



September 11, 2023

The Honorable Xavier Becerra
Secretary, U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, D.C. 20201

Subject: Short-Term, Limited-Duration Insurance; Independent, Non-coordinated Excepted Benefits Coverage; Level-Funded Plan Arrangements; and Tax Treatment of Certain Accident and Health Insurance (CMS-9904-P) (RIN 1545-BQ28)

Dear Secretary Becerra,

Covered California is pleased to submit comments in support of the Treasury Department, the U.S. Departments of Labor, and Health and Human Services' (HHS) (the Departments') proposed rule aimed at defining and more clearly distinguishing Short-Term, Limited-Duration Insurance (STLDI) and fixed indemnity excepted benefits coverage from comprehensive coverage, as well respond to the request for additional feedback on the use of level-funded arrangements among small groups.

With over 1.6 million members, Covered California is the largest state-based health insurance Marketplace through which individuals and small business owners can purchase affordable, high-quality health coverage for themselves, their families, and their employees. Central to Covered California's mission are efforts to maximize and build upon the landmark health coverage reforms established by the Patient Protection and Affordable Care Act to continue to drive progress in health care not only in California, but across the nation more broadly. Given the potential health and financial risk posed to consumers, California has banned the sale of STLDI in the state and limits the sale of hospital indemnity and specified disease coverage to consumers that already have comprehensive health coverage. Covered California appreciates the Department's proposed actions to limit the availability of STLDI and fixed indemnity excepted benefits products and ensure consumers are better informed of how they differ from ACA-compliant coverage.

STLDI and Fixed Indemnity Plans

The Affordable Care Act (ACA) enacted sweeping changes to ensure that individuals cannot be turned away from coverage and that once coverage is obtained, individuals would have access to affordable, high-quality coverage. Among other key provisions, the ACA prohibited plans from denying coverage on the basis of pre-existing conditions and discriminating against consumers based on health status, price, or other factors, eliminates

annual and lifetime coverage limits, and requires plans to cover a standard set of 10 essential health benefits to ensure consumers have comprehensive coverage that will protect them when they need care.

However, because STLDI and fixed indemnity products are not considered health insurance coverage, these critical consumer protections and comprehensive coverage requirements do not apply. This means that issuers are allowed to offer non-ACA compliant STLDI products with lean benefits and low premiums to individuals, exposing them to high out-of-pocket health expenses, limits on services, and medical underwriting that increases the likelihood of individuals incurring medical debt. Enrollment in these plans too often results in devastating outcomes for consumers because of their many limitations on coverage and punitive claims practices.

While California and other states took action to prohibit the sale of STLDI products and impose additional restrictions on fixed indemnity products for these reasons, in 2018, regulations issued by the former administration instead promoted and expanded these products' availability, undercutting the ACA at the expense of consumer well-being. In a step forward in safeguarding consumers, this proposed rule seeks to reinstate many previous protections and require additional important ones, including:

- Limiting the initial contract term of STLDI products to no more than 3 months and the maximum duration, taking into account any renewals or extensions, to no longer than 4 months. This is a dramatic reduction from the current limit on the initial contract term length of less than 12 months and maximum total duration of up to 36 months, including renewals and extensions.
- Amending the required notice that issuers of STLDI and fixed indemnity products must provide to enrollees to further clarify the differences between STLDI and fixed indemnity coverage and comprehensive coverage, and to provide individuals with options to obtain comprehensive coverage.
- Requiring that the notice be in at least 14-point font and on the first page of the policy, certificate, or contract of insurance, including for renewals or extensions. The notice must also be prominently displayed in all marketing and application materials provided to individuals in connection with enrollment in STLDI and fixed indemnity products.
- Requiring fixed indemnity coverage in the individual market to pay benefits in a fixed dollar amount on a per-period basis regardless of the services or items received, actual or estimated amount of expenses incurred, the severity of the illness or injury, or any other characteristics tied to the course of treatment.

As the Departments look to make significant progress through finalization of these proposals, the ongoing utility of STLDI products should be questioned more broadly and it is imperative that states continue to have the flexibility to further regulate the sale of STLDI products or, as California has done, end their sale all together. We recognize that transitions between coverage sources are inherent to America's health care landscape, as individuals experience changes in employment, relationships, income, and age.

Marketplaces have always served as an effective option during these times; for example, individuals can enroll in coverage through the Marketplace after losing job-based coverage anytime during the year through a special enrollment period. Americans should not have to sacrifice affordable, quality coverage when the Marketplace stands ready to meet them where they are.

Level Funded Plans

The Departments also solicited comments to better understand the prevalence of level-funded arrangements among small groups, their designs, and whether additional guidance or regulation is warranted to clarify their requirements.

Consistent with other states, California has enacted state laws surrounding stop-loss insurance designed to safeguard the interests of small employers and their employees. Consistent with these state-level efforts and considering the potential impact of level funded plans on small businesses, their employees, and small group market stability more broadly, we are concerned about healthy consumers being drawn away from the small group market and into level-funded plans. This type of adverse selection will result in a worsening of the risk pool and higher premiums for the small group market in future years. Recognizing that many small businesses struggle with the rising cost of providing health benefits to their employees, it is critical to continue to balance affordability with consumer protections, while ensuring adverse selection does not result in inequitable outcomes for those that need health care the most. We believe that the federal government's involvement in collecting information about the use of level-funded arrangements among small groups is an important step towards achieving greater affordability and accessibility.

We appreciate your consideration of Covered California's comments and look forward to continuing our partnership with you to ensure that the ACA continues to work effectively and build on its foundation as we strive to ensure that all Americans have access to affordable, high-quality coverage. If you have any questions or would like more information, please feel free to contact me.

Sincerely,



Jessica Altman
Executive Director