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September 8, 2023

The Honorable Xavier Becerra
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

The Honorable Lisa M. Gomez
Assistant Secretary
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20002

The Honorable Douglas W. O'Donnell
Deputy Commissioner for Services and Enforcement
Internal Revenue Service
U.S. Department of the Treasury
1111 Constitution Avenue, NW
Washington, DC 20224

**Re: CMS-9904-P
Short-Term, Limited-Duration Insurance; Independent, Noncoordinated Excepted
Benefits Coverage; Level-Funded Plan Arrangements; and Tax Treatment of Certain
Accident and Health Insurance**

Submitted electronically via [regulations.gov](https://www.regulations.gov)

Dear Secretary Becerra, Assistant Secretary Gomez, and Deputy Commissioner O'Donnell:

We, the undersigned organizations, share a commitment to strengthening access to quality mental health and substance use disorder care for Americans and, as such, are writing to express our strong support for the Departments' proposed regulations for short-term, limited duration insurance (STLDI), independent, non-coordinated excepted benefits coverage and level-funded plan arrangements. We commend the Departments for recognizing the importance of increasing transparency and implementing consumer safeguards and, in particular, to better ensure that STLDI plans are, as their name implies, marketed and purchased to provide a short-term bridge during a temporary gap in coverage.

We urge the Departments to adopt the proposed regulations swiftly as, under rules adopted in 2018, STLDI plans are allowed to mimic comprehensive health coverage by having a duration of up to 364 days and by being extendable, or “stacked,” for up to 36 months. STLDI plans provide none of the important consumer protections in Affordable Care Act qualified health plans and are not subject to the federal parity law; they are able to exclude or severely limit coverage for mental health and substance use conditions, impose annual or lifetime limits, make coverage rescissions, and to discriminate against people with pre-existing conditions. These “junk” plans expose consumers to high financial and health risks, which is particularly troubling in the midst of unprecedented [mental health challenges](#), with over 30% of adults reporting symptoms of anxiety or depression and a 50% increase in drug overdose deaths from 2019 to 2021. In 2022, there were 49,449 suicide deaths (an average of one death by [suicide](#) every 11 minutes) and, in 2021, nearly 106,699 [drug overdose](#) deaths.

Exacerbating this mental health crisis is the “unwinding” of Medicaid coverage protections, leaving potentially millions of adults in need of affordable coverage. Unfortunately, under current rules, it is very difficult for individuals to understand that they may be purchasing a “junk” insurance plan (STLDI) that leaves them without the coverage they expect when they need it most. In fact, a nurse practitioner living with a serious mental illness unwittingly purchased an STLDI plan during a gap between employment and attending graduate school and discovered, too late, that it did not provide mental health coverage during a life-threatening psychiatric episode. As this story illustrates, swift safeguards are needed to protect people from inadvertently purchasing substandard insurance that leaves them vulnerable.

Below, we provide our detailed comments on the proposed regulations for STLDI plans and more limited comments on independent, noncoordinated excepted benefits coverage and level-funded plan arrangements.

A. *Short-Term, Limited-Duration Insurance*

1. *“Short-Term”*

We urge the Departments to finalize the proposed amendment of the Federal definition of “short-term” to no more than 3 months after the original effective date of the policy. This definition is needed to help ensure that STLDI plans are not purchased in lieu of comprehensive coverage while providing an option for those who are subject to a 90-day waiting period for a group market plan. The proposed definition closely aligns with rules already enacted in multiple states and with rules prior to 2018. A definition of “short-term” that exceeds 3 months, in contrast, threatens to confuse and jeopardize consumers who would otherwise enroll in comprehensive coverage that provides better protection.

2. *“Limited-Duration”*

We urge the Departments to finalize a definition of “limited-duration” to refer to a maximum coverage period of no longer than 4 months in total within a 12-month period by *any* issuer. Given the problematic practice of “stacking” STLDI plans to mimic comprehensive coverage, we believe it is vital to limit the total duration no matter who the issuer is. This duration would allow for coverage for people who are subject to a 90-day group health plan waiting period and up to 1 month employment-based orientation period

that, together, can delay the start of coverage for up to 4 months. For those with longer-term needs, we believe that the individual and small group Marketplace offer more appropriate alternatives that are also eligible for Federal financial support. Therefore, we recommend that CMS extend the prohibition on stacking to all STLDI policies including those by unaffiliated issuers as well as all issuers that are part of the same controlled group.

