

FROM THE NAIC CONSUMER REPRESENTATIVES

To: Market Analysis Procedures (D) Working Group
Teresa Cooper
Randy Helder

Date: April 2, 2019

Re: **Comments on Short-Term Limited Duration Medical Data Call Template**

The undersigned NAIC consumer representatives write to offer comments and express our continued support for the Working Group in developing a data call template to monitor states' experiences with short-term, limited duration insurance products. We remain concerned about the potential for fraud and abuse, insolvency, unpaid claims, and consumer confusion associated with these products.¹ This data call will give state regulators access to more comprehensive data and help policymakers better understand how these products may be affecting their residents and insurance markets.

The data call is particularly timely because enrollment in short-term coverage is likely increasing, and short-term plans are being aggressively marketed to consumers and through associations.² In light of some of these abuses, states have had to take multi-state enforcement action against short-term plan insurers.³ These developments are consistent with the concerns raised by state regulators about the marketing of short-term coverage and consumer complaints that departments report receiving about these products.

The collection of additional data and increased transparency is critical to addressing some of these challenges. We believe that the data call will better enable effective market oversight and consumer protection by helping state regulators better understand market dynamics and make policy recommendations regarding regulation and oversight.

As noted above, we strongly support the Working Group in advancing and finalizing this data call. We also believe there are ways the current template could be strengthened. We believe that the following recommended changes will ensure that the data being collected is both comprehensive and consistent:

- **Collection of Group Data.** Questions 16 through 18 and 33 through 38 ask for data on group short-term coverage and the sale through associations. We believe the collection of this data is critical and urge the Working Group to ensure that all data is reported consistently regardless of whether sold through the individual or group market and through an association or not.
- **Cancellations.** Question 19 asks for the total number of member-requested cancellations within 60 days. In addition to this question, we recommend asking for 1) the total number of insurer-

¹ See Christina Goe, *Non-ACA-Compliant Plans and the Risk of Market Segmentation*, Mar. 2018, available at: http://healthyfuturega.org/ghf_resource/non-aca-compliant-plans-risk-market-segmentation/.

² See Health Insurance Innovations, Inc. CEO Gavin Southwell on Q4 Results, [Earnings Call Transcript](#) (Mar. 2019); Sabrina Corlette et al., [The Marketing of Short-Term Health Plans: An Assessment of Industry Practices and State Regulatory Responses](#), Georgetown University Center on Health Insurance Reforms (Jan. 2019); Emily Curran et al., [Short-Term Health Plans Sold Through Out-of-State Associations Threaten Consumer Protections](#), The Commonwealth Fund (Jan. 2019); eHealth, [Half-Time Report – The ACA Open Enrollment Period for 2019 Coverage](#) (Nov. 2018).

³ See, e.g., California Department of Insurance, [“Investigation into Sale of Short-Term Health Policies Leads to \\$5 Million Settlement with HCC Life Insurance Company,”](#) Press Release (Apr. 10, 2018).

initiated cancellations within any period of time; and 2) the reasons for the cancellation, including any diagnosis or claim that led to the cancellation. We believe this information will complement the data requested in interrogatory 11.

- **Rating Factors.** Question 20 asks whether the health status of members is used as a rating factor. We support this question but recommend also asking whether gender and industry are used as rating factors.
- **Coverage of Benefit Categories.** Questions 25 and 26 ask whether the plan covers state-mandated benefits and prescription drugs. We support these questions but urge the data call to clarify that a prescription drug discount card does not constitute prescription drug coverage for purposes of the data call. We also recommend that the data call ask whether the contract covers 1) mental health services; 2) substance use disorder treatment; 3) maternity care (in addition to complications of pregnancy); and 4) rehabilitation and habilitation services and durable medical equipment.
- **Preexisting Condition Exclusions.** Question 27 asks whether the contract includes limitations on the coverage of preexisting conditions. We support this question and recommend two additional questions. First, the data call should ask insurers to specify the look-back period, in months, for any limitation on the coverage of preexisting conditions. Second, the data call should include a new interrogatory that asks the company to identify its definition of preexisting condition.
- **Additional Exclusions.** We recommend that the data call ask whether the plan includes specific exclusions based related to gender identity, injury resulting from intoxication, or hazardous activity. We also recommend a new interrogatory to indicate the total number of claims denied under each of these exclusions.
- **Denial of Claims.** Questions 29 through 31 ask for data on the total number of claims submitted, paid, and denied during the reporting year for each product. We support these questions and recommend additional subcategories to better understand each product's benefits and limitations. Companies should be asked to additionally identify the number of claims submitted, paid, and denied for each of the following benefit categories: mental health services, substance use disorder services, organ transplants, cancer, kidney stones, gallbladder disease, and appendicitis.
- **Method of Sales.** Interrogatory 2 asks companies to describe how their short-term policies are marketed. We support this question and recommend asking insurers to also disclose their method of sales by asking how many individuals were enrolled online (either directly or via a web broker), by phone, or in-person.
- **Plan Network.** We recommend that the data call ask whether the plan has a provider network. If so, companies should disclose the number of claims denials for in-network claims and out-of-network claims as well as the number of paid claims for in-network services and out-of-network services.
- **Appeals.** We recommend that the data call ask the number of denied claims that were overturned and upheld following appeal.

- **Commissions for Producers.** We recommend an additional interrogatory asking each company to indicate whether it provides commissions or other incentives to producers for the sale of short-term products. If yes, how much are those commissions or other incentives? How do these commissions or incentives compare to those offered for ACA-compliant plans sold by the company?
- **Marketing Content.** We recommend a new interrogatory asking each company to indicate whether its marketing materials advertise coverage for mental health services, substance use disorder services, and organ transplants.

Thank you in advance for your consideration, and we look forward to continuing to work closely with the chair and members of the Working Group on this critical issue. If you have any questions about the content of this letter, please contact Justin Giovannelli (justin.giovannelli@georgetown.edu) or Sarah Lueck (lueck@cbpp.org).

Sincerely,

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