April 23, 2018

Secretary Alex Azar
Department of Health and Human Services
ATTN: CMS-9924-P
P.O. Box 8010
Baltimore, MD 21244

RE: Short Term Limited-Duration Insurance (CMS-9924-P)

Dear Secretary Azar:

The Epilepsy Foundation is pleased to submit comments on the Departments of Treasury, Labor, and Health and Human Services proposed rule issued on February 22, 2018 that expands the scope of short-term, limited-duration (STLD) insurance. The Epilepsy Foundation is the leading national voluntary health organization that speaks on behalf of the at least 3.4 million Americans with epilepsy and seizures. We foster the wellbeing of children and adults affected by seizures through research programs, educational activities, advocacy, and direct services.

Epilepsy is a medical condition that produces seizures affecting a variety of mental and physical functions. Approximately 1 in 26 Americans will develop epilepsy at some point in their lifetime. For the majority of people living with epilepsy, epilepsy medications are the most common and cost-effective treatment for controlling and/or reducing seizures, and they must have meaningful and timely access to physician-directed care. Epilepsy medications are not interchangeable and treatment of epilepsy is highly individualized. There is no "one size fits all" treatment option for epilepsy, and the response to medications can be different for each person. Maintaining seizure control with minimal side effects requires careful evaluation and monitoring by physicians and their patients. To change, limit, or deny access to medications could be extremely dangerous.

The Epilepsy Foundation believes the proposed changes would negatively impact access to quality, affordable care for consumers, disrupt the individual and small business marketplace, and further strain the limited resources of state regulators. The expanded STLD plans would be exempt from many of the consumer protections created by the Affordable Care Act (ACA), including insurance standards such as Essential Health Benefits, premium rating rules, and risk pooling. In addition, brokers may be incentivized to steer healthy consumers to these short-term, unregulated plans which will further expedite the destabilization of the individual market.

<u>Access to Quality, Affordable Care for Consumers</u>

The proposed STLD insurance plans would not have to comply with the ACA marketplace requirement of covering the ten categories of defined Essential Health Benefits (EHBs). In order to keep costs down, most STLD plans will not offer the full array, if they offer any, of EHBs. As

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a result, individuals may be left with inadequate coverage and high medical costs if they experience unanticipated health care needs such as cancer treatment, pregnancy, or a new diagnosis of a chronic condition. Health status is dynamic and individuals cannot often predict which services they might need in the future. If an individual were to become ill and the services they need are not covered by the STLD plan, they may have to choose between seeking or forfeiting care due to the unaffordable costs of uncovered services. This can lead to beneficiaries entering financial peril due to unexpected medical costs and high healthcare bills. As a result of the ACA and increased access to comprehensive healthcare, there has been a 50 percent decline in personal bankruptcies filed between 2010 and 2016.[1] We are of the opinion that if they proposed rule were to be finalized, the positive trend would be reversed.

The Epilepsy Foundation appreciates the Department's request for information about required notices. STLD plans should be required to provide transparent notices that not only state that plans do not meet standards for minimum value, but also explicitly state which EHBs will not be covered under the plan. This would ensure that individuals know that the plans are less comprehensive than health plans available on the individual or small group markets. Further, if the STLD plan does not meet minimum value, the employees and their dependents must be made aware of their right to receive coverage through the ACA marketplaces, potentially with premium tax credits based on their income.

<u>Impact on the Individual Marketplace</u>

The Epilepsy Foundation strongly urges the Departments of Treasury, Labor, and Health and Human Services to consider the implications of the expanded STLD plans with regards to the individual marketplace. The intent of the president's executive order was to increase consumer choice while curbing costs. However, we believe that STLD plans, as proposed, would invariably weaken the individual and small group markets leading to higher healthcare costs for all including higher premiums for those who stay in the marketplace and higher out-of-pocket costs for unexpected medical needs for those who rely on STLD plans.

Individuals with serious and chronic conditions would be more likely to enroll in coverage offered in the exchange. Conversely, younger and healthier individuals may be more likely to prioritize cost of premiums over generous benefit coverage when shopping for insurance. Thus, the younger and healthier population may be more drawn to STLD plans, despite the fact that these products will likely have less comprehensive coverage. Over time, as younger and healthier individuals leave the marketplace, premiums would likely increase and fewer insurers may participate in the state's marketplace.

While this change will lead to more younger and healthier people leaving the marketplace, the STLD proposed rule could expedite the withdraw, further exacerbating the damage to the

[1] https://www.consumerreports.org/person-bankruptcy/how-the-aca-drove-down-personal-bankruptcy/

individual market. Web-based brokers help boost marketplaces and provide new avenues for consumers to enroll in coverage. Major medical insurers have made moves to reduce broker commissions for individual market plans. As such, brokers will stand to earn a higher commission by steering healthy consumers to these STLD plans. This kind of incentivized selling behavior could lead to more younger and healthier individuals leaving the individual market in favor of STLD plans at a faster pace than anticipated. This will have severe effects on the individual marketplace, and will lead marketplace plans to either raise premium prices for the remaining consumers or pull out of the marketplace all together.

Protecting Consumers from Harmful and Discriminatory Practices

Many individuals with epilepsy have first-hand experience with the harmful practices employed by health insurance companies such as annual or lifetime limits and medical underwriting prior to the implementation of the ACA. In the past, insurers evaluated health status, health history, and other risk factors of applicants to determine whether and under what terms to issue coverage. The proposed rule amends the definition of STLD insurance for the purpose of its exclusion from the definition of individual health coverage, which falls under the purview of the ACA rules and protections. Unlike plans that fall under the ACA, STLD plans would be permitted to deny or exclude coverage for preexisting conditions. In addition, STLD plans could charge higher rates based on a person's overall health status. Consumers enrolled in STLD plans must be guaranteed protections against plans that may engage in discriminatory practices or decline coverage for beneficiaries with preexisting conditions.

The proposed rule further skirts consumer protections while perpetuating the trend of healthcare costs outpacing income increases for the average families. These STLD plans would be exempt from protections such as cost-sharing limits, rating rules, and caps for consumers' out-of-pocket spending on deductibles, copays, and coinsurance. The consumer protections created by the ACA are critically important for making quality health care affordable. Without these protections, insurers would likely resort to the practices of the past which made healthcare unattainable to so many individuals, particularly people with serious and complex chronic conditions such as epilepsy.

Please do not hesitate to contact Beatriz Duque Long, Interim Vice President Public Policy, at 301-918-3764 or bduquelong@efa.org with any questions or concerns. Thank you.

Sincerely,

Philip M. Gattone, M.Ed.
President & CEO
Epilepsy Foundation