April 23, 2018

The Honorable Alex Azar
Secretary of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

The Honorable R. Alexander Acosta
Secretary of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

The Honorable Steven Mnuchen
Secretary of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

RE: CMS-9924-P – Proposed Rule on Short-Term Limited Duration Insurance

Submitted Electronically via www.regulations.gov

Dear Secretaries Acosta, Azar and Mnuchen:

I am writing on behalf of the National Association of Health Underwriters (NAHU), a professional association representing more than 100,000 licensed health insurance agents, brokers, general agents, consultants and employee benefits specialists. The members of NAHU work on a daily basis to help individuals and employer groups purchase, administer and utilize health insurance coverage. As such, we are pleased to have the opportunity to provide comments on the notice of proposed rulemaking titled "Short-Term, Limited Duration Insurance" published in the *Federal Register* on February 21, 2018.

NAHU appreciates the willingness of the Departments of Health and Human Services, Labor and Treasury (the Departments) to accept comments from stakeholders. In developing these comments, we have consulted extensively with health insurance agents and brokers who have knowledge about short-term coverage and who are familiar with the marketplace for such coverage today and the short-term coverage marketplace prior to 2016 promulgation of the current federal rules governing this coverage. Accordingly, our comments reflect the views of experts in the field who fully understand the needs and interests of today's individual and group health insurance consumers, including the specific types of consumers likely to purchase short-term, limited-duration coverage in the future.

Background

The Departments promulgated extensive new requirements for short-term, limited-duration health insurance policies in 2016, which have been in force for more than a year. These rules changed the federal definition of short-term, limited-duration coverage that had been in place since the passage of the Health Insurance Portability and Accountability Act of 1996 by specifying that short-term, limited-duration health coverage could not provide coverage for more than three months, rather than the previous federal maximum of 12 months. Under the old rules, states determined the length and availability of short-term policies in their jurisdictions while abiding by the federal coverage duration ceiling of 12 months. While there were state-level variances in the availability and typical durations of such coverage, agents who sell these policies both directly and through online enrollment mechanisms, report that before the implementation of the current federal rules, the average duration of the short-term policies they sold was five to six months.

Before the adoption of the current rules, short-term medical policies only represented a small fraction of health insurance policies sold. However, when these policies were sold, they had a clear purpose—to serve as a bridge to more comprehensive coverage options. Their buyers included not only people seeking individual coverage, but also those who are either in their waiting period prior to the start of group coverage, have gaps between different employment opportunities, or who are waiting until the next open enrollment after declining a group offer of coverage. Agents who sold these policies prior to 2017 report that at least half of their sales were to people were transitioning between jobs and to those who had purposely reduced hours or who had taken unpaid leave and could afford or did not qualify for COBRA or other group continuation coverage options. Newly retired people who are seeking a temporary bridge to Medicare enrollment, Americans students studying abroad, and individuals temporarily in the United States on VISA programs were also ordinary limited-duration health policy consumers.

Full-scale implementation of the Patient Protection and Affordable Care Act (ACA) also emphasized the marketplace's need for a year-long, short-term coverage option. Since the ACA utilizes a very short open-enrollment period (OEP) system for the individual health insurance marketplace (as opposed to a late-enrollment penalty system, as is used for Medicare participants), every year there are people who do not enroll during the OEP and therefore are shut out of the individual marketplace for a good portion of the year. Additionally, individuals who qualify for the individual mandate hardship exemption, particularly those who fall into a Medicaid coverage gap, may buy short-term coverage because it is all they can afford. While of course, NAHU feels it be would preferable for all of these individuals to have comprehensive coverage year-round, our organization also believes that health insurance coverage is, at its core, a financial-protection product, not just a means of providing access to medical care. Individuals should be able to purchase at least some type medical and financial protection for the majority of the year. Limited-duration medical policies are one of the only means for interim coverage.

Proposed Regulation

The proposed rule would restore the definition of short-term, limited-duration to its pre-2016 status and allow policies to be sold for up to 12 months in duration as long as long as its sale was accompanied by revised consumer disclosures. However, it is important to note that since the promulgation of the 2016 rules on short-term coverage, the whole context of the individual health insurance market in the United States has changed. The open enrollment window for individual market coverage has grown shorter, a lack of federal funding for cost-sharing subsidies has affected prices and plan designs, and the stability of this market has declined significantly. As a result, market competition is scarce, and for individuals who do not qualify for premium subsidies, costs are very high. According to the Kaiser Family Foundation, the average number of health insurance companies offering fully insured health insurance per state in 2018 is 3.5. This average includes eight states that have only one insurer actively marketing to new individual and group health insurance clients. The lack of competition is particularly a problem in the individual health insurance exchange marketplace, where in 2018 the Kaiser Family Foundation reports that about 26% of enrollees (living in 52% of counties) have access to just one insurer offering exchange marketplace coverage. Research from the Center on Budget and Policy Priorities notes that this lack of competition, combined with the loss of cost-sharing reduction payments for insurers, will increase premiums or cost-sharing for up to 3.3 million moderate-income consumers by up to $1,000 per year in the year ahead. Finally, in 2019 and beyond, the