3. Sales and Marketing Practices

We urge the Departments to adopt rules that strictly limit the sale of STLDI plans during the open enrollment period on the Marketplace to prevent consumer confusion and to maintain the integrity of the risk pool for comprehensive coverage. We further urge the Departments to use their authority to ensure marketing of STLDI plans during non-open enrollment periods does not deceive or mislead people into thinking they are purchasing a low-cost alternative to comprehensive insurance. A report of the [Government Accountability Office](#) makes clear that deceptive and misleading marketing practices can result in people purchasing STLDI plans that do not afford them the coverage they expect or, frequently, need. In light of growing mental health needs, it is critical that consumers are protected from inadvertently purchasing a plan that places them in significant peril.

4. Notice

We strongly urge the Departments to finalize the proposed requirement that issuers prominently display the required notice on the first page of the policy, certificate, or contract of insurance, including for renewals or extensions, as well as in any marketing, application and enrollment materials provided to the person at or before the time the person has the opportunity to enroll or reenroll in STLDI. We further urge the Departments to ensure these requirements also apply to any websites or advertisements that seek to enroll or reenroll people in STLDI. Additionally, we urge the Departments to adopt provisions requiring notice to consumers who have purchased STLDI plans of alternative coverage options at least 30 days prior to the expiration of their STLDI plan.

We commend the Departments for recognizing the vital role that notices can play in informing consumers, particularly those with low health insurance literacy, and support requirements that will result in high readability, meaningful review of notices, high understanding of STLDI limitations and easily-accessible options for accessing other coverage or additional information.

Font

We urge the Departments to finalize rules requiring that the font be at least 14 point. We further urge the Departments to adopt a requirement that the font be a highly readable font or the same font as the rest of text in order to ensure that the notice is not displayed in a typeface that makes it more difficult to read, or easier to overlook, than surrounding or subsequent text.

Telephone numbers and links

We urge the Departments to require the notice to be customized to specify the website and telephone number for HealthCare.gov or for the Exchange that operates in the state in which the person to whom the STLDI is sold or marketed resides if that state does not use

HealthCare.gov. This state-specific information is important to achieving the goal of informed purchases by consumers and does not represent an undue burden on issuers, agents, or brokers.

We also urge the Departments to finalize a requirement that the notice be tailored to include the name and phone number of the relevant state department of insurance, *including the specific link for the state insurance department's webpage for health insurance questions and complaints*. This information is needed because state insurance sites can be difficult to find and navigate, creating additional barriers to informed and supported consumers.

Additionally, we urge the Departments to adopt the proposed requirement that the notice remind consumers to contact their employer or family member's employer about health coverage and to direct consumers to contact the state department of insurance for questions and complaints about the STLDI.

Permitted Length

We urge the Departments to require additional information in the notice that, in plain language, allows consumers to understand what is meant by "short-term, limited-duration" or "temporary" insurance. In order to increase consumer awareness of the limitations of STLDI plans, it is important that consumers are aware that, unlike comprehensive health coverage, STLDI has a maximum permitted period of coverage and cannot be renewed or extended beyond the maximum allowable duration (and may have a shorter length depending on state law).

Format and Language

We strongly support the proposed requirement that the notice be prominently displayed on the first page of not only policies, certificates, or contracts of insurance, including any renewals or extensions, but also in any marketing, application, and enrollment materials and on websites or advertisements that seek to enroll or enroll people in STLDI plans. However, to enhance the intended impact for consumers, we strongly recommend that the Departments test formats with consumers, especially those with low health insurance literacy, and adopt a required notice that best ensures that consumers understand the nature of STLDI coverage, alternative coverage options, and that effectively combats deceptive marketing practices. More specifically, we urge the Departments to test the following suggested modification to the notice that incorporates elements from both versions in the proposed regulations:

WARNING

This notice is required by Federal law.

IMPORTANT: This is short-term, limited-duration insurance. This is temporary insurance. It will only provide coverage for a maximum of up to [x] months. **It isn't comprehensive health insurance.**

You may be eligible for comprehensive insurance and financial help at HealthCare.gov [or state-specific Exchange]. Visit HealthCare.gov online or call 1-800-318-2596 (TTY: 1-855-889-4325) [or state Exchange number] to learn about your options.

