September 11, 2023

Administrator Chiquita Brooks-LaSure
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U.S. Department of Health and Human Services
7500 Security Boulevard
Baltimore, MD 21244

Assistant Secretary Lisa Gomez
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Associate Chief Counsel Rachel Leiser Levy
Employee Benefits, Exempt Organizations,
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CC: Elizabeth Schumacher, Rebecca Miller, Jason Sandoval, Cam Clemmons, and Geraldine Doetzer

RE: Proposed Rule on 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)*

Dear Administrator Brooks-Lasure, Assistant Secretary Gomez, and Associate Chief Counsel Levy:

Thank you for allowing The Allstate Corporation ("we" or "Allstate") the opportunity to provide comments to the Centers for Medicare & Medicaid Services ("CMS"), the Employee Benefits Security Administration ("EBSA"), and the Internal Revenue Service ("IRS") on the above-referenced proposed rulemaking covering short-term, limited-duration insurance ("STLDI") and other insurance and tax related issues released on July 12, 2023.

Allstate is one of the largest providers of protection to consumers in the U.S., protecting their cars, homes, phones, personal property, lives, health, and identities with 189.1 million policies in force and $43.9 billion of premiums over the last 12 months. As part of the Allstate Corporation, National Health Insurance Company, Integon National Insurance Company, Integon Indemnity Corporation, and American Heritage Life Insurance Company, authorized to provide health insurance in all 50 states, the District of Columbia, and the territories of Puerto Rico, Guam, and the U.S. Virgin Islands, are focused on protecting individuals' health and providing supplemental and short-term coverage options to individuals, employer groups, unions, and associations.

With over 90 years of experience and knowledge, Allstate has developed a strong proficiency in providing customized insurance solutions to its policyholders. These solutions are designed to effectively address the intricate requirements of health coverage while adhering to the policy forms approved by the state Departments of Insurance.

SHORT TERM MEDICAL POLICIES

We recognize the concerns raised in the proposed rule regarding consumers' understanding of the benefits and limitations of STLDI policies and fully support additional protections around transparency and consumer awareness related to STLDI benefits and limitations. Nonetheless, we believe implementing the rule as proposed would have adverse effects on the approximately 1.5 million individuals who are covered by an STLDI policy and the estimated 500,000 people would become uninsured due to the introduction of this proposed rule.[1]

STLDI plans play a significant role in providing access to affordable health insurance options while filling gaps in coverage. Preserving consumer choice is vital as it enables individuals to make decisions based on their unique circumstances and needs. We do not believe that shortening the duration of the STLDI policy addresses the consumers' ability to distinguish STLDI from comprehensive coverage and retain necessary transitional coverage when needed.

To address these concerns, we propose an alternative approach. Our recommendation is to implement a rule that limits the maximum duration of the STLDI policy to 12 months per issuer, terminating on December 31 of each year. Alongside this change, we advocate for enhanced transparency and disclosure measures, comprehensive consumer and agent education, and granting states the autonomy to regulate appropriate STLDI durations. We believe states are ideally positioned to regulate STLDI plans because they possess a comprehensive understanding of their unique healthcare landscapes and can tailor regulations to address the specific needs of their state.

By combining these efforts, we promote transparency and improve consumer education to make informed decisions about their healthcare needs. This approach promotes consumer awareness of STLDI benefits and limitations and ensures continued access to critical coverage for those who rely on it.

I. Duration of Short-Term, Limited-Duration Insurance

STLDI plans are designed to bridge temporary coverage gaps during an individual's transition to Affordable Care Act ("ACA") or employer-sponsored coverage. Unfortunately, not all individuals' circumstances align with annual open enrollment periods, and unforeseen life events may result in coverage gaps exceeding 4 months. Not only are STLDI plans an important option for those individuals who missed open enrollment opportunities, these plans play a crucial role in providing healthcare coverage to consumers in need of temporary options, particularly those who cannot

[1] Cost Estimate, . CONGRESSIONAL BUDGET OFFICE, April 25, 2019, https://www.cbo.gov/system/files/2019-04/hr1010.pdf.

afford coverage provided under the Consolidated Omnibus Budget Reconciliation Act ("COBRA") or unsubsidized coverage under the ACA.

A significant proportion of individuals experience prolonged periods of unemployment, with up to 35 percent of individuals being unemployed for longer than 15 weeks, and 15 percent of individuals enduring unemployment for over 26 weeks.[2] Due to these prolonged unemployment periods, extending the duration of STLDI plans to a period greater than 4 months is imperative to ensure continued access to essential healthcare services for those who may be left uninsured during these long transitional periods.