ACA's individual mandate penalty will decline to $0 so American healthcare consumers will have no legal motivation to maintain minimum essential coverage, particularly when they are in a coverage gap.

Due to all of these market-based changes, NAHU predicts that the short-term coverage marketplace will expand in the years ahead beyond those who are just simply seeking to fill a temporary coverage gap. In addition to these typical consumers, the short-term coverage marketplace may become a haven for those who would have in the past bought traditional individual coverage but are now avoiding that coverage due to limited choices and high prices. Since short-term coverage is not comprehensive, it is not a good medical solution for any consumer on a long-term basis. If healthy individuals who may be interested in buying limited-duration policies repeatedly leave the current individual market, their exodus will also lead to further instability in the individual market risk-pool. Accordingly, NAHU is concerned that if the Departments merely restore the definition of a short-term, limited-duration policy to what it was along with consumer warning, as is proposed in the rule, consumer and overall market protection may be insufficient.

NAHU urges the Department to consider ways to strike a balance of providing an affordable and sufficient coverage option for those who are truly experiencing a gap and avoiding a true bifurcation of the individual market between healthy and sicker individuals that is harmful to all. One such solution might be adjusting the definition of short-term, limited-duration coverage to either six months, with one full renewal cycle or to six months with a renewal to January 1, whichever is shorter. Further renewal options could be limited to those individuals who qualify for an individual mandate hardship exemption while it is still valid or are otherwise ineligible to purchase individual-market coverage using a premium tax credit. That way, consumers will still have a legitimate financial protection and health coverage option that lasts for an appropriate length of time, and those consumers who qualify can purchase traditional individual market coverage for the next calendar year during the OEP.

Any expansion of short-term plans gives rise to the possibility that more people will select these plans due to affordability and won't realize what they're agreeing to prior to seeking treatment and incurring cost. In an effort to aid individuals in understanding what these plans cover and what they don't, beyond a notification requirement, consideration should be given to expanding the Summary of Benefits and Coverage (SBC) to better describe the attributes of these policies. Comparison examples between short-term coverage and traditional ACA-compliant coverage will aid consumers in understanding at the time of purchase and use.

Additionally, NAHU believes that primary legal authority to regulate short-term policies rests with the states. Over the years since the passage of HIPAA, the states have done an excellent job regulating these policies, including imposing appropriate durational limits. As evidence of this, the National Association of Insurance Commissioners (NAIC) is in the process of improving model legislation and a model regulation establishing minimum standards for limited-duration policies, excepted benefits and other health coverage traditionally under the complete purview of state regulation. NAHU urges the Departments to coordinate with the NAIC to ensure that any final rule is harmonious with its efforts since many states will look to the NAIC's work for guidance on short-term, limited-duration medical coverage public policy efforts. The Departments should focus on working with state regulators to ensure that jurisdictionally appropriate consumer protections are put in place.

Finally, NAHU would like to remind the Trump Administration that while regulatory actions such as this proposed rule are important, the Departments should not limit their efforts regarding reducing healthcare purchasing costs and growing market options for health insurance consumers to just short-term policies and the other ideas addressed in Executive Order 13813. Unless federal policymakers concentrate significant efforts on holistically improving traditional individual health insurance market conditions and on lowering the costs of medical care and prescription drugs directly, market competition and cost issues will remain. We urge the Departments to take up all of these endeavors, and to work on increasing medical care price and quality transparency for consumers.

NAHU sincerely appreciates the opportunity to provide comments on the proposed rule and we look forward to working with you on the implementation of any final measure. We are also happy to provide you with additional information about the marketing, sale and state-based regulation of short-term, limited-duration health insurance policies, including how such activity impacts consumers and interacts with the provisions of the ACA. If you have any questions about our comments or need more information, please do not hesitate to contact me at either (202) 595-0787 or jtrautwein@nahu.org.

Sincerely,

Janet Stokes Trautwein
Executive Vice President and CEO
National Association of Health Underwriters