



August 9, 2016

Internal Revenue Service  
P.O. Box 7604  
Ben Franklin Station  
Washington, DC 20044  
CC:PA:LPD:PR (REG-135702-15)

RE: Expatriate Health Plans, Expatriate Health Plan Issuers, and Qualified Expatriates; Excepted Benefits; Lifetime and Annual Limits; and Short-Term, Limited-Duration Insurance

SUBMITTED VIA: [www.regulations.gov](http://www.regulations.gov)

To Whom It May Concern:

Guarantee Trust Life Insurance Company (GTL) appreciates the opportunity to offer our comments on the notice of proposed rulemaking (NPRM) entitled "Expatriate Health Plans, Expatriate Health Plan Issuers, and Qualified Expatriates; Excepted Benefits; Lifetime and Annual Limits; and Short Term Limited-Duration Insurance" published in the *Federal Register* on June 10, 2016, by the Internal Revenue Service, the Department of Labor, and the Department of Health and Human Services (agencies).

Founded in 1936, GTL is a legal mutual reserve company which provides a portfolio of competitive health, accident, life and special risk insurance programs. Through our independent agents and brokers, we serve individuals and families in 49 states and the District of Columbia.

We will restrict our comments to the portions of the NPRM which address short-term, limited duration coverage (short-term) and excepted benefits, specifically specified disease or illness insurance offered in both the group and individual insurance markets; and the treatment of individual hospital indemnity or other fixed indemnity insurance compared to the treatment of group hospital indemnity or other fixed indemnity insurance.

The business of insurance in this country continues to be one regulated at the state level, regardless of the attempts of the Patient Protection and Affordable Care Act (ACA) to undermine the system. As such, GTL firmly believes the agencies have gone far beyond their legal authority with the proposed language addressing short-term coverage and the attempted regulatory overreach concerning excepted benefits products.

### **Short-Term, Limited Duration Insurance**

As noted in the NPRM, and as defined in the Health Insurance Portability and Accountability Act (HIPAA), short-term insurance is "...health insurance coverage provided pursuant to a contract with an issuer that has an expiration date specified in the contract... that is less than 12 months after the original date of the contract." The NPRM notes that a common use of short-term insurance is as transitional coverage between jobs. In fact, these policies are used by consumers to fill a variety of needs: gaps in school coverages, transitional coverage involving life choices, by young adults upon losing their dependent status, by informed consumers who have assessed their needs and find no value in the minimal essential coverage mandated by the ACA. However, while short-term coverage is legally issued to be less than 12 months in duration, and is many things to many policyholders, the one thing it is not is subject to the provisions contained within the ACA. The agencies were not granted, and do not have the authority under the ACA to revise the definition of short-term insurance to be anything other than HIPAA's stated requirement.

The agencies have asked for information concerning the number of short-term policies offered for sale (we suggest the agencies will derive a better understanding of the marketplace if they request information on the number of inforce short-term policies), the types of individuals who purchase the coverage and the reasons behind their purchasing decisions. This request implies a desire to learn about and understand the short-term marketplace. Yet, the agencies have proceeded to propose a drastic alteration of short-term insurance duration limits using suppositions about purchaser intent and, most remarkably, the contents of a newspaper article.

GTL respectfully requests the agencies realize the limits of their authority and do not finalize the proposed rules for short-term, limited duration coverage.

### **Excepted Benefits - Specified Disease and Fixed Indemnity Coverages**

In the preamble to the NPRM, the agencies express "concern" about the supposed confusion of consumers who purchase specified disease coverage or group or individual fixed indemnity coverage, believing they are purchasing minimal essential coverage. As with the previously discussed proposal to limit short-term coverage, this concern is supposition without a basis of fact, and is used by the agencies, in place of statutory authority, to justify attempts at further regulatory overreach of excepted benefit products.

A nearly identical attempt has been struck down by the courts. The agencies would be well served to heed the reprimand incurred by their previous actions and cease efforts to impose regulations in the absence of authority to do so.

The recent United States Court of Appeals for the District of Columbia Circuit decision in *Central United Life Insurance Co. v. Burwell* emphatically declared the agency has no authority to require more of excepted benefit policies than that already required by HIPAA, and that the language of the ACA does not authorize the agency to change or alter the parameters within which excepted benefit insurance products are considered exempt from the ACA's requirements imposed on minimal essential coverage products.

According to the language of the ACA, specified disease insurance is not limited to an enumerated number of diseases. The agencies' request for comments on limiting the number of diseases or illnesses, and consideration of doing so, therefore, is another overstep of its authority.

Similarly, the request for comments on other issues surrounding excepted benefit products, such as the suggested modification of individual hospital or other fixed indemnity insurance to make it consistent with group fixed indemnity insurance, pertains to actions contemplated by the agencies which far exceed their express authority to regulate.

Given the agencies' lack of authority, and especially in light of the recent Appeals Court ruling prohibiting a previous attempt of regulatory overreach against hospital and other fixed indemnity products, GTL respectfully requests the agencies cease their continued efforts to impose additional requirements on all excepted benefit products. Additionally, and most importantly, we note the regulation of these products continues to lawfully rest with the various departments of insurance housed in the states, and we ask the agencies to respect that authority.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Marianne Eterno". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Marianne Eterno

Vice President, Government Relations

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