



Charles N. Kahn III
President and CEO

September 11, 2023

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Hubert H. Humphrey Building
200 Independence Avenue SW
Washington, DC 20201

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

Dear Administrator Brooks-LaSure:

The Federation of American Hospitals (FAH) is the national representative of more than 1,000 leading tax-paying hospitals and health systems throughout the United States. The FAH members provide patients and communities with access to high-quality, affordable care in both urban and rural areas across 46 states, plus Washington, DC, and Puerto Rico. Our members include teaching, acute, inpatient rehabilitation, behavioral health, and long-term care hospitals and provide a wide range of inpatient, ambulatory, post-acute, emergency, children's, and cancer services.

The FAH appreciates the opportunity to provide our views in response to the proposed rule: *Short-Term, Limited-Duration Insurance; Independent, Noncoordinated Excepted Benefits Coverage; Level-Funded Plan Arrangements; and Tax Treatment of Certain Accident and Health Insurance* [CMS-9904-P], 88 Fed. Reg. 44596 (July 12, 2023) issued by the Departments of Health and Human Services, Labor, and the Treasury (the Departments). We appreciate the Departments' commitment to ensuring consumers have access to the information they need to make informed decisions about their health care coverage and the scope of benefits available under that coverage.

The FAH expressed strong opposition to the policies adopted in the 2018 Short-Term, Limited-Duration Insurance (STLDI) final rules¹, which expanded the duration of STLDI plans from 3 months to up to 12 months after the original effective date and permitted renewals for up to 36 months. We believed then and, based on our experience, continue to believe that these plans result in inadequate coverage and destabilize the insurance market because of the increased opportunities and incentives for risk segmentation.

We agree with the Departments' position expressed in this proposed rule that this type of coverage is intended only as a type of stop gap for short periods of time because STLDI does not afford consumers the type of protections required of qualified health plans under the *Affordable Care Act*. For example, STLDI products are not required to provide minimum essential benefits or to limit lifetime or annual cost-sharing; additionally, STLDI plans may exclude individuals with pre-existing conditions and may be medically underwritten. These plans are not required to provide coverage for, or may impose exclusions or limitations for, benefits such as hospitalization, emergency services, maternity care, preventive care, prescription drugs, and mental health and substance use disorder services. Enrollees in these plans are at risk for significant out-of-pocket costs when they purchase STLDI as their primary source of coverage, which can vastly increase their medical debt. These consumers learn too late that coverage under their STLDI plans is inadequate or that the cost-sharing requirements imposed under the plans are very high.

Under the current regulatory definition of "short term," STLDI products are misleading because consumers may believe that these products provide the same type of coverage as qualified health plans due to the potential 12-month policy period and the ability to renew for additional years. This misperception along with lower premiums for STLDI as compared to plans and insurance products regulated under the *Affordable Care Act* puts consumers at high risk of inadvertently purchasing plans that do not provide meaningful coverage or that expose them to potentially high cost-sharing requirements. This may occur notwithstanding information included in the required notices. Additionally, aggressive sales tactics contribute to this problem, which too often include marketing practices that fail to provide adequate disclosure of the coverage limits of the STLDI plans.

Health care providers also bear the burden of the inadequacy of these plans. Patients who enroll in STLDI plans that do not provide meaningful coverage are either uninsured or underinsured for a particular condition or course of treatment, which means that health care providers are uncompensated for the care they provide. Health care providers continue to face unprecedented financial challenges in light of the COVID-19 pandemic and the associated workforce shortages and supply chain issues. Additionally, enrollees of STLDI plans are often dissuaded, either due to noncoverage or high cost-sharing, from getting routine care or seeking care when they first become ill. Thus, when they arrive at an emergency department, they require a higher volume and intensity of services to treat the disease or condition, which is both dangerous and more costly for the patient and in many cases the provider.

¹ <https://www.govinfo.gov/content/pkg/FR-2018-08-03/pdf/2018-16568.pdf>

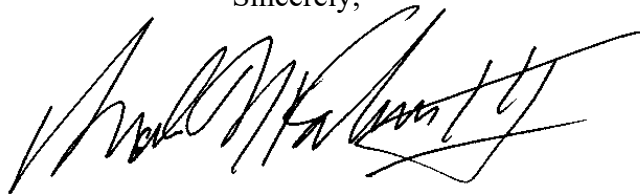
The FAH urges the Departments to finalize the proposals to revise the regulatory definitions of “short term” and “limited duration” to limit the length of the STLDI initial contract period to no more than 3 months (as opposed to the current 12 months) and the maximum coverage period (i.e., the limited duration) to no more than 4 months, taking into account any renewals or extensions.

The proposed rule would also make a number of revisions to the content of notices required to be provided in conjunction with the sale of STLDI plans, which are designed to provide consumers more information about STLDI plans and the differences between these plans and plans that offer comprehensive coverage and protections under the *Affordable Care Act*. Additionally, the notices would identify options for consumers to get information on plans that offer comprehensive coverage in concise, understandable language that would be meaningful to them as well as contact information (either telephone contact numbers or electronic links) for enrollment in comprehensive coverage, such as the HealthCare.gov website and telephone number. Additional changes would also direct consumers to contact the state department of insurance for questions and complaints about the STLDI plans.

The FAH strongly supports these proposed changes to the required notices for STLDI plans because they would facilitate access to information about STLDI plans and make that information more readily understandable. The changes would also direct consumers to resources for the submission of complaints about STLDI plans. We believe consumers would benefit from the inclusion of the name and phone number of the state department of insurance of the state in which the product is filed for these purposes and encourage the Departments to include this policy in the final rule as well.

Thank you for the opportunity to comment on the Proposed Rule. If you have any questions, please contact me or a member of my staff at 202-624-1534.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew M. Kuntz". The signature is fluid and cursive, with a long horizontal stroke extending to the right.