AMA
AMERICAN MEDICAL ASSOCIATION

JAMES L. MADARA, MD
EXECUTIVE VICE PRESIDENT, CEO

ama-assn.org
t (312) 464-5000

April 23, 2018

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 Avenue, NW
Washington, DC 20210

The Honorable Alex M. Azar, II
Secretary
U.S. Department of Health & Human Services
Hubert H. Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201

RE: Notice of Proposed Rulemaking, Short-Term, Limited Duration Insurance (CMS-9924-P)

Dear Secretary Mnuchin, Secretary Acosta, and Secretary Azar:

On behalf of the physician and medical student members of the American Medical Association (AMA), I appreciate the opportunity to provide comments in response to the above-referenced proposed rule on short-term limited duration insurance (STLDI) issued jointly by the Internal Revenue Service, Department of the Treasury; Employee Benefits Security Administration, Department of Labor; and the Centers for Medicare & Medicaid Services (CMS), U.S. Department of Health and Human Services (HHS). The proposed rule would increase the maximum duration of STLDI policies from less than three months under current regulations to as long as 364 days, and would allow the coverage to be renewed or reissued so that individuals could continue such coverage indefinitely.

The AMA shares the goals of the Departments to support state and federal efforts to increase health plan choices and make coverage affordable and comprehensive for individuals seeking health insurance in the individual and small group markets. We look forward to continuing to work with your Departments toward such goals. Unfortunately, this proposed rule is antithetical to achieving these goals, as it would undercut crucial state and federal patient protections, disrupt and destabilize the individual health insurance markets, and result in substandard, inadequate health insurance coverage. Accordingly, we urge the Departments to withdraw the proposed rule.

The AMA strongly believes that the coverage gains of the past decade should be maintained. Central to this principle is ensuring meaningful coverage, assisting individuals with low-incomes or unusually high medical costs in obtaining health insurance coverage and meeting cost-sharing obligations, and ensuring the continuation of essential health benefit (EHB) categories and their associated protections against annual and lifetime limits and out-of-pocket expenses. Affordability is also critical, as is stabilizing and strengthening the individual health insurance market, maintaining key insurance market reforms under

current law, and expanding choice of health insurance coverage to best meet individual needs. The proposed rule fails to comply with these important principles, and in fact, would reverse progress that has been made in expanding meaningful coverage to millions of previously uninsured Americans.

Market Destabilization

Unlike marketplace plans offered pursuant to the Affordable Care Act (ACA), STLDI plans do not have to comply with the market reforms and consumer protections of the ACA. As such, STLDI plans can deny coverage or charge higher premiums based on health status; exclude coverage for pre-existing conditions; impose annual or lifetime limits; have higher out-of-pocket limits than the ACA maximums; not cover EHB categories, such as prescription drugs, maternity benefits, and mental health and substance use disorders; rescind coverage; and not comply with medical loss ratio requirements. Currently, STLDI coverage can only be offered for three months at a time, and if individuals enroll in STLDI plans for more than three months, their coverage does not meet the minimum essential coverage requirements (i.e., their health care coverage is not considered sufficiently comprehensive to avoid the current individual mandate penalty). By limiting STLDI coverage to three months, the purpose of STLDI plans is to serve as a bridge or stop-gap measure between coverage in plans offering meaningful coverage; STLDI is not meant to serve as comprehensive coverage. Under the proposed rule, however, STLDI coverage could again be offered for periods up to 364 days, with the potential for consumers to reapply for coverage at the end of the 364-day period. As such, "short-term" would be a misnomer under the proposed rule, since these expanded STLDI plans will, in reality, be able to be offered for a full plan year and also be renewable.

Without the consumer protections required by the ACA, STLDI is considerably less expensive than individual market insurance and hence is very attractive to healthy individuals who do not want or think they do not need comprehensive coverage. If implemented, the proposed rule would allow these plans to compete against ACA-compliant plans. In fact, it is predicted by health policy experts that the proposed expansion of STLDI will undermine the individual insurance market and create an uneven playing field by luring away healthy consumers, thereby damaging the risk pool and driving up premiums for consumers left in the ACA-compliant market. A primary purpose of regulations governing the individual—and small-group—markets to date has been to help ensure that insurers are competing and operating on an even playing field in which all insurers and plans must play by the same rules.

