

April 23, 2018

Honorable Alex Azar
Secretary
Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Mr. David Kautter
Acting Commissioner, Internal Revenue Service
Department of the Treasury
1111 Constitution Avenue, NW
Washington, DC 20224

Ms. Seema Verma
Administrator, Centers for Medicare &
Medicaid Services
Department of Health and Human Services
P.O. Box 8010
Baltimore, MD 21244-8010

Mr. Preston Rutledge
Assistant Secretary, Employee Benefits Security
Administration
Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Attention: Short-Term, Limited Duration Insurance (CMS-9924-P)

Dear Secretary Azar, Administrator Verma, Acting Commissioner Kautter and Assistant Secretary Rutledge:

As organizations dedicated to promoting the health of our nation's children and pregnant women, we appreciate the opportunity to comment on the Departments of Treasury, Labor, and Health and Human Services Proposed Rule: Short-Term, Limited Duration Insurance. We believe that commercial coverage for children must ensure access to timely, affordable, high-quality and age-appropriate health care (including dental, vision and hearing services) that meets their unique needs. Plans must also promote the health of women before, during and between pregnancies.

While we share the departments' goal of increasing access to affordable health care coverage in the commercial market, we are very concerned that the proposed rule will leave children, pregnant women and their families – particularly children with chronic, complex or serious health conditions, or developmental disabilities – with less comprehensive coverage and higher costs. The rule could result in some children losing coverage altogether. More than one million children are currently enrolled in qualified health plans, and some of those children are in families that may consider switching to Short-term Limited Duration Insurance (STLDI) plans, given their lower premium costs.

Expanding the availability of STLDI plans and allowing for reapplications could have serious negative implications for children, pregnant women, families and the overall individual market, including:

- Exposure to higher costs due to medical underwriting, annual and/or service-specific limits, possible coverage denials, and limited access to appropriate maternal and child health providers.
- Family confusion about the difference between ACA-compliant plans and STLDI plans, which could lead to the purchase of a plan that does not cover necessary pediatric services, including vision and dental, or maternity care.
- Reliance on short-term plans as primary insurance, as a result of the proposed streamlined reapplication process, which could lead to long-term gaps in coverage.
- A siphoning of healthy individuals out of the ACA-compliant individual market, creating a two-tiered insurance market that would result in greater financial burdens for the families who remain in the ACA-compliant market and need health care services.

We urge the departments to consider these implications on the health and well-being of the nation's children and pregnant women and ask that you reconsider moving forward with these policy changes. However, in the event the departments decide to finalize this proposed rule, our organizations strongly recommend the following changes to help mitigate some of these negative implications and address the unique needs of children and women who may be covered by these problematic plans.

- Strengthen the notice requirements further to ensure families are able to make informed coverage decisions.
- Guarantee coverage for reapplicants to protect against additional underwriting, if the streamlined reapplication proposal is finalized.
- Establish minimum oversight and data transparency requirements for states to monitor and review the practices of STLDI plans and issuers.

We look forward to working with you to find other – better – solutions that strike the correct balance between affordability and comprehensiveness of coverage for children, pregnant women and their families. Our specific comments are below.

Implications of Extending the Duration of a STLDI Policy

We have strong concerns about the extension of the allowable duration of STLDI plans from three to 12 months and urge the departments to reconsider moving forward with this proposal. We agree with the departments that extending the allowable duration of STLDI plans will increase consumer confusion regarding the coverage these plans offer. While we appreciate your effort to address consumer confusion in the proposed rule, we do not believe that it will prevent families from unknowingly enrolling in a short-term plan that does not provide the comprehensive services that their children need. Families that purchase short-term plans will have fewer benefits and face the risk of medical underwriting and pre-existing condition exclusions in coverage. Furthermore, expanded access to cheaper, non-comprehensive plans could draw younger, healthier individuals out of the ACA-compliant individual market. This could have serious implications for children, pregnant women and their families who need comprehensive coverage and remain in the individual market.

