COMMENTS ON PROPOSED REGULATIONS FOR SHORT-TERM, LIMITED-DURATION INSURANCE

Centers for Medicare & Medicaid Services
Department of Health and Human Services

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BERN
STEIN
SHUR

**Bernstein, Shur,
Sawyer & Nelson, P.A.**
100 Middle Street
PO Box 9729
Portland, ME 04104-5029

T (207) 774 - 1200
F (207) 774 - 1127

Steven Gerlach
(207) 228-7128 direct
sgerlach@bernsteinshur.com

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Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-9924-P
P.O. Box 8010
Baltimore, MD 21244-8010
RIN 0938-AT48

Re: Short-Term, Limited-Duration Insurance—comments on proposed regulations

To whom it may concern:

My firm represents the Opportunity Solutions Project, which brings together citizens and thought leaders across America to identify proven reforms to expand opportunity and freedom for all ("OSP"). On behalf of OSP, this letter responds to the request for comments issued by the Department of Health and Human Services (the "Department") in connection with proposed regulations under 45 CFR Parts 144, 146, and 148 regarding the definition of "short-term, limited-duration insurance" ("STLDI") for the purposes of its exclusion from the definition of individual health insurance coverage. We support the Department's proposal to reinstate the 364-day maximum coverage period permitted for STLDI policies, as these policies play an important role in providing protection for individuals during transitional periods, such as when they are between jobs. We offer two comments regarding this proposed rule, the first concerning renewability and the second concerning individual market impact.

Renewability. In its request, the Department specifically seeks comments regarding the extension or renewal of STLDI policies to terms longer than 12 months. Our primary consideration with this issue is the impact of renewability upon premium cost. Specifically, we believe that insurers offering to extend STLDI policies must be permitted to offer coverage with pre-existing condition exclusions to maximize access to the lowest cost premium. <u>Requiring</u> an insurer to cover pre-existing conditions upon renewal would drive up the cost of coverage, limit consumer choice, and defeat the purpose of these low-cost, stopgap policies. On the other hand, <u>permitting</u> insurers to offer consumers a choice between policies—with and without pre-existing condition exclusions upon renewal—is the most market-efficient approach. It will keep the cost of STLDI policies down and consumers will choose policies that best fit their needs. We believe there are multiple ways this could be approached; for example:

1. Allow STLDI insurers to sell multiple consecutive policies at the initial point of sale. This happens under current law with the three-month duration plans. Some insurers allow an applicant to purchase up to four consecutive policies (essentially a year of coverage). This subjects the applicant to health underwriting only once. The applicant is essentially purchasing a guaranteed renewal option at the initial point of sale.
2. Allow STLDI insurers to sell renewal options with and without imposition of new pre-existing condition limitations. It is important to maintain this consumer choice as plans that remove pre-existing condition limitations will be more expensive. Insurers could still adjust premiums upon renewal for age.
3. Amend 45 C.F.R. § 155.420(d)(1) to add the end of coverage under an STLDI policy as a triggering event for a special enrollment period for Exchange-based individual plans, as otherwise described in section 155.420.

Individual Market Impact. Critics of reinstating the 364-day limit argue that younger, healthier individuals will be attracted to the lower cost of the STLDI coverage and will thus be drawn out of the individual market. Under this logic, the loss of the younger, healthier individuals will cause instability in that market and raise the cost of coverage for people who have health conditions. We disagree.

The 364-day definition of STLDI provided by HIPAA was the governing rule for 20 years and did not create the type of instability that critics claim. Our view is exactly the opposite; the maximum three-month term contributes to market instability by requiring STLDI purchasers to renew more often. It creates four times the need for medical underwriting and four times more opportunity to trigger a policy's pre-existing condition exclusion. To put a fine point on this, the three-month term results in <u>more</u> people going without coverage for their illness. By contrast, permitting STLDI policies to have terms up to 364 days guarantees that a person insured by such a policy can make it to the next open enrollment on the individual market without additional renewals required.

Moreover, to the extent that the expansion could cause adverse selection (which we do not concede), premium subsidies available to households earning up to 400 percent of the federal poverty level correct for its effects by leveling the cost differential between the two types of policies. Households well into the middle class are eligible for these subsidies,[1] and households that make more than 400 percent of the federal poverty level do not need them in order to afford full coverage.

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[1] For example, in 2018 a family of four is eligible for a subsidy until they surpass $98,400 in income. According to the U.S. Census Bureau, median household income in the U.S. is U.S. median is $59,039 (using 2016 data, which is the most recent available, https://www.census.gov/library/publications/2017/demo/p60-259.html.).

Conclusion. With these comments in mind, we support the Department's proposal to reinstate the maximum term of STLDI coverage back to 364 days.

Respectfully submitted,

Steven R. Gerlach, Esq., LL.M

Bernstein, Shur, Sawyer & Nelson, P.A.