



*Sent via email*

Jan 31, 2022

The Honorable Xavier Becerra  
 Secretary, Department of Health and Human  
 Services  
 200 Independence Ave SW  
 Washington, DC 20201

Mr. Charles P. Rettig  
 Commissioner, Internal Revenue Service  
 Department of the Treasury  
 1111 Constitution Avenue, NW  
 Washington, DC 20224

Ms. Chiquita Brooks-LaSure  
 Administrator, Centers for Medicare and  
 Medicaid Services  
 Department of Health and Human Services  
 P.O. Box 8010  
 Baltimore, MD 21244-8010

Mr. Ali Khawar  
 Acting Assistant Secretary  
 Employee Benefits Security Administration  
 Department of Labor  
 200 Constitution Avenue, NW  
 Washington, DC 20210

Dear Secretary Becerra, Administrator LaSure, Commissioner Rettig, and Acting Assistant Secretary Khawar:

The 29 undersigned organizations write to ask that you issue new regulations as soon as possible limiting the sale and availability of short-term, limited-duration (“STLD”) health insurance. Our organizations are pleased to see the Administration included amending regulations concerning STLD plans on the Fall 2021 Unified Agenda and Regulatory Plan. We represent millions of patients and consumers across the country facing serious, acute, and chronic health conditions. We have a unique perspective on what individuals and families need to prevent disease, manage health, and cure illness. As such, we urge you to take these perspectives into account as you undertake rulemaking to limit the sale of STLD health insurance.

In early 2017, our organizations agreed upon three principles that we use to help guide our work on health care to continue to develop, improve upon, or defend the programs and services our communities need to live longer, healthier lives.<sup>1</sup> These principles state that: (1) healthcare must be adequate, meaning that healthcare coverage should cover treatments patients need; (2) healthcare should be affordable, enabling patients to access the treatments they need to live healthy and productive lives; and (3) healthcare should be accessible, meaning that coverage should be easy to get, keep, and understand and not pose a barrier to care.

We are deeply concerned that STLD plans have disproportionately harmed patients with pre-existing conditions. STLD insurance is not required to adhere to important standards, including prohibitions on discrimination against people with pre-existing conditions, coverage for the 10 essential health benefit (EHB) categories, the limitation on age rating of premiums, annual out-of-pocket maximums, prohibitions on gender rating, annual benefit limits, lifetime coverage limits, and many other critical patient and consumer protections.

STLD plans charge higher premiums and refuse to sell coverage altogether to individuals with pre-existing conditions. Plans also exclude specific services based on an individual's health status and medical history, include deductibles that are many times higher than ACA compliant plans, and do not need to meet basic network adequacy requirements. Therefore, many of the individuals represented by our organizations with pre-existing conditions are likely either unable to purchase short-term plans or unable to rely on short-term plans due to the high cost and poor coverage. Similarly, individuals that unwittingly purchase a short-term plan that are later diagnosed with a chronic or acute condition may find themselves seriously uninsured as short-term plans typically exclude coverage of key services such as prescription drugs and mental health services, among others.<sup>2</sup>

Since the previous administration's 2018 de-regulation<sup>3</sup> that expanded the availability of short-term plans, sub-par STLD insurance plans have continued to proliferate, confusing consumers and leaving them under-covered as many of our groups detailed in a recent report.<sup>4</sup> As STLD plan enrollment has grown, they have pulled away healthier individuals from the Affordable Care Act (ACA) marketplaces – as a result, premiums for high-quality, comprehensive ACA plans have risen. For example, a study commissioned by The Leukemia & Lymphoma Society found that 2020 premiums for ACA plans increased as much as 4.3% in states that chose not to regulate STLD plans and forecasted that marketplace enrollment would also drop. In contrast, states that have taken regulatory action to restrict or prohibit the sale of these substandard insurance options subsequently saw premiums of ACA compliant plans drop by as much as 1.2%.<sup>5</sup>

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<sup>1</sup> Healthcare reform principles. Available at: <https://www.lung.org/getmedia/24309f63-74e9-4670-8014-d59f21104cfd/092021-ppc-healthcare-principles-42-logos-final.pdf>.

<sup>2</sup> Pollitz, K. et. al., *Understanding Short-Term Limited Duration Health Insurance*, Kaiser Family Foundation, April 2018. <https://www.kff.org/health-reform/issue-brief/understanding-short-term-limited-duration-health-insurance/>.

