



August 9, 2016

Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Re: Expatriate Health Plans, Expatriate Health Plan Issuers, and Qualified Expatriates; Excepted Benefits; Lifetime and Annual Limits; and Short-Term, Limited-Duration Insurance – CMS-0032-P/ REG-125702-15

To Whom It May Concern:

The District of Columbia Health Benefit Exchange Authority (DC HBX) appreciates your consideration of our comments below. DC HBX is responsible for implementing a state-based on-line health insurance marketplace under the ACA in the District of Columbia. The marketplace, called DC Health Link (DCHealthLink.com), enables individuals and small businesses to compare health insurance prices and benefits and to purchase affordable, quality health insurance.

Definitions: Short-term, Limited-Duration Insurance (§54.9801-2; §2590-701-2; §144.103).

HBX strongly supports the Departments' proposed changes to the definition of "short-term, limited duration-health insurance" to better protect consumers. We support the proposed standard that will limit the duration of such plans to less than 3 months after the original effective date of the contract and require a prominent disclosure informing consumers that these plans do not qualify as minimum essential coverage required under the individual responsibility standards. These proposed standards are necessary to reflect changes, requirements, and new rights that consumers have since the passage of the Affordable Care Act, including the individual responsibility requirement. Now that consumers have a right to purchase comprehensive health insurance (called minimum essential coverage (MEC)) and cannot be medically underwritten, cannot be charged higher premiums due to their gender or health status, and consumers can be subject to the individual responsibility penalty for failing to have MEC, it is essential that consumers have access to adequate information to make informed decisions.

Unlike health insurance subject to the ACA, short-term plans are exempt from the benefit protections now required in the individual health insurance markets. For example, these plans can still impose pre-existing condition exclusions, use medical underwriting, apply annual and lifetime dollar caps on benefits, and exclude coverage for essential health benefits (EHB). Consequently, these plans do not



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provide comprehensive health insurance coverage and do not satisfy the individual responsibility requirement.

Importantly, DC HBX staff have seen firsthand how consumers are adversely impacted when they are induced to buy short-term plans without having proper information about such plans. We have assisted consumers who believed that they enrolled in MEC with the full protection and coverage that MEC provides. Believing that they had purchased MEC, consumers missed their opportunity to purchase comprehensive health insurance during open enrollment. DC HBX strongly supports the Departments' proposal, which will help ensure that consumers are making informed decisions when considering these plans.

DC HBX supports the Departments' goal of modifying the definition of short-term insurance to reflect the intended purpose of short-term insurance, which is to fill temporary coverage gaps when people transition between primary health coverage. To this end, the Departments' proposal to limit short-term plans to less than 3 months in duration would harmonize the definition of short-term insurance with the short term coverage gap exemption set forth in 26 CFR §1.5000A-3, which grants an exception from the individual responsibility penalty where an individual has a qualifying short coverage gap of less than 3 months. The proposal to limit short-term plans to less than 3 months will help prevent consumers from retaining this coverage for a period that exceeds the short term coverage gap exemption, thus reducing the risk that these consumers will be subject to the individual responsibility IRS penalty.

HBX strongly supports the Department's proposal to require that short-term insurance include a notice in the contract and application materials that the coverage is not MEC and a reminder to consumers that failure to have MEC may result in a tax penalty. Consumers who are new to the individual health insurance market or unfamiliar with this type of insurance product may not know that these plans are not subject to the consumer protections under the ACA and that this coverage does not satisfy the individual responsibility requirement. The proposed disclosure will help to inform consumers about the nature of the product and the consequences of electing this type coverage. Disclosure is critical to empower consumers with the information needed to make an informed decision.

HBX has concerns that some consumers purchasing short-term plans may be unable to access individual market coverage immediately if they keep this coverage for the full duration permitted under these proposed rules. For example, consumers may purchase this coverage as a bridge between losing employer sponsored coverage and seeking individual market coverage. Under 45 CFR §147.104(b)(3) and 45 C.F.R. §155.420(c) individual market consumers seeking coverage outside of open enrollment generally have 60 days from the triggering date, for example the date of an involuntary loss of MEC, to enroll in individual market coverage. Individuals who fail to enroll in coverage consistent with this deadline may not be able to purchase a health insurance policy until the next individual market open enrollment period. These consumers would potentially be subject to the individual responsibility penalty and be unable to access MEC for an extended period of time. Under the proposed regulations, consumers may inadvertently miss their special enrollment opportunity into individual market coverage because they have short-term coverage lasting for more than 60 days but less than three months and do

not understand that loss of short-term coverage, which is not MEC, would not create a new special enrollment opportunity. DC HBX recommends that, in addition to the Department's proposals, that short-term plans be required to include a notice informing consumers that the loss of short-term coverage, which is not MEC, would not create a special enrollment right under 147.104 or 155.420.

Hospital Indemnity and Other Fixed Indemnity Insurance (§54.9831-a; §2590.732; §146.145)

DC HBX supports the proposal to require fixed indemnity insurers to include the proposed disclosure in application and enrollment materials. DC HBX supports this disclosure because it would improve consumer understanding of these products and the products' purpose to be supplemental to major medical insurance. This disclosure would also inform consumers of some of the consequences of electing to enroll in this type of coverage in lieu of MEC.

Specific Disease Coverage

DC HBX recommends that specified disease insurance products also be required to include a disclaimer for consumers, similar to the notice proposed for short-term, limited duration policies. Specified disease insurance poses similar issues for consumers, who may not know that these products do not satisfy the requirement to have MEC. A clear disclaimer in the contract, the application, and marketing materials informing consumers that this coverage is not MEC would help ensure that consumers are informed about the nature of these policies, prior to purchasing coverage.

Thank you for your consideration of these comments.

Sincerely,



Mila Kofman
Executive Director
DC Health Benefit Exchange Authority