STLDI plan enrollees. We note, as also articulated in the proposed rule, that families who purchase these plans could be subject to pre-existing condition exclusions, annual or lifetime limits, limited benefits with no guaranteed coverage of essential health benefits (e.g., prescription drug coverage and pediatric and maternity benefits), rating restrictions based on health status, and no guaranteed renewability without medical underwriting. In addition, children may not have access to the full range of in-network pediatric providers to ensure they receive all necessary care, given the lack of network adequacy requirements for these plans. Many women may also enroll in these plans without expecting to need maternity care during the plan year and would then be left without coverage for that care if they became pregnant.

As the departments highlight in their analysis of benefits and costs of the proposed rule, the STLDI policy changes will result in, “reduced access to some services and providers for some consumers who switch from PPACA-compliant plans.”¹ Furthermore, because the STLDIs are not subject to the ACA's consumer protection requirements, children, pregnant women and their families could have their

¹ See: pg. 7442 in <https://www.gpo.gov/fdsys/pkg/FR-2018-02-21/pdf/2018-03208.pdf>

coverage rescinded at any time. This would be detrimental for a family with a child who develops a health condition during the plan period and requires services that are not covered under the plan, or a woman who becomes pregnant and needs to access maternity care. Gaps in needed services can have long-term implications for a growing child's ability to reach his or her full potential to become a contributing member of society, especially if the child is experiencing developmental delays or has ongoing health problems.

ACA-compliant market enrollees. We appreciate the departments' recognition of the impact of the proposed rule on the number of enrollees in the ACA-compliant market. However, we highlight recent analyses that show that the departments' estimate of the number of individuals who would move from the ACA-compliant market to a STLDI plan is extremely low. While the departments estimate that between 100,000 and 200,000 individuals previously enrolled in Exchange coverage would move to STLDI policies under the proposed rule², an Urban Institute analysis shows that the impact on the individual market will be significantly higher. It estimates that enrollment in the ACA-compliant market will be reduced by 43.3 percent under current law with the addition of the expanded STLDI policies.³

As the departments state in the proposed rule, the expanded availability of short-term plans will result in a "worsening of States' individual market single risk pools and potential reduced choice for some other individuals remaining in those risk pools."⁴ As also noted in the proposed rule, the high cost to insurers of covering expensive, high-need enrollees will lead to, "increased out-of-pocket costs for some consumers, possibly leading to financial hardship."⁵ Clearly, these policy changes will leave children, pregnant women and their families, who need the comprehensive coverage protections available only in the ACA-compliant individual market, with higher costs and reduced coverage options.

Recommendations

Should the departments choose to move forward with this proposed expansion of STLDI plans, we urge you to incorporate the following recommendations into the final rule to mitigate some of the significant risks to families, their children and pregnant women, and address their unique needs.

Notice requirements. We appreciate the departments' efforts to revise the notice requirements to ensure that consumers understand that short-term plans are not subject to ACA individual market consumer protection requirements and, therefore, likely will not offer the same comprehensive benefits as ACA-compliant plans (e.g., pediatric vision and dental services and maternity care). We strongly recommend that issuers be required 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. At a minimum,

² The departments' 2019 estimates account for the elimination of the individual mandate penalty.

³ Current law reflects the elimination of the individual mandate penalty and the cost-sharing reduction payments. See: https://www.urban.org/sites/default/files/publication/96781/2001727_updated_finalized.pdf

⁴ See: pg. 7442 in <https://www.gpo.gov/fdsys/pkg/FR-2018-02-21/pdf/2018-03208.pdf>

⁵ Ibid.

⁶ See: <https://www.federalregister.gov/documents/2015/06/16/2015-14559/summary-of-benefits-and-coverage-and-uniform-glossary>; and SBC Template: <https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/laws/affordable-care-act/for-employers-and-advisers/sbc-template-final.pdf>

the notice should include reference to specific ACA consumer protections that are not covered by the plan, including prohibition of pre-existing condition exclusions and coverage of essential health benefits.

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.” All required notices and related materials should be available in multiple languages. Families deserve access to the information that will equip them to compare coverage options and make the appropriate coverage decision for themselves and their children.