II. Benefits of Longer STLDI Durations

By extending the proposed limitation on the duration of STLDI plans to December 31 each year, individuals will have the option to maintain access to necessary medical treatments, preventive care, and prescription medications without disruption. To illustrate, consider the following examples:

- Temporary Unemployment. A person who is in-between jobs and without access to employer-sponsored coverage may face a coverage gap that exceeds 4 months. An extended STLDI duration would provide them with continuous healthcare coverage during this transitional period.
- Self-Employment. A self-employed individual who is awaiting the start of a new ACA-compliant plan during open enrollment may require temporary coverage for a longer duration than the proposed rule permits.
- Multi-Jurisdiction Employment/Frequent Traveler. An individual who travels as part of their job description may have ACA coverage that does not extend to the consumer when they are out of the network. STLDI plans offer a more extensive network.
- Unemployed Recent College Graduate. Recent college graduates who are uninsured, not living at home, and have not secured employment may face additional financial challenges. This is particularly true for those who cannot rely on their parents' coverage due to out-of-network restrictions or being over the age of 26. Compounded by impending student loan repayments, these individuals could experience temporary periods of heightened financial strain. STLDI plans could present a viable solution by offering a more cost-effective healthcare option during this transitional phase.

III. Risks to Consumers

If the regulation is implemented as written, consumers who possess STLDI plans that expire outside of the open enrollment period may find themselves with no alternative. They will have no choice but to remain uninsured until the next ACA enrollment period. This lack of continuity in coverage may pose a significant risk to their health and financial well-being.

Additionally, individuals who are forced to move STLDI plans from more than one issuer to remain insured until open enrollment will be faced with multiple deductibles and out of pocket costs that

[2] Unemployed persons by duration of unemployment Table A-12, U.S. BUREAU OF LABOR STATISTICS, July 7, 2023, https://www.bls.gov/news.release/empsit.t12.htm.

reset with each plan. Allowing a duration longer than 4 months but terminating on December 31 of each year would enable consumers the ability to maintain 1 deductible for the calendar year.

IV. Consumer challenges in differentiating STLDI from individual health insurance coverage and risks to individuals who enroll in STLDI.

Allstate fully supports additional protections around transparency and consumer awareness related to STLDI benefits and limitations. Deceptive or aggressive marketing and lack of consumer understanding regarding the purpose of STLDI as an alternative to comprehensive coverage harms the consumer and the entire industry. For this reason, we support the proposed amendments to current disclosure requirements and adding them to marketing material and websites in addition to including them in the application and policy documents.

We also recommend the development of enhanced state-based agent training programs that encompass a comprehensive certification process specifically designed for agents who sell STLDI. This certification process aims to guarantee that agents possess a thorough understanding of the advantages and limitations of STLDI.

V. Affordability and Consumer Choice

Allstate applauds the significant improvements to the access of affordable comprehensive coverage; however, consumers still experience concerns of affordability, specifically related, to Marketplace coverage. The primary driver for 70% of the uninsured is lack of access to affordable health care. Even after Medicaid expansions and federal policies designed to stabilize coverage during COVID-19, 27.5 million nonelderly individuals remain uninsured.[3] Additionally, it is anticipated the current Medicaid redeterminations will significantly increase this number in the coming months.[4]

Striking a balance between the expenses associated with an ACA plan and the individual's ongoing financial commitments can pose considerable challenges. The prevailing rate of inflation has notable implications for the individual's available income. Additionally, the resumption of student loan payments scheduled for October 1, 2023, is likely to place a significant strain on many consumers, potentially rendering them financially unable to afford unsubsidized or partially unsubsidized ACA health insurance options.

STLDI plans serve as a more affordable coverage option for consumers experiencing a temporary period of financial stress, particularly those who do not qualify for ACA subsidies and face the rising ACA plan costs.

VI. Impact on Consumer Choice and Access to Healthcare Providers

Extending the proposed duration of STLDI plans also preserves consumers' freedom of choice regarding their healthcare providers. In certain service areas, STLDI plans will offer a broader

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[3] Key Facts about the Uninsured Population, KFF.org, December 19,2022, https://www.kff.org/uninsured/issue-brief/key-facts-about-the-uninsured-population/#:~:text=As%20a%20result%2C%20after%20increasing%20for%20three%20straight,from%2010.9%25%20in%202019%20to%2010.2%25%20in%202021.

[4] Id

provider network than the consumer will find with an ACA plan. "Studies find nearly 8 in 10 qualified health plans ("QHPs") are health maintenance organizations (HMO) or exclusive provider organizations (EPO); both types of plans have closed networks, meaning nonemergency care from out-of-network providers generally is not covered. And many QHP provider networks are narrow."[5] In these situations, a STLDI plan would allow individuals to see their preferred doctors and specialists during transitional periods. Limiting the duration of STLDI plans may inadvertently lead to reduced access to healthcare providers, therefore limiting the healthcare options available to consumers.

VII. Consideration of Past Rule Changes and Enrollment Trends

It is crucial to learn from past experiences when considering changes to STLDI regulations. Notably, reducing the maximum duration to 3 months in October 2016 and then reverting to 12 months in August 2018 led to a decline in ACA enrollment between 2016 and 2018.[6] Such trends indicate that abrupt changes to STLDI duration may have unintended consequences on overall healthcare coverage and consumer choices.

