premiums for those remaining in the ACA marketplaces. Estimates indicate that the combined effect of eliminating the individual mandate and expanding short-term plans could increase premiums by 18.2% on average in the marketplaces in states that do not prohibit or limit short-term plans.²

Despite these incentives for younger and healthier individuals to exit the individual and small group markets, the tri-agencies estimate that only between 100,000 and 200,000 individuals would shift from coverage purchased on the exchanges to short-term coverage. However, other estimates indicate that expansion of short-term plans under the Proposed Rule would increase the number of people without minimum essential coverage by 2.5 million in 2019.³ Expanded access to short-term plans, in conjunction with the loss of the individual mandate penalties beginning on January 1, 2019, is estimated to result in a 9.3% increase in federal spending in 2019.⁴

We share the tri-agencies’ goal of identifying and promoting improvements to our health insurance system that reduce cost and stabilize the insurance markets. Expanding access to short-

² Linda J. Blumberg, Matthew Buettgens, & Robin Wang, *The Potential Impact of Short-Term Limited-Duration Policies on Insurance Coverage, Premiums, and Federal Spending*, The Urban Institute (Feb. 26, 2018), https://www.urban.org/sites/default/files/publication/96781/stld_draft_0226_finalized_0.pdf.

³ *Id.*

⁴ *Id.*

term plans will move us away from—not towards—achieving these goals. We urge the tri-agencies to consider the impact that this Proposed Rule would have on consumer choice, health care costs, and quality of coverage.

III. Oversight of Short-Term Plans

Short-term plans are largely unregulated and exempt from many federal insurance regulations. Although states have broad authority to regulate short-term coverage, only seven states currently prohibit or limit short-term plans. In addition, among those states that do regulate short-term plans, current state regulation varies significantly by state. If the tri-agencies choose to go forward with the Proposed Rule, we support the continued ability of states to apply stricter limitations on short-term plans than the federal regulations.

We greatly appreciate your attention to our concerns involving this important proposed rule. Should you have further questions regarding this information, please contact Peter Thomas, CPR Coordinator, at 202-466-6550 or peter.thomas@powerslaw.com.

Sincerely,

The Undersigned Members of the Coalition to Preserve Rehabilitation (CPR)

Academy of Spinal Cord Injury Professionals
ACCSES
American Association of People with Disabilities
American Association on Health and Disability
American Congress of Rehabilitation Medicine
American Dance Therapy Association
American Medical Rehabilitation Providers Association
American Physical Therapy Association
American Spinal Injury Association
American Therapeutic Recreation Association
Association of Academic Physiatrists
Association of Rehabilitation Nurses
Brain Injury Association of America
Center for Medicare Advocacy
Christopher and Dana Reeve Foundation
Clinician Task Force
Disability Rights Education & Defense Fund
Falling Forward Foundation
Lakeshore Foundation
National Association of State Head Injury Administrators
National Association for the Advancement of Orthotics and Prosthetics
National Disability Rights Network
National Multiple Sclerosis Society
United Spinal Association