



State of New Jersey

DEPARTMENT OF BANKING AND INSURANCE

OFFICE OF THE COMMISSIONER

PO BOX 325

TRENTON, NJ 08625-0325

TEL (609) 292-7272

PHIL MURPHY
Governor

SHEILA OLIVER
Lt. Governor

MARLENE CARIDE
Acting Commissioner

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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

To Whom It May Concern:

Thank you for the opportunity to comment on the proposed regulations on Short-Term, Limited Duration Insurance published in the Federal Register on February 21, 2018. These comments are submitted on behalf of the New Jersey Department of Banking and Insurance. First, New Jersey agrees with the position of the National Association of Insurance Commissioners (NAIC) that requirements, including but not limited to restrictions related to the sale, design, rating or duration of these plans must be left to the States. This is particularly true in New Jersey where the sale of short-term, limited duration plans has been prohibited in the individual market since the creation of our Individual Health Coverage Program market in August of 1993.

New Jersey law, N.J.S.A. 17B:27A-3, does not permit the sale of short-term, limited duration policies. In New Jersey, all individual health benefit plans issued on or after August 1, 1993, must comply with the requirements of Individual Health Coverage Act (IHC Act), N.J.S.A. 17B:27A-2 et seq. Under the IHC Act, health benefits plans issued to individuals in New Jersey must be one of the standard health benefit plans promulgated by the IHC Board, all of which provide: coverage for a full year, comprehensive benefits that exceed the requirements of the Affordable Care Act, and guaranteed issue and guaranteed renewability. The plans must also comply with all state and federal rating and minimum loss ratio standards. Short-term, limited duration plans do not qualify as standard health benefit plans because they provide limited benefits, commonly feature pre-existing condition exclusions, are not offered on a guaranteed issue basis, are not guaranteed renewable, and do not conform with the minimum loss ratio and rating requirements of New Jersey law. Therefore, short-term, limited duration plans are prohibited from being sold in New Jersey. This prohibition applies whether short-term is defined as 12 months or 3 months, and cannot be subject to preemption via federal rulemaking.

New Jersey's prohibition on short-term, limited duration plans seeks to protect consumers and prevent adverse selection in the individual market. While it is true that short-term, limited

duration plans can be sold at premiums lower than the premiums associated with individual plans that satisfy the requirements of New Jersey law or are Qualified Health Plans (QHP) under the ACA, the comparison of a short-term, limited duration plan to a New Jersey standard health benefit plan/QHP is like comparing apples and oranges. While both are insurance, the similarities do not go much further. New Jersey standard health benefit plans/QHPs provide coverage for all of the essential health benefits, while short-term, limited duration plans do not. New Jersey standard health benefit plans/QHPs are subject to specific underwriting, rating and minimum loss ratio requirements. Short-term plans are not. Simply put, short-term, limited duration plans can be sold at a much lower cost than New Jersey standard health benefit plans/QHPs because they provide far fewer benefits and contain more exclusions and other features banned by New Jersey law and the ACA. Thus, a comparison of the prices between these two very different types of plans is meaningless and misleading to prospective purchasers absent a similar comparison of the benefits provided thereunder.

Although it may appear that allowing short-term, limited duration plans will provide additional choices to consumers, the sale of short term plans would only allow for significantly inferior coverage. New Jersey's Legislature made an express determination that New Jersey citizens should be provided with comprehensive coverage in the individual health insurance market, and this decision to protect our consumers cannot be preempted by federal rule.

In general, the sale of short-term, limited duration plans would create significant adverse selection in the individual market whereby younger, healthier individuals could opt for such inferior coverage leaving those with significant health care needs in the individual market. This would exert further upward pressure on health premiums in the individual market, and could result in an adverse selection "death spiral." Additionally, the sale of short-term, limited duration plans and the resulting adverse selection could further incent carriers to withdraw from, or reduce the number of plan offerings in, the individual market.

Ultimately, New Jersey prohibits the sale of short term plans and believes that the rules in no way preempt a state's ability through statute to make its own determinations as to whether short-term, limited duration plans should be allowed for sale. Thank you for this opportunity to comment.

Sincerely,



Marlene Caride
Acting Commissioner