

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

ASSOCIATION FOR COMMUNITY  
AFFILIATED PLANS, et al.,

*Plaintiffs,*

v.

UNITED STATES DEPARTMENT OF  
TREASURY, et al.,

*Defendants.*

Civil Action No. 18-cv-2133

**DECLARATION OF ANGELA KIMBALL**

I, Angela Kimball, hereby declare as follows:

1. I have personal knowledge of the following facts, and if called as a witness I could and would testify competently as to their truth.

2. I am the National Director of Advocacy and Public Policy at the National Alliance on Mental Illness (NAMI). In that capacity, I am familiar with NAMI's operations. I previously served as NAMI's Director of State Advocacy.

3. NAMI is the nation's largest organization representing people living with mental illness and their families and is dedicated to building better lives for the millions of Americans affected by mental illness. NAMI is organized as an alliance of local affiliates, state organizations, and members.

4. NAMI's activities on behalf of individuals affected by mental illness fall into several categories. For one, NAMI advocates for effective prevention, diagnosis, treatment, support, research and recovery that improves the quality of life of persons who are affected by

mental illness. NAMI organizes peer-led education programs and support groups designed to provide outstanding free education, skills training, and support for people with mental health conditions and families. NAMI also operates a HelpLine, primarily staffed by volunteers, to answer questions about mental health conditions, symptoms, treatment options, and to provide referrals to services and supports for individuals and family members with mental health concerns.

5. NAMI believes that the STLDI Rule will have a dramatic impact on access to health and mental health care for people with mental illness.

6. First, STLDI plans are not required to—and frequently do not—cover mental health and substance abuse care, as well as prescription drug coverage. Even when these areas are covered, they are often subject to extreme restrictions. A person who purchases an STLDI plan and then requires mental health care is therefore certain to experience shock and hardship. STLDI plans can even retroactively rescind coverage entirely if they determine there were pre-symptomatic indications of a pre-existing condition. All this is especially troubling because research shows that the first symptoms of serious mental illness typically strike in youth and early adulthood—precisely the age group considered the most likely to purchase STLDI plans.

7. Research also shows that early intervention for mental health conditions is key to successful outcomes. If individuals on STLDI plans develop mental health issues, waiting for the next open enrollment period is no substitute for prompt and thorough mental health care.

8. Second, individuals who already have a mental health condition will be unable to purchase STLDI plans because of pre-existing condition rules or exorbitant medically-underwritten premiums. In addition, they will face rising premiums in Marketplace plans caused by the exit of younger, healthier consumers.

9. NAMI submitted comments in response to the Proposed STLDI Rule. Attached as Exhibit A is a true and correct copy of those comments.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed on September 28, 2018, at Arlington, Virginia.

  
Angela Kimball

# Exhibit A



April 23, 2018

The Honorable R. Alexander Acosta  
Secretary  
Department of Labor  
200 Constitution Avenue, NW  
Washington, DC 20210

The Honorable Alex Azar  
Secretary  
Department of Health and Human Services  
200 Independence Avenue, SW  
Washington, D.C. 20201

The Honorable David Kautter  
Acting Commissioner, Internal Revenue Service  
Department of the Treasury  
1111 Constitution Avenue, NW  
Washington, DC 20224

Attention: CMS-9924-P

Dear Secretary Acosta, Secretary Azar, and Commissioner Kautter:

On behalf of the National Alliance on Mental Illness (NAMI), I am pleased to offer comments on the proposed rule entitled "Short-Term, Limited-Duration (STLD) Insurance." As the nation's largest organization representing people living with mental illness and their families, NAMI appreciates the opportunity to comment on this rule.

At the outset, NAMI would like to express significant concerns regarding provisions in the rule that would loosen previously established constraints for enrollment in STLD plans and the impact it will have on the health and financial well-being of enrollees, particularly people living with mental illness or other serious or chronic health conditions. This rule, if finalized, is certain to have a dramatic impact on access to health and mental health care for people with mental illness, as well as long-lasting implications for the stability of the individual and small group health insurance market in states across the country.

