

**NAFSA: Association of
International Educators**

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July 28, 2016

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

RE: Expatriate Health Plans and other issues (RIN 0938-AS93)

I write to you today on behalf of NAFSA: Association of International Educators concerning the proposed rule published at [81 Fed. Reg. 38019](#) (June 10, 2016) addressing “Expatriate Health Plans, Expatriate Health Plan Issuers, and Qualified Expatriates; Excepted Benefits; Lifetime and Annual Limits; and Short-Term, Limited-Duration Insurance.” NAFSA is the world’s largest nonprofit association dedicated to international education, with nearly 10,000 members at approximately 3,500 colleges and universities throughout the United States and around the world. Our membership includes professionals at U.S. higher education institutions who manage both education abroad programs and international student and scholar programs, so NAFSA is in a unique position to comment on this proposed rule. We have significant concerns about how it may impact American students participating in education abroad programs and international students and scholars studying, researching, and teaching in the United States.

International students and scholars travel to the United States to study, teach, and conduct research at institutions of higher education and their programs may be of short, medium and long duration, ranging in length from days to years. American students and international students also participate in education abroad programs outside of the United States. While participating in international education and exchange programs, these students and scholars are outside their country of residence and need insurance that follows them internationally, simplifies access to the health care system of the countries where they are studying, and is provided by companies with

experience and knowledge specifically about international students' and scholars' issues and needs.

Many international students and scholars currently purchase short-term, limited-duration insurance products specifically to ensure they have appropriate international coverage in addition to their home-country insurance. This is true of both international students and scholars traveling to the United States, many of who are required to maintain certain limited health insurance coverage by the terms of their J nonimmigrant (J-1 exchange visitor and J-2 dependent) visas, and American students, faculty, and researchers traveling outside the United States, who frequently have little or no international coverage from their primary, major medical coverage (whether obtained as a dependent, through an insurance program at their institution of higher education, or purchased on an exchange).

We are concerned that the proposed rule, as currently drafted, would drastically reduce the availability of admitted, state-regulated insurance products for students and scholars traveling to the United States to study, teach, or research and for American students studying abroad, and force students and scholars into unregulated, off-shore insurance markets instead. Currently, the short-term, limited duration plans available to international students and scholars can be issued with terms of less than 12 months, and are not renewable. This permits students to secure health coverage while outside their home country that covers two semesters, or one year, of school programming. These policies provide stability and meet the very specific needs of our students and scholars.

If short-term, limited-duration policies are limited by the proposed rule to a single, three-month term, students and scholars will no longer be able to purchase limited-duration coverage for their international educational experiences from domestic insurance companies. However, limited-duration coverage is best suited for students and scholars spending a defined period of time studying internationally. In most cases, they already have primary health insurance. For American students, such coverage may be obtained through dependent coverage on family plans, on the exchanges, and in some cases through student health insurance plans, and for international students and scholars in the United States, most have insurance in their home countries, either through national health insurance programs or private insurance. This primary coverage generally does not meet their international coverage needs.

In the proposed rule, the Departments identify a number of issues with respect to short-term, limited-duration insurance products or other similar situations: (i) such products are being sold to address situations other than transitioning between jobs or

insurance plans; (ii) some issuers are renewing short-term, limited-duration insurance policies beyond the 12-month limit currently imposed by regulations; (iii) short-term, limited-duration policies may have significant limitations, such as lifetime and annual benefit limits and pre-existing condition exclusions, and (iv) healthier individuals may be targeted for sales of short-term, limited-duration policies. As we will discuss below, while these issues may be legitimate concerns regarding short-term, limited-duration policies sold to American citizens and providing coverage only in the United States, they do not apply to American and foreign students and scholars traveling for international education experiences.

I. Purpose of Short-Term, Limited-Duration Insurance

Students and scholars participating in international education programs have specific, limited-duration needs for international health insurance that is generally not available from group or individual health insurance plans in the United States or from major medical coverage or national healthcare programs for foreign nationals. This international health insurance coverage does not need to be guaranteed renewable, or available for time periods beyond the intended international education experience; in fact, such features would serve no purpose for students and scholars. Further, some ACA-compliant health plans available through the exchanges terminate coverage for insureds that move outside the plan's area of coverage (especially HMO and narrow-network plans) for extended periods of time. This means that American students who purchase ACA-compliant coverage through an exchange may lose that coverage during their time abroad and may consequently require a short-term, limited-duration plan to fill the gap until they return to the United States and can again acquire ACA-compliant coverage at home.

Additionally, the terms of the J-1 exchange visitor program require limited health insurance coverage (\$100,000 per accident or illness) for students, scholars, and other exchange program participants entering the U.S., for the duration of their programs.¹ This regulatory requirement was not affected by the passage of the ACA. As a practical matter, international students and scholars need limited-duration health insurance coverage that is international in nature and that complies with the federal government's J-1 visa requirements, and such coverage is already provided in a reasonable fashion by short-term, limited-duration insurance sold by admitted insurance companies in the United States.

¹ [22 CFR 62.14](#)

II. Renewal of Short-Term, Limited-Duration Insurance

We understand the Departments' concern that short-term, limited-duration insurance sold in the United States and providing coverage only in the United States may be marketed and sold as an inappropriate alternative to ACA-compliant coverage. However, in the international student and scholar marketplace, eligibility for coverage is tied directly to actual international educational opportunities. International students and scholars are generally not permitted to, and as a practical matter have no incentive to, seek any "renewal" of their short-term, limited-duration international insurance beyond the end of their international educational activities. Accordingly, restricting the term of all short-term, limited-benefit insurance in order to frustrate the minority of cases where short-term, limited-benefit insurance is inappropriately renewed will have a significant negative impact on international students and scholars and will not have any effect on their decision to obtain or maintain minimum essential coverage before, during or after their international educational experience.

