Sept. 11, 2023

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Department of the Treasury
1111 Constitution Ave, NW, Room 6329
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Attention: (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

Dear Administrator Brooks-LaSure, Assistant Secretary Gomez and Commissioner Werfel,

Thank you for the opportunity to comment on this proposed rule. As organizations dedicated to promoting the health of our nation's children, we applaud you for promulgating this rule and support its provisions to limit the length of Short-Term, Limited Duration Insurance (STLDI) plans and strengthen consumer information about the plans.

Our organizations believe that all coverage for children must ensure access to timely, affordable, high-quality, and age-appropriate health care (including mental health, dental, vision, and hearing services) that meets their unique developmental needs and enables them to meet their full potential as adults. Access to health care for children and their families is vital to long-term health, well-being, and productivity.

We support increasing access to affordable, high-quality health care coverage in the commercial market and also support the original intent of STLDI plans, which is to only fill **short-term coverage gaps** and not to serve as long-term insurance coverage. The 2018 rule that expanded the availability of STLDI plans contradicts the intent of these plans and increases the potential that families will choose a seemingly affordable, but not comprehensive, plan as their long-term coverage choice. Most federal standards and rules that apply to individual health insurance, such as those

under the ACA, the Health Insurance Portability and Accountability Act, the Mental Health Parity and Addiction Equity Act, and the No Surprises Act do not apply to short-term plans. This lack of fundamental protection leaves families at substantial financial and health risk when they enroll in a STLDI plan. Families with children – particularly those with chronic, complex or serious health conditions, or developmental disabilities – who unknowingly purchase plans that do not cover necessary pediatric services (including vision and dental) rather than an ACA-compliant plan risk gaps in needed coverage and higher out-of-pocket costs, potentially leading to financial hardship and poor health outcomes. STLDI plans also fall short in providing sufficient habilitative services and devices that help the child acquire, improve, or retain a skill or level of functioning that they did not previously possess, which can mean the difference between having the ability to walk or talk.

With states now conducting their Medicaid eligibility redeterminations as a result of the end of the Medicaid continuous enrollment protection ("unwinding"), appropriate limits on the duration of STLDI plans are even more critical. Prior to the beginning of the unwinding, more than one-half of all children were covered by either Medicaid or the Children's Health Insurance Program (CHIP). Last year, the Georgetown University Center for Children and Families estimated that as many as 6.7 million children could experience a period of uninsurance as a consequence of the unwinding.[1] As unwinding unfolds, we are seeing a disproportionate number of children being disenrolled with **children accounting for over four in ten (43%) of Medicaid disenrollments in the 15 states reporting age breakouts as of Aug. 24[2].** Rolling back the expanded availability of STLDI plans will help protect families from mistakenly enrolling their child(ren) who have lost their Medicaid/CHIP coverage into a plan that does not provide the comprehensive pediatric services that they need.

Our more detailed comments follow.

Limiting the Duration of STLDI plans

We strongly support the proposed definition of a STLDI plan, which limits plan duration to no longer than four months in total. The expanded availability of STLDI plans under the 2018 rule increased the probability that families will treat STLDI as comprehensive, long-term coverage, when it is far from that. Because STLDI plans are not subject to the ACA's consumer protection requirements and other federal protections, they may impose pre-existing condition exclusions; annual or lifetime dollar limits on benefits; medically underwrite coverage with higher premiums based on health status or disease/health condition; cover a limited set of benefits with no guaranteed coverage of the ACA's essential health benefits (e.g., pediatric, mental health or prescription drug coverage); charge for preventive services; and rescind overall coverage or coverage of a particular condition at any time. They are also not subject to the ACA network adequacy requirements.

A 2020 Milliman analysis[3] comparing STLDI plans and ACA-compliant plans found that all the STLDI plans they reviewed included a pre-existing condition exclusion provision, as well as dollar limits on the amount of benefits the plans covered. Most plans in the study limited their total benefits to between $1 and $2 million. In addition, **almost half of the STLDI plans did not cover**

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[1] Georgetown Center for Children and Families, Millions of Children May Lose Medicaid: What Can Be Done to Help Prevent Them From Becoming Uninsured?. Feb. 17, 2022.