The President's Executive Order 13813 proclaimed that "it shall be the policy of the executive branch...to facilitate...the development and operation of a healthcare system that provides high-quality care at affordable prices for the American people." NAMI has serious concerns that this proposed rule will provide neither high-quality health care nor care at affordable prices. Therefore, NAMI urges CMS to carefully consider the implications of the proposed rule on individuals' health and well-being, including Americans living with mental illness. Redefining STLD plans, as proposed in this rule, would take away comprehensive health benefits and patient protections, increase health care costs on individuals and the healthcare system, and put greater strain on the individual health insurance market. For this reason,

NAMI urges CMS to not finalize this rule and, instead, retain the previous durational constraints on STLD plans.

### **STLD Plans Lack Critical Patient Protections and Health Benefits**

NAMI has significant concerns about the impact that the proposed rule will have on consumers, and specifically on people with mental illness. STLD plans are not required to adhere to important standards, including coverage of the ten essential health benefit (EHB) categories, guaranteed issue, age and gender rating, prohibitions on discrimination against people with pre-existing conditions, annual out-of-pocket maximums, prohibitions on annual and lifetime coverage limits, and many other critical patient and consumer protections. Without such protections, STLD plans will expose enrollees to a variety of harmful practices by plan sponsors. Despite the intention of the Executive Order to expand consumer choice, STLD plans would actually restrict access to health care coverage.

Access to a comprehensive set of essential health benefits (EHBs) ensures that people living with mental illness can get the prescription medications and mental health treatment they depend on to maintain quality of life. Because they do not have to cover EHBs, plans sold as STLDs will fall far short of what enrollees expect of health insurance coverage. Enrollees are certain to experience shock and hardship as a result of severely restricted access or the complete exclusion of critical coverage such as prescription drugs and mental health services. This is particularly troubling for NAMI as first symptoms of serious mental illness typically strike in youth and early adulthood, the very age group considered most likely to purchase STLD plans.

Further, even if the plan indicates it covers a certain essential benefit, the breadth of that service can fall far short of what individual patients need, as STLD plans will be able to impose artificially low restrictions on the number of visits or on prescription medications. Plans would also be able to avoid existing regulations that require their formularies to cover at least the same number of drugs in each state's benchmark plan, consider newly approved medications, utilize Pharmacy and Therapeutics Committees for formulary review, or follow prevailing treatment guidelines. Failing to cover basic benefits that a reasonable enrollee would expect to receive will leave consumers paying monthly premiums for substandard coverage, without any guarantee of access to needed health care.

Further, it is important to note that under STLD plans, enrollees could be subject to lifetime dollar limits or dollar limits on certain benefits such as mental health care – a practice that was specifically barred in the Affordable Care Act (ACA) and the Mental Health Parity and Addiction Equity Act (MHPAEA). Imposing annual and lifetime dollar limits would place an undue burden on individuals who have a mental health condition or experience a mental health crisis while being covered by a short-term plan.

Before the passage of the ACA, people living with mental illness were subject to insurer discrimination based on pre-existing conditions. They could be refused coverage or charged more because of a diagnosis of a mental health condition. In the absence of federal protections, STLD plans will be allowed to again discriminate based on health status. Not only can STLD plans “cherry pick” beneficiaries by choosing not to cover a person based on a pre-existing condition, such as a mental illness, if a person is diagnosed while covered, the plan can conduct a rigorous review of their medical history to retroactively assess whether or not there was evidence of medical advice or pre-symptomatic indications to determine if a condition was pre-existing in order to rescind coverage.

The proposed rule states that STLDs would be required to be sold with a disclaimer stating that the plan does not qualify as health coverage, or minimum essential coverage, and does not satisfy the coverage requirements of the ACA. Unfortunately, STLDs still offer the illusion of coverage and will likely offer

lower monthly premiums than ACA-compliant plans. This problem could be exacerbated by unscrupulous, aggressive and deceptive marketing methods.

Finally, under these plans, a beneficiary could find that their payments made toward the deductible do not count toward the maximum out-of-pocket costs and could experience high cost-sharing on preventive services and high costs for uncovered service or treatment costs. Medical bills had been a leading cause of personal bankruptcy before health care coverage expanded under the ACA. Finalization of this proposed rule could mean returning to a time when consumers have to choose between financial ruin and seeking health care.

