



September 11, 2023

Danny Werfel, Commissioner  
Internal Revenue Service  
Department of the Treasury

Lisa Gomez, Assistant Secretary  
Employee Benefits Security Administration  
Department of Labor

Ellen Montz, Deputy Administrator and Director  
Center for Consumer Information and Insurance Oversight  
Centers for Medicare & Medicaid Services  
Department of Health & Human Services

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

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

Dear Commissioner Werfel, Assistant Secretary Gomez, and Deputy Administrator and Director Montz:

On behalf of Chorus Community Health Plan (CCHP), an affiliate of Children’s Wisconsin, I appreciate the opportunity to provide comments 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” (the “Proposed Rule”).

CCHP serves over 165,000 members, including both kids and adults, through our Medicaid and Marketplace health plans. Our BadgerCare product is offered in 29 counties in eastern Wisconsin, and is the third largest Medicaid health plan in the state in terms of enrollment. We also offer individual and family health insurance plans offered on and off the Marketplace in 15 counties in the eastern part of the state. We are proud to offer comprehensive health benefits and innovative services including case management for individuals with complex needs. CCHP also provides health insurance programs to support our members with asthma, depression, pregnant women, new moms and many other wellness initiatives.

CCHP strongly supports the Administration’s Proposed Rule pertaining to short term, limited duration insurance (STLDI) plans and other non-Affordable Care Act compliant insurance. We believe these reforms are critical towards providing consumers with meaningful information to help them access health care and ensure they are not subject to greater than expected out-of-pocket spending when illness or injury occur. Additionally, we believe the Proposed Rule will strengthen the Affordable Care Act Marketplace so that all Americans continue to have access to affordable, comprehensive health care

insurance. We support the recommendations put forward by the Association for Community Affiliated Health Plans (ACAP), for which we are a member, and offer the following comments.

CCHP supports the Department's proposal to define "short term" as a contract term with an expiration date no more than 3-months after the original effective date and to define "limited duration" to mean that the maximum permitted duration for an STLDI plan is no longer than 4 months total, taking into account any renewals or extensions. We believe these definitions better align with the plain language of the statute and will ensure that STLDI plans are indeed used to fill temporary gaps in coverage and not lead consumers to believe they are a substitute for comprehensive coverage due to sometimes deceptive marketing practices. Additionally, we concur with the Department's assertion that defining short-term in a manner that prevents STLDI plans from having terms that are similar in length to a 12-month policy year is helpful to consumers in distinguishing between STLDI plans and comprehensive individual coverage. We also support the Proposed Rule provisions that clarify requirements of coverage provided through associations.

CCHP supports the Department's proposal to amend current notices to consumers in order to further clarify the differences between STLDI and comprehensive coverage in a concise and understandable language and the requirement to offer information on how to purchase comprehensive coverage on healthcare.gov. We believe that the notice requirements should apply to both new policies and existing STLDI policies that are sending renewal or extension notices. Additionally, we urge the Department to consider: prohibiting the sale of STLDI plans during the annual ACA open enrollment; requiring all STLDI policy terms to have an end date of December 31<sup>st</sup> of any given calendar year, regardless of the initial contract date; and prohibit both federal and state exchanges from linking to or otherwise advertising STLDIs. These updated notices and new policies will help curb misleading marketing practices and make it easier for consumers to distinguish STLDI plans from ACA-compliant comprehensive coverage.

We are concerned that without these reforms, and other changes included in ACAP's letter, STLDI plans will continue to create gaps in access to health care in Wisconsin, including to potentially life-saving care, as well as subject Wisconsin consumers to unexpected out-of-pocket costs, because despite believing their insurance was comprehensive, their claims are rejected or barely paid out. Recently, the Wisconsin Office of the Commissioner of Insurance (OCI) commissioned an outside review of the insurance market in the state to help regulators and policymakers better understand the impact of the STLDIs.<sup>1</sup> While the analysis found that STLDI plan marketing materials consistently included language which emphasized that the plans do not provide minimum essential coverage under the ACA and are a bridge to other coverage options, some materials also included messaging that "suggests STLDI plans as a substitute for comprehensive coverage."<sup>2</sup> Specifically, the report provided examples of messages that indicated that the plans are "for others who lack adequate health insurance" or for consumers seeking to "tailor health coverage to just what you need and not spend money on services you might not need."<sup>3</sup>

As expected given federal and state exemptions from consumer protections and comprehensive coverage requirements, STLDI plans offered in Wisconsin provide fewer benefits and consumer

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<sup>1</sup>Berry Dunn Health Analytics Groups, *Wisconsin Individual Health Insurance Market: Presence and Impact of Short-Term Limited Duration Plans*, May 2023

<https://oci.wi.gov/Documents/Consumers/STLDP%20Report%20Final%20May%202023.pdf>

<sup>2</sup> Ibid., 3.

<sup>3</sup> Ibid., 36.

protections. For example, the OCI sponsored analysis found that of the 18 carriers offering STLDI plans available for Milwaukee in 2018 “39% of carriers provided prescription drug coverage, 56% covered substance abuse services, and 72% provided coverage for some mental health services.”<sup>4</sup> Statewide, less than half of plans covered mental health and substance use treatment, and none covered maternity care. Additionally, some carriers reported excluding coverage for high-cost conditions, “including HIV/AIDS, heart conditions, seizure disorder, stroke, and insulin or diabetes care.”<sup>5</sup> <sup>6</sup> Especially concerning is that the report found that about one-third of STLDI claims during calendar year 2021 were denied, with non-covered benefits accounting for about 55% of STLDI denied claims.<sup>7</sup> According to the report this “far exceeded the average denial rate for in-network claims by Wisconsin’s ACA Marketplace plans which was 11.7% for 2021.”<sup>8</sup>

We urge the Department to finalize the rule as soon as possible and encourage the Department to include an expedited effective date. As you know, the resumption of Medicaid redeterminations is sending millions of consumers nationwide, many with lower or fluctuating incomes, into the health insurance market for the first time since the beginning of the COVID-19 pandemic. The proposed rule’s reforms will help limit customer confusion regarding STLDI and non-compliant ACA plans which will improve access to comprehensive low cost coverage and limit financial liability to consumers in event of a costly or unexpected health care event.

Additionally, at a time when more individuals will need access to individual health insurance as result of the Medicaid unwinding, the rule’s proposed reforms will further support a robust Marketplace for individuals to access affordable, comprehensive coverage. A hallmark of the Affordable Care Act was the creation of a single risk pool, so that the shared risk of all consumers is broad and diverse as possible to help contain cost and premium growth. Under existing regulations, non-ACA compliant plans are able to cherry pick enrollees which helps ensure a healthier-than-average risk pool. This bifurcation of risk can lead to adverse selection and worsening of the risk pool for individuals in the ACA-compliant market. While Wisconsin’s ACA Marketplace remains strong and has expanded as a result of federal measures to promote enrollment, we remain concerned that without the Proposed Rules changes there is a risk that additional expansion of STLDI plans could erode the Marketplace and undermine access to the type of comprehensive, affordable health care that Wisconsinites have come to rely on.

We appreciate your consideration of these comments and your attention to this important issue.

Sincerely,



Mark Rakowski  
President

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<sup>4</sup> Ibid., 5.

<sup>5</sup> Ibid., 28

<sup>6</sup> Note from report “answers in this survey did not clearly differentiate between those carriers that report excluding coverage for treatment based on enrollment exclusions and those carriers that exclude coverage for enrolled members who develop these conditions while enrolled.”

<sup>7</sup> Ibid., 2.

<sup>8</sup> Ibid.

Chorus Community Health Plans