[2] KFF. Medicaid Enrollment and Unwinding Tracker. Aug. 23, 2023

[3] Milliman, Inc., The impact of short-term limited-duration policy expansion on patients and the ACA individual market. February 2020.

mental health services at all, a key essential health benefit under the ACA. The lack of mental health coverage is especially problematic for children and youth who face ongoing, and growing, mental health challenges. Furthermore, almost three-quarters of STLDI plans did not cover prescription drugs, which are also required benefits for ACA-compliant plans. The lack of vital consumer protections in STLDI plans can lead to gaps in needed services for children, particularly those who have chronic or complex health conditions, and have long-term negative implications for their overall health and well-being, as well as their family's financial health.

Notice to Consumers About Short-Term Limited Duration Insurance

We support the requirement that plans display prominently a notice to consumers that emphasizes that STLDI plans are not comprehensive insurance products. We also strongly support the inclusion in the rule of the requisite language that all notices must contain, including language that specifically notes the types of services that the plan may not cover or may limit, including coverage for pediatric and mental health services.

To further clarify for consumers the differences between these products and comprehensive coverage, we recommend that additional language be required to be included in the notice that describes the maximum permitted length of STLDI plans. In addition, the notices should include language that clearly explains that the plans are not subject to any of the ACA consumer protections, with a list of each of those protections, including the prohibition of pre-existing condition exclusions, rescissions of coverage, annual and lifetime dollar limits, etc. Concrete examples of how the lack of these consumer protections could impact coverage should also be provided to further clarify the real-life implications.

Issuers should be required to share this same information verbally with potential enrollees in a culturally competent manner and to provide a Summary of Benefits and Coverage (SBC) to any consumer considering enrolling in a short-term plan. The SBC should meet the requirements for ACA-compliant plans delineated in the 2015 Summary of Benefits and Coverage and Uniform Glossary final rule to ensure that families can clearly identify what the plan does and does not cover (e.g., annual limits, essential health benefit exclusions and limitations, out-of-pocket costs). [6] The SBC has undergone a robust development and testing process, and has been approved by insurers, the administration and consumers as an effective educational tool for choosing and understanding plan options.

Additionally, we recommend that plans be required to include a signed acknowledgement statement that coverage under STLDI plans does not meet the minimum standards required under the ACA and does not provide equivalent consumer protections. The acknowledgement statement should include the list of non-covered conditions or services, including but not limited to, any services in the essential health benefits package that the plan does not cover. A sample statement might read: "Applicant acknowledges that the policy does not provide benefits for: prescription drugs; maternity services; mental health treatment; physical, occupational or speech therapies; or pediatric vision and dental services."

Finally, all required notices and related materials should be available in the 15 most commonly spoken languages for the geographic area. Families deserve access to culturally appropriate, readable and clear information that will equip them to compare coverage options and make the appropriate coverage decision for themselves and their children.

Sale and Marketing of STLDI Plans During ACA Open Enrollment Periods
To further support families in their coverage decisions, we encourage you to prohibit the sale and marketing of STLDI plans during the ACA's annual open enrollment period. We also urge you to consider how to restrain aggressive marketing by brokers and others who try to sell STLDI plans to those who have lost coverage as a result of the Medicaid unwinding.

Data collection
We urge the departments to work with states and the National Association of Insurance Commissioners on the collection of data that will enable regulators and stakeholders to assess whether and how children and families are being served by STLDI plans. It is critical that the departments collect and use plan data to document, identify and analyze patterns in consumer behavior and in coverage. In particular, plan-level enrollment/disenrollment and claims data (paid and unpaid) that is disaggregated by age, income, race/ethnicity and geographic location can help assess the impact of service denials, coverage limits and other key plan design elements on children and their families and inform future policy actions related to STLDI.

In conclusion, we reiterate our strong support for the rollback of the expanded availability of STLDI plans. We look forward to working with you to ensure that families and children have access to appropriate health care coverage, and information about that coverage, that meets their unique needs and protects their families from financial harm. If we may provide further information or otherwise be of assistance, please contact Jan Kaplan at the Children's Hospital Association, at 202-753-5384 or jan.kaplan@childrenshospitals.org.

Sincerely,

American Academy of Pediatrics
Children's Hospital Association
Family Voices
First Focus on Children
Georgetown Center for Children and Families
March of Dimes
National Association of Pediatric Nurse Practitioners