Short-term, limited-duration insurance (this plan)	HealthCare.gov [or state Exchange] insurance
May deny you coverage if you have a preexisting condition, like anxiety or diabetes	Cannot deny you coverage even if you have a preexisting condition
May not cover or may limit coverage for pediatric, hospital, emergency, maternity, mental health, and substance use disorder services, prescription drugs, and preventive care	Covers pediatric, hospital, emergency, maternity, mental health, and substance use disorder services, prescription drugs, and preventive care
Does not qualify for Federal financial help	Provides Federal financial help to help qualified people pay for premiums or out-of-pocket costs
May cancel your coverage if you develop a medical condition	Cannot cancel your coverage due to a medical condition
Does not protect you from surprise medical bills	Provides protection from surprise medical bills

- **Employer coverage?** If you or a family member are employed by a company, contact them to learn if you are eligible for health insurance coverage.
- **Questions or complaints?** If you have questions or complaints about this short-term, limited-duration insurance, contact your State department of insurance at [name, telephone number, health insurance web page].

5. Short-Term, Limited-Duration Insurance Sold Through Associations

We urge the Departments to work with State departments of insurance to identify association and group trusts that are marketing STLDI plans and to facilitate opportunities for information-sharing about regulations and oversight steps to decrease deceptive marketing practices. We are concerned, like the Departments, that group trusts or

associations may take advantage of ambiguities about State jurisdiction to avoid State regulations and to mislead vulnerable consumers.

6. *Applicability Dates*

We strongly urge the Departments to apply the amended definitions of STLDI and revised notice provisions for new coverage sold or issued, and for existing coverage upon renewal or extension, on or after the effective date of the final rules. We are concerned that any delay in implementation will unnecessarily jeopardize consumers, especially as the process of Medicaid unwinding will likely lead large numbers of people to seek new health coverage. Further, given extraordinarily high rates of mental health and substance use disorders and deaths by suicide and overdose, there is urgent need to prevent the harm inflicted when people purchase STLDI plans that do not provide them with the coverage or protections they need.

B. *Independent, Noncoordinated Excepted Benefits Coverage*

We urge prompt finalization of the proposed rules for independent, noncoordinated excepted benefits coverage to align conditions across the individual and group markets and to better protect people, as well as employers, from inadvertently purchasing substandard insurance. As with STLDI, we urge the Departments to adopt notice requirements that more clearly warn consumers of the limitations of such coverage and that provide user-friendly information on accessing comprehensive insurance options. We further urge the Departments to consider an earlier effective date to better serve consumers. As our opening comments articulated, there are growing and urgent mental health and substance use treatment needs throughout the country. Current health insurance regulation, however, is often out of step with today's mental health needs and with consumer demand for patient protections. For this reason, we applaud the Departments for proposing regulations to more clearly differentiate insurance that does not offer important patient protections, such as fixed indemnity excepted benefits coverage, from comprehensive coverage.

C. *Level-Funded Plan Arrangements*

We commend the Departments for seeking additional information about level-funded plan arrangements and urge additional guidance and rulemaking to ensure that consumers are appropriately informed and protected from unwittingly choosing insurance that is not comprehensive and lacks important benefits and consumer protections, particularly for people with mental health and substance use disorders. The significant increase in small employers offering a level-funded plan raise serious concerns. These employers, and certainly their employees, may not realize that by leaving the small group health insurance market for a self-funded plan, they may be abandoning certain benefits and consumer protections, such as those included in the federal parity law. These plans may jeopardize employees and may adversely affect the risk pool in State's small group health insurance markets.

We thank you for the opportunity to comment on the Departments' proposed regulations and wish to reiterate our strong support for the swift adoption of the proposed rules for STLDI

plans, as well as for independent, noncoordinated excepted benefits coverage and level-funded plan arrangements. These proposed regulations are urgently needed to help protect consumers amid dual challenges: the escalating mental health and substance use crisis and the loss of Medicaid coverage protections with the end of the public health emergency.

Sincerely,

American Psychiatric Association
Eating Disorders Coalition for Research, Policy & Action
Inseparable
The Kennedy Forum
Mental Health America
National Alliance on Mental Illness