AARP
Real Possibilities

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April 23, 2018

Secretary Alex Azar
United States Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Secretary R. Alexander Acosta
United States Department of Labor
200 Constitution Avenue, NW
Washington, DC 20120

Secretary Steven Mnuchin
United States Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Re: REG-133491-17

Submitted electronically via regulations.gov

Dear Secretaries Azar, Acosta, and Mnuchin:

AARP appreciates the opportunity to comment on the Tri-Agency's proposed rule that would expand the availability of short-term limited duration (STLD) health plans by removing the current 3-month policy limitation and expanding the duration of these plans to 364 days. AARP, with its nearly 38 million members in all 50 States and the District of Columbia, and US Territories, is a nonpartisan, nonprofit, nationwide organization that helps people turn their goals and dreams into real possibilities, strengthens communities and fights for the issues that matter most to families such as healthcare, employment and income security, retirement planning, affordable utilities and protection from financial abuse.

We write to express our strong concerns that this proposal would dramatically undermine the existing individual market – and lead to higher insurance premiums -- by encouraging an influx of plans that need not meet the Affordable Care Act's (ACA) consumer protection threshold.

Most notably for older Americans is the prohibition on denying coverage or charging higher rates for pre-existing conditions and the prohibition on charging older Americans more than 3 times the rate of the youngest Americans. Given these issues, in addition to those we raise below, we urge that the proposed rule be withdrawn from consideration.

AARP has consistently maintained (most recently in our comment on the Administration's association health plan proposed rule) that any regulatory or legislative action that would increase the fragmentation of risk pools and remove the core consumer protections of the ACA would drive up the costs of coverage for Americans. This negative impact is particularly true for the roughly 6 million individuals between the ages of 50-64 who currently purchase health insurance coverage through individual market exchanges.[1].

The loss of consumer protections is harmful to older Americans in several ways. STLDs are not subject to Sec. 2701 (Fair Health Insurance Premiums) of the Public Health Service Act (PHSA), which limits carriers offering fully insured products in the individual and small group markets from charging older Americans any more than three times the premium that a younger individual would pay. This crucial protection protects older Americans from paying an "age tax;" essentially being forced into paying exorbitant rates for health insurance coverage simply because of their age. Prior to enactment of the ACA, health insurers were allowed to charge rates that were often ten times higher, effectively rendering coverage inaccessible on the individual market to older Americans. We note that the 3:1 age rating limitation is already a compromise that allows insurers to charge older Americans thousands of dollars more each year. Should STLDs be expanded under the proposed rule, age rating discrimination on those policies will likely increase, siphoning off younger and healthier individuals from the individual market.

In addition to an age tax for STLDs, these plans can charge higher premiums or flat out deny coverage for an individual with a pre-existing condition. 40 percent of Americans between the ages of 50-64 have a pre-existing condition[2]. As people age, they tend to develop more health problems, including chronic conditions like congestive heart failure, rheumatoid arthritis, and kidney disease. Because STLDs allow for medical underwriting of these pre-existing conditions, older adults are far more vulnerable to being denied coverage. Older Americans would also be more likely to be offered an STLD that does not cover the condition or disease for which they need insurance. This could result in older adults delaying needed care, not filling prescriptions, and ultimately experiencing worse health outcomes[3].

AARP is also concerned with the proposed rule's impact on the stability of the overall individual health insurance market. The expansion of these plans will likely increase premiums for all Americans, including those aged 50-64 and those with pre-existing conditions, who remain in

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[1] https://blog.aarp.org/2016/01/21/how-has-the-affordable-care-act-impacted-americans-ages-50-64/
[2] https://www.aarp.org/ppi/info-2017/affordable-care-act-protects-millions-of-older-adults-with-pre-existing-conditions.html
[3] https://www.aarp.org/content/dam/aarp/ppi/2017-01/ACA-Protects-Millions-of-Older-Adults-with-Preexisting-Health-Conditions-PPI-AARP.pdf

the ACA compliant individual health insurance market. Siphoning off younger and healthier people from the existing market means older Americans and those with pre-existing conditions will have to pay more for their existing coverage due to the further fragmentation of the risk pool. Recent estimates[4] have shown that the proposed rule, in combination with the repeal of the requirement to have minimum essential health insurance coverage, will increase premiums by an average of 16.6 percent in 2019, with some states seeing increases as high as 22 percent[5].

Beyond the lack of consumer protections for the STLD plans themselves, we are also concerned about the inadequate guidance for marketing these non-compliant plans, especially to older Americans. The proposed rule's new notice language (2590.701-2(3)) is insufficient and is likely to lead to more consumer confusion. The language and the core of the rule itself requires an individual not just to read through hundreds of pages of insurance documentation, it would require an intimate knowledge of insurance products themselves to sufficiently understand the exclusions and potential consequences inherent in purchasing an STLD as coverage. We would urge the Administration to enhance disclosure requirements on all STLD plans – regardless of the result of this final rule – so that consumers can better identify and understand the implications of their decision.

Once again, we thank you for the opportunity to comment on the negative impact of the proposed rule and urge its withdrawal from consideration by the Administration. If you have any questions, please do not hesitate to contact me or have your staff contact Brendan Rose on our Government Affairs staff at 202-434-3770 or brose@aarp.org.

Sincerely,

David Certner

David Certner
Legislative Counsel and Legislative Policy Director

[4] https://www.urban.org/research/publication/updated-potential-impact-short-term-limited-duration-policies-insurance-coverage-premiums-and-federal-spending
[5] https://blog.aarp.org/2018/03/21/warning-short-term-health-plans-higher-premiums-for-older-adults/