<sup>3</sup> Short-Term, Limited-Duration Insurance, 83 FR 38212 (2018): <https://www.federalregister.gov/documents/2018/08/03/2018-16568/short-term-limited-duration-insurance>

<sup>4</sup> *Under-Covered: How "Insurance-Like" Products Are Leaving Patients Exposed*. March 2021. [https://www.ils.org/sites/default/files/National/undercovered\\_report.pdf](https://www.ils.org/sites/default/files/National/undercovered_report.pdf)

<sup>5</sup> Hansen, D., & Diegues, G. (2020, February). *The impact of short-term limited-duration policy expansion on patients and the ACA individual market: An analysis of the STLD policy expansion and other regulatory actions on patient spending, premiums, and enrollment in the ACA individual market*. Milliman Actuarial. <https://www.ils.org/sites/default/files/National/USA/Pdf/STLD-Impact-Report-Final-Public.pdf>

The need for adequate, affordable, and accessible coverage has become even more important during the COVID-19 pandemic. Unfortunately, patients seeking comprehensive healthcare coverage are likely to be directed away from the Healthcare.gov marketplace during enrollment. A secret shopper study conducted by Georgetown's Center on Health Insurance Reforms during the recent COVID-19 special enrollment period documented misleading and deceptive marketing practices that lure patients into enrolling in STLD and other sub-standard non-compliant plans.<sup>6</sup> Despite the historic increases in marketplace subsidies under the American Rescue Plan Act that qualified millions of people for plans with little to no premium, consumers are still overwhelmingly more likely to be directed towards an STLD or other non-ACA plan when looking for coverage online or speaking with an agent, broker, or sales representative.

As these recent investigations illustrate, STLD plans frustrate the ACA's goal of protecting individuals living with pre-existing conditions. We remind the Departments of their authority to address this dilemma pursuant to the President's Executive Order instructing all agencies to review and reverse actions that may undermine protections for people living with pre-existing conditions.<sup>7</sup> In light of numerous studies showing the adverse effect STLD plans have on patients with pre-existing conditions, our organizations request that you promptly revise the previous administration's STLD plan rule and reissue regulations that would robustly protect patients and consumers.<sup>8</sup> The administration should limit the harm these plans do by restoring the 3-month duration limit, limiting renewability and the ability to purchase back-to-back STLD plans (otherwise known as "stacking"), banning sales during the marketplace Open Enrollment, limiting internet and phone sales, establishing a prohibition on plan rescissions, and improving disclosures.

We are pleased the Department of HHS has indicated in the Unified Agenda its intent to propose amendments to the current STLD rule.<sup>9</sup> As HHS moves forward with this rulemaking we specifically we request that you include the following recommendations:

#### ***Restore Three-Month Duration***

The administration should work to restore the October 2016 regulation that prohibited STLD plans from extending beyond three months.<sup>10</sup> While this action will help to ensure that these products are used solely for their original purpose, it alone is not sufficient to protect patients.

#### ***Limiting Renewability and Closing the "Stacking" Loophole***

STLD plans should not be renewable or allowed to continue for more than three months because of the significant financial risk posed to consumers by their combination of extraordinary deductibles and limited catastrophic financial protection. The renewability of plans should be reserved for health insurance that meets the definition of minimum essential

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<sup>6</sup> Palanker, D. and Volk, J (2021, October). *Misleading Marketing of Non-ACA Health Plans Continued During COVID-19 Special Enrollment Period*. Georgetown Center on Health Insurance Reforms. <http://chirblog.org/misleading-marketing-non-aca-health-plans-continued-covid-19-special-enrollment-period/>

<sup>7</sup> Executive Order 14009, Strengthening Medicaid and the Affordable Care Act:

<https://www.federalregister.gov/documents/2021/02/02/2021-02252/strengthening-medicaid-and-the-affordable-care-act>

<sup>8</sup> Short-Term, Limited-Duration Insurance, 83 FR 38212 (2018): <https://www.federalregister.gov/documents/2018/08/03/2018-16568/short-term-limited-duration-insurance>

<sup>9</sup> Office of Management and Budget. Unified Agenda. Short-Term Limited Duration Insurance, Update. Available at <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202110&RIN=0938-AU67>

<sup>10</sup> Excepted Benefits; Lifetime and Annual Limits; and Short-Term, Limited-Duration Insurance, 81 FR 75316 (2016): <https://www.federalregister.gov/documents/2016/10/31/2016-26162/excepted-benefits-lifetime-and-annual-limits-and-short-term-limited-duration-insurance#h-1>

coverage (MEC), which short-term plans do not. Allowing short-term plans to be renewed or to be sold such that nominally separate policies run consecutively — a loophole in the duration limit protections known as “stacking” — contributes to consumer confusion, increased premiums, and financial risk for consumers. We therefore recommend that the administration take action to ensure plans cannot be renewed and to prevent issuers from evading regulatory requirements through the practice of stacking.