Therefore, NAMI strongly urges CMS to consider the health and financial implications for consumers and require short-term plans to comply with ACA consumer protections.

### **Proposed Rule Undermines Consumer Choice and Stability of Health Insurance Market**

The proposed policy changes for STLD plans in the rule will impact not just people who will experience restricted benefits when they suddenly need them, but the stability of the Marketplace and the greater healthcare system. As recognized in the proposed rule, “individuals who are likely to purchase short-term, limited-duration insurance are likely to be relatively young or healthy,” which means that STLD plans will undoubtedly deplete the ACA-compliant market of younger, healthier individuals. This will leave traditional, ACA-compliant plans with a higher-risk pool of individuals, including people with mental illness, who are more care-dependent, while STLD plans will have a healthier, lower-risk pool. As a result, premiums would likely skyrocket for those in traditional health plans as insurers attempt to counter the higher costs of providing care when younger, healthier individuals are no longer a part of their risk pool.

The additional stress on already-fragile individual markets across the country will mean insurers will be less incentivized to participate in the ACA Marketplace as they weigh the risk of covering a pool of individuals who are more care-dependent and, therefore, have higher medical claims. Once STLD plans proliferate, it will create even more pressure on insurers to pull out of the ACA market and leave consumers with fewer choices. This is in direct conflict with the Administration’s intention of providing more choice.

### **Proposed Rule Definition of “Short Term” is a Misnomer**

The proposed rule would extend enrollment in STLD plans to 364 days, well beyond the previously restricted three-month duration maximum and would allow beneficiaries to renew their contract. STLDs were intended to be purposely limited, serving primarily as a stop-gap measure for insurance coverage in times of transition. They were never designed to support comprehensive access to health care. By relaxing duration restrictions, people may opt to utilize these plans as an alternative to ACA-compliant health plans, not knowing the risk they take on because these plans do not meet minimum essential coverage and utilize substandard health benefit design.

Furthermore, the proposed rule outlines changes to existing regulations allowing STLD plans to renew a person’s coverage. Renewability does not protect a person against being charged a higher premium after receiving a diagnosis of a mental health condition. Because health status is not static, STLD plans are simply not a viable option for health insurance for people with previously diagnosed conditions, or even healthy individuals at the point at which coverage is initiated.

Therefore, NAMI recommends that CMS retain the “short term” nature of these plans and not allow them to continue beyond a duration of three months.

### **Issuers Should Not Be Allowed to Renew STLD Plans**

The proposed rule seeks comment on whether and how to allow issuers to renew or extend short-term coverage beyond 12 months. It also seeks comment on a proposed streamlined application process that would expedite plan renewals or extensions. NAMI opposes allowing STLD plans to renew or extend coverage. Allowing for renewal only encourages longer enrollment in these plans and further undermines the stability of the individual market.

Instead, NAMI recommends that CCIIO support policies that encourage consumers to use STLD policies as they were intended – not as a long-term coverage option, but only to fill in short gaps in loss of coverage. Easing the reapplication process is in direct conflict with the entire purpose of a STLD policy and does nothing to protect people from pre-existing condition exclusions based on health conditions that began during the previous coverage period. Additionally, renewability does nothing to prevent insurers from engaging in medical underwriting and increasing premiums or denying claims for enrollees that incur high costs. Policies requiring renewability or streamlined application would therefore yield the same result; namely, enrollees with chronic or serious medical conditions like mental illness being denied coverage or being priced out of the short-term market.

Therefore, NAMI believes that renewability of plans should be reserved for health insurance plans that meet the definition of minimum essential coverage (MEC) and therefore we recommend that CMS not allow the renewability of STLD plans.

### **Conclusion**

NAMI appreciates the opportunity to offer comments on this proposed rule. Given the history of discrimination and inadequate coverage in STLD plans, we are concerned that the proposed rule does not move us toward a health care system that provides high-quality care at affordable prices for Americans, including the millions who live with mental illness. NAMI urges CMS to withdraw this proposed rule and focus on efforts to stabilize the insurance market and lower premiums. We encourage CMS to retain the existing restrictions on STLD plans, including restoration of the three-month limitation on coverage and limits on renewability.

Sincerely,



Angela Kimball

National Director, Advocacy & Public Policy