Reapplication at the end of policy duration. We are concerned that allowing STLDI plans to be renewed or extended (with or without the issuer’s consent) could motivate families who enroll in the plans to treat them as comprehensive coverage and/or their primary insurance coverage. This could have serious implications for children and pregnant women who will not have access to services and providers that they need. Therefore, we urge the departments not to move forward with the proposal for renewals using a streamlined reapplication process. A streamlined reapplication process would empower insurers to alter a policyholder’s coverage during reapplication, potentially with little notice or disclosure to the consumer. This may result in a denial of a new short-term policy or affect the quality or cost of coverage offered to families upon reapplication due to insurers’ ability to perform a new round of medical underwriting and exclude coverage of conditions that may have manifested during the first term of the policy.

If the departments do proceed with the development of an expedited or streamlined reapplication process, we encourage you to adopt a minimum set of federal standards to protect consumers. Specifically, issuers should be required to guarantee coverage for reapplicants with no additional health status underwriting or consideration of claims incurred during the first term of the policy. In addition, we do not support the exclusion of pre-existing conditions from coverage and do not believe STLDI plans should be able to cherry-pick healthier enrollees or refuse coverage of pre-existing conditions. The prohibition of pre-existing condition exclusions under the ACA is a fundamental consumer protection. It is especially crucial for children, pregnant women and their families, particularly for families with children who have complex, chronic or serious medical conditions or developmental disabilities.

We also strongly recommend that issuers automatically enroll infants born to a family while the parents are covered by a short-term plan and receive coverage for the duration of the policy. This is a requirement for newborns that predated the ACA.

State and federal regulation of STLDIs. We ask the departments to make state regulatory authority explicitly clear in the final rulemaking to ensure that states have the flexibility to determine parameters of plan duration, benefit coverage, provider networks, actuarial value and other key design elements. For example, states might want to adopt requirements for STLDI plans that are more restrictive than federal standards, both current and proposed in this rule. In the proposed rule’s Summary of Impacts, the departments reiterate that states may continue to apply these state law requirements that are either equivalent or go further than the federal standard proposed in the rule.

Additionally, we strongly recommend the departments include in the final rule uniform state requirements for the regular oversight of STLDI plans. In the absence of prescribed requirements, there

will be inconsistencies in state regulation and oversight, with some states limiting or eliminating the sale of STLDI plans and others exercising little or no oversight, leaving families vulnerable. At a minimum, states should be required to conduct regular rate reviews of STLDI plans, including a medical loss ratio review, develop network adequacy standards, and establish a process to address grievances and appeals for these plans.

Data collection. In addition, we urge the departments to work with states and the National Association of Insurance Commissioners (NAIC) on the collection of data that will enable regulators, as well as stakeholders, to assess whether and how children, pregnant women 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. The data transparency requirements under Section 2715A of the ACA should serve as a model for data transparency requirements for STLDI plans.

In particular, we believe the departments, in collaboration with the NAIC and states, should collect detailed disaggregated, plan-level enrollment/disenrollment data. In addition, we recommend the collection of claims data (paid and unpaid) by age and income to help assess the impact of service denials, coverage limits and other key plan design elements on children, pregnant women and their families.

In conclusion, we reiterate that we share the departments' concerns regarding the need to address affordability of coverage. However, we are very concerned that the proposed expansion of the availability of STLDI plans without basic protections for children and families does not achieve a reasonable balance between affordability and access to quality care, and does children and pregnant women – and ultimately the nation – a serious disservice. Therefore, we strongly urge the departments to reconsider this proposal and, instead, work collaboratively with us to identify delivery system reforms and other health care quality improvement initiatives to reduce health care costs, drive down premiums and improve care for children, pregnant women and their families.

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.

Thank you for the opportunity to comment on the proposed rule.

Sincerely,

American Academy of Pediatrics
Children's Defense Fund
Children's Dental Health Project
Children's Hospital Association
Family Voices
First Focus
Georgetown University Center for Children and Families
March of Dimes
National Association of Pediatric Nurse Practitioners