### ***Halting Sales During Open Enrollment***

As mentioned, studies indicate that STLD plans have been aggressively and deceptively marketed to consumers, especially during the ACA’s annual Open Enrollment period.<sup>11</sup> We therefore urge the administration to end the sale of STLD plans during federal and state open enrollment periods to decrease consumer confusion.

### ***Limiting Sales via the Internet and Phone***

Sales of STLD plans via the internet and phone have also increased since they were deregulated in 2018.<sup>12</sup> The increased availability of these plans combined with deceptive marketing practices leave consumers at increased risk of purchasing a plan that does not meet their medical needs. As a result, we ask the Departments to restrict sales of non-compliant plans to in-person encounters, in compliance with COVID restrictions.

### ***Establishing a Prohibition on Rescissions***

Unlike comprehensive insurance plans sold on the individual market, short-term plan insurers are allowed to rescind a patient’s coverage following a process called post-claims underwriting. Insurers have utilized this process to initiate retroactive coverage rescissions, leaving patients who thought they were covered without any financial or medical protection whatsoever. This practice leaves patients without access to necessary services and at significant financial risk.<sup>13</sup> As such, we urge the Departments to place strong prohibitions on the practice of rescissions within this market

### ***Improving Disclosures***

Disclosure alone is not an adequate solution to the risks posed by the proliferation of STLD plans. However, state and federal policymakers should ensure that consumer information is provided in a clear and comprehensive way to reduce the risk that consumers are misled into purchasing inadequate coverage. Consumer disclosure should be provided both in writing and verbally; be available in a number of commonly spoken languages for any geographic area and conveyed in a culturally competent manner; be of sufficient font size using bold text and boxes to aid consumers in identifying critical information and ensure readability; explicitly say that a STLD plan is not comprehensive, including a list of EHB services that are not provided; and, when

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<sup>11</sup> Palanker, D. and Volk, J (2021, October). *Misleading Marketing of Non-ACA Health Plans Continued During COVID-19 Special Enrollment Period*. Georgetown Center on Health Insurance Reforms. <http://chirblog.org/misleading-marketing-non-aca-health-plans-continued-covid-19-special-enrollment-period/>. Findlay, S. (2019, January 31). *Ads For Short-Term Plans Lacking ACA Protections Swamped Consumers’ Online Searches*. Kaiser Health News. <https://khn.org/news/ads-for-short-term-plans-lacking-acaprotections-swamped-consumers-online-searches/>

<sup>12</sup> Committee on Energy & Commerce. (2020, June). *Shortchanged: How the Trump administration’s expansion of junk short-term health insurance plans is putting Americans at risk*. U.S House of Representatives. [https://drive.google.com/file/d/1uiL3Bi9XV0mYnxpvalMeg\\_Q-BJaURXX3/view](https://drive.google.com/file/d/1uiL3Bi9XV0mYnxpvalMeg_Q-BJaURXX3/view)

<sup>13</sup> Palanker, D., & Goe, C. (2020, March 27). *States Don’t Know What’s Happening in Their Short-Term Health Plan Markets and That’s a Problem* | Commonwealth Fund. Commonwealth Fund. <https://www.commonwealthfund.org/blog/2020/states-dont-know-whats-happeningtheir-short-term-health-plan-markets-and-thats-problem>

applicable, provide a clear explanation that the plan does not have a network of providers and/or offer protection against being balance billed by providers following a service. Disclosure information should also meet standard requirements so that there is a high degree of consistency across individual types of insurance products, including what information is included and how it is presented.

### **Conclusion**

Our organizations eagerly await formal rulemaking on STLD plans and are available to assist you in efforts to protect patients from these and other non-ACA-compliant plans. We welcome the opportunity to meet and discuss these issues with you further. To arrange a meeting, please contact Katie Berge, Leukemia & Lymphoma Society Director of Federal Government Affairs at [Katie.Berge@lls.org](mailto:Katie.Berge@lls.org). We thank you for your attention to this important matter and look forward to working with you on behalf of patients.

Sincerely,

ALS Association  
American Cancer Society Cancer Action Network  
American Heart Association  
American Kidney Fund  
American Lung Association  
Arthritis Foundation  
Asthma and Allergy Foundation of America  
Cancer Support Community  
Cystic Fibrosis Foundation  
Epilepsy Foundation  
Family Voices  
Hemophilia Federation of America  
JDRF  
Mended Little Hearts  
Muscular Dystrophy Association  
National Alliance on Mental Illness  
National Coalition for Cancer Survivorship  
National Eczema Association  
National Health Council  
National Hemophilia Foundation  
National Multiple Sclerosis Society  
National Organization for Rare Disorders  
National Patient Advocate Foundation  
National Psoriasis Foundation  
Pulmonary Hypertension Association  
Susan G. Komen  
The AIDS Institute  
The Leukemia & Lymphoma Society  
United Way Worldwide