III. Benefit Limitations in Short-Term, Limited-Duration Policies

Short-term, limited-duration insurance provided to students and scholars has the practical effect of expanding the total coverage available to those students and scholars and does not realistically subject them to limitations on benefits. American students traveling abroad are already required by the ACA to have minimum essential coverage and are subject to the individual mandate. Many such students are covered under family plans, and those who are not on a family plan have access to the exchanges and may be eligible for premium subsidies as well. The availability of short-term, limited duration insurance specifically for international students and scholars gives them critical coverage while they are in the United States that is not available from most ACA-compliant health plans, and many such short-term, limited-duration policies do not provide benefits to American students while they are inside the United States. Accordingly, short-term, limited-duration products are in no way a substitute (not even a poor one) for ACA-compliant domestic coverage, and the availability of such student and scholar policies would not have the effect of encouraging students and scholars to substitute international short-term, limited-duration coverage for ACA-compliant coverage.

J-1 nonimmigrant exchange visitors and their dependents coming to the United States for educational activities are required by the terms of their J nonimmigrant visas to maintain limited health insurance coverage. These foreign students and scholars are not generally subject to the ACA. If American insurance companies are prohibited by the proposed rule from offering short-term, limited-duration policies to these

foreign students, scholars, and their dependents, those individuals will not purchase ACA-compliant coverage instead. They will simply shift from purchasing short-term, limited-duration coverage written in the United States to purchasing similar coverage from foreign insurers. While the proposed rule has the salutary goal of helping to channel so-called “young invincibles” to ACA-compliant policies, foreign students and scholars and their families have no practical reason to desire such policies. They likely have primary health insurance in their home country, and are only required to maintain limited coverage in the United States pursuant to their J exchange visitor visas. Accordingly, restricting the term of short-term, limited-duration policies for foreign students and scholars will cause premium to move off-shore because foreign students and scholars in the United States will purchase off-shore policies sufficient to meet the applicable visa requirements. In fact, in some cases J exchange visitor students and scholars will not be able to find an offshore policy that complies with Department of State regulations. The unavailability of a U.S.-based short-term, limited-duration policy, coupled with the unavailability of ACA-compliant plans that meet the J exchange visitor program’s regulatory requirements, could place the student, scholar, or dependent family member into a regulatory corner in which they cannot comply with Department of State regulations due to the existence of IRS regulations that remove one of the primary avenues of insurance compliance. This will represent a loss of premiums for U.S. domestic insurers and will increase the administrative burdens related to foreign student and scholar insurance for U.S. educational institutions and health care providers, and result in large-scale compliance issues for participants in J-1 exchange visitor programs.

IV. Adverse Selection

The availability of short-term, limited-duration insurance aimed specifically at international students and scholars does not have a meaningful impact on the choice of such international students and scholars to purchase ACA-compliant coverage. American students are purchasing short-term, limited-duration coverage in addition to their domestic health insurance, and for international students and scholars, ACA-compliant plans do not meet the specific requirements of Department of State J exchange visitor program regulations. In many cases, nonimmigrants who are here for programs of very short duration or who are otherwise not subject to the ACA penalty provisions are not able to access the exchanges and are very unlikely to purchase ACA-compliant coverage in any case. Thus, subjecting student and scholar insurance policies to the new restrictions in the proposed rule is unlikely to move lives to ACA-compliant coverage because the purchasers of short-term, limited-duration insurance for international students are either (a) already covered by ACA-compliant plans, or (b) not allowed on the Exchanges, not in compliance with Department of

State insurance regulations, and not likely to purchase major medical coverage in the United States in any circumstance.

While the proposed rule's changes to the marketplace for short-term, limited duration insurance may help to remedy issues relating to the sale and purchase of such insurance by American citizens seeking health insurance coverage in the United States, they will cause substantial disruption for international students and scholars seeking international health insurance and leave those students, scholars, and their families with no viable, domestic insurance product available for purchase. The impact of that change will be particularly harsh for American students, who cannot simply purchase off-shore coverage without navigating state insurance laws intended for commercial insurance purchasers in the surplus lines market, and for participants in J exchange visitor programs, who will not have access to U.S.-based policies that conform to exchange visitor program regulations. Accordingly, we request that the Departments consider a handful of suggested changes to the proposed rule:

Insurance products sold to students and scholars and providing international coverage (whether for American students studying abroad or foreign students, scholars, and their families participating in programs in the United States) should be exempted from the ACA as a type of Expatriate Health Plan, and American students studying abroad should be a defined type of Qualified Expatriate.

Short-term, limited-duration insurance products sold to students and scholars and providing international coverage (whether for American students studying abroad or foreign students, scholars, and their families participating in programs in the United States-) should not be subject to the provisions of the proposed rule that limit the term of short-term, limited-duration insurance products to three months. Instead, such student insurance products should be permitted to have a term less than 12 months, without a prohibition on purchasing another term in the future, as under the current regulations.

The effective date of the proposed rule's restrictions on short-term, limited-duration insurance, if any, should take into account the specialized needs of institutions of higher education and international students and scholars.

The proposed rule would have significant negative impacts on international students' and scholars' access to health insurance and would negatively impact international educational exchanges that have significant benefits to the United States, our citizens, and our world-leading institutions of higher education. We urge the Departments to clarify the proposed rule to prevent these negative impacts on our students.

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We look forward to seeing a final version of the proposed rule that strengthens America's health insurance marketplace without harming international student programs. We would be pleased to provide additional information at your request.

Sincerely,

Sheila Schulte

Deputy Executive Director

Leadership and Professional Development Services