The AMA stresses that exchanges need to offer patients with choices to spur competition. Mechanisms to facilitate competition in health insurance should ensure critical patient protections remain in place, including the ban on pre-existing condition exclusions, as well as critical cost protections guaranteed in the ACA (e.g., the annual cap on out-of-pocket costs and the ban on annual and lifetime limits). The AMA is very concerned about the potential impact of the proposed STLDI expansion in destabilizing the ACA marketplace. The AMA strongly believes that an important federal role remains to ensure that proposals to foster competition in health insurance also promote ACA marketplace stability and a balanced risk pool, and do not lead to adverse selection in the marketplace. Consideration should be taken in any proposals moving forward to not divide the individual market between healthier consumers being drawn to skimpier plans, and individuals with known health needs being drawn to plans following ACA requirements and offering more comprehensive coverage. Such a division in the market could result in rising—in some cases, unaffordable—premiums for those individuals who need and want to buy more comprehensive coverage.

While the Administration estimates that between 100,000 and 200,000 individuals previously enrolled in marketplace coverage will instead purchase STLDI plans in 2019, this appears to be a significant underestimate when compared to independent analyses. For example, the Urban Institute estimates that the introduction of expanded STLDI policies would increase the number of people without minimum essential coverage by 2.6 million in 2019, and that if consumers are offered full-year "short-term" coverage, 4.3 million consumers will enroll in STLDI in 2019. This will only add to the destabilization of the individual market, which has already been exacerbated by the repeal of the individual mandate penalty, the proposed association health plan rule, and other policy changes made since the beginning of 2017. In fact, the Urban Institute found that the proposed rule, along with the individual mandate repeal and other policy changes, will result in 6.4 million more uninsured compared to prior law. Another study, commissioned by the Association for Community Affiliated Plans and conducted by the Wakely Consulting Group, estimates that the proposed rule could decrease enrollment in ACA-compliant individual plans by up to 15 percent, or 2 million individuals. This study concludes that the Administration's estimate failed to account for the five million consumers who purchase ACA-compliant coverage off the exchange, such as directly from brokers or plans.

Unaffordability

The AMA is also concerned about the impact of the proposed rule on affordability of insurance for individuals who continue to need and purchase ACA-compliant plans. In terms of costs, the Urban Institute estimates that premiums will rise an additional 18 percent on average in states that do not limit or prohibit STLDI as a result of this proposed rule and other policy changes. Moreover, these premium hikes will disproportionately impact middle class families earning over 400 percent of the federal poverty level, i.e., the very consumers who do not qualify for tax credits to help offset the costs of their premiums. The Wakely study estimated that premiums could increase by 6.6 percent for those remaining in the individual market as a result of the proposed rule.

In addition, plans that do not offer meaningful coverage have the potential to cause significant financial exposure for patients. The AMA believes that health insurance must provide meaningful coverage for hospital, surgical, medical and behavioral care; protect patients against catastrophic expenses; and promote preventive services. We are concerned that many consumers will be confused by the promotion of expanded, year-long STLDI policies by insurers, and that, despite required disclaimers that such policies do not qualify as minimum essential coverage and do not satisfy the coverage requirements under the ACA, will be attracted to them by their lower premiums. Consumers may choose to use these plans as an alternative to ACA-compliant health insurance plans, but not fully understand how limited the coverage is until they actually submit a claim. Patients could find that their payments under these plans do not count toward the out-of-pocket maximum limit, and be liable for footing the full bill for uncovered services or treatment. This is likely to result in financial hardship for many patients, especially those who can least afford it.

For the above reasons, the AMA believes the proposed expansion of STLDI is a step in the wrong direction and will lead to a proliferation of inadequate health insurance policies in the market, increased confusion for consumers, and higher costs for both those individuals purchasing STLDI policies and those buying ACA-compliant policies. We urge you to withdraw this flawed proposal. Thank you for the

opportunity to comment. If you have any questions, please contact Margaret Garikes, Vice President for Federal Affairs, at margaret.garikes@ama-assn.org or 202-789-7409.

Sincerely,

James L. Madara, MD