VIII. Collaboration of Stakeholders

To create effective healthcare policies and regulations that benefit the American people, collaboration with various stakeholders is essential. We encourage the Departments to consider all feedback from healthcare providers, insurers, consumer advocacy groups, National Association of Insurance Commissioners ("NAIC"), and state agencies focused on insurance when finalizing the proposed ruling.

IX. State Regulation of STDLI

We believe that it would be highly beneficial for the States to continue to regulate STLDI plans. States are uniquely positioned to carefully craft regulations that thoughtfully consider the diverse healthcare landscape within their states. Empowered to help consumers distinguish STLDI from comprehensive medical coverage and protect consumers from other misinformation and confusion, States are equipped to balance access to affordable health insurance options with defining benefits and durations that aligns with the preferences and needs of their constituents.

X. Alternative Solutions

If the Departments are not willing to allow the states to regulate the STLDI, we would suggest that instead of strictly limiting STLDI duration, alternative solutions are explored, such as:

- STLDI Duration. Allow STLDI plans to have a maximum duration of 12 months per issuer, terminating on December 31 of each year allowing the consumer to have the necessary coverage as they make the decision to transition to ACA or employer-based coverage.

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[5] Network Adequacy Standards and Enforcement, KFF. February 4, 2022, https://www.kff.org/health-reform/issue-brief/network-adequacy-standards-and-enforcement/.
[6] Marketplace Enrollment, 2014-2023,KFF, https://www.kff.org/health-reform/state-indicator/marketplace-enrollment/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D.

- Annual Notification. Notify STLDI enrollees on an annual basis about the Individual ACA open enrollment.
- Agent Training Mandates. Ensure insurance agents are well-informed about STLDI plans and can provide accurate information and disclosures to consumers.
- Disclosure Mandates. Require clear and comprehensive disclosures, pre- and post-sale, regarding the limitations associated with STLDI plans to enhance consumer understanding.
- Consumer Attestation. Require affirmative acknowledgment from the consumer that confirms they fully and completely understand the limitations of a STLDI plan and accept those risks.

FIXED INDEMNITY EXCEPTED BENEFITS COVERAGE

Allstate firmly aligns with and fully supports the positions advocated by the American Council of Life Insurers ("ACLI") and American Health Insurance Plans ("AHIP") regarding the Proposed Rule on Supplemental Benefits. These supplemental products provide financial support when individuals are injured or ill and Allstate strongly believes in the value of these products to those who need them.

Allstate agrees that the proposed rule exerts a significant impact over these specific policy forms and their role within the market. Fixed benefit plans have long been major components of insurance coverages offering valuable solutions to address diverse healthcare needs and financial considerations.

Allstate has identified the following summary of issues with the currently proposed language of the rule.

- The potential ramifications of constraining benefits within a per-day payment structure, could potentially erode the overall protection that policyholders receive. Such an approach neglects to encompass additional coverage for vital medical services, including doctor visits, ambulance services, and other per-service benefits. Each of these individual benefits stands as a crucial form of asset protection for policyholders, aiding them in offsetting costs incurred during necessary medical procedures.
- The proposed rule curtails or eliminates the ability to adjust benefit amounts based on the severity of the disease or treatment. Such customization aligns coverage with the actual financial risk associated with diverse medical treatments, thereby enriching the value and relevance of the benefits provided.
- Allstate strongly advocates for enhanced transparency and disclosure measures but believes that the proposed language in the rule needs to be revised to make it function as a more transparent disclosure that is applicable and meaningful within both the group and individual context. The disclosure should provide enhanced transparency without creating an unwarranted barrier for individuals or groups wanting to access these coverages.
- The proposed rule mandates the alignment of all fixed indemnity plans with the new proposed benefit structure by no later than January 1, 2027. Our existing policyholders are issued insurance contracts that guarantee renewability. The sole avenue for contract termination rests upon non-payment of premiums by the policyholder. This facet of the

proposed rule potentially exposes issuing carriers to legal proceedings on grounds of contractual breach, some contracts that extend as far back as 10+ years.

- The proposed change in the tax treatment of fixed indemnity benefits will likely have a significant impact on the individual policyholder, as well as the employer in the group market. Benefits paid out from fixed indemnity excepted benefit plans are designed to supplement health insurance and should be governed by the same pre-tax rules as health products. While the premium is fractional compared to major medical, the pre-tax status has been enough to encourage employers and employees to access these products to help reduce out-of-pocket exposure risk for unexpected events.

CONCLUSION

We believe the proposed rule on STLDI duration necessitates a delicate balance between safeguarding consumer interests and ensuring access to high-quality healthcare coverage during periods of transition. Our response underscores the importance of extending STLDI plan durations beyond 4 months, accompanied by enhanced transparency, rigorous disclosure measures, and heightened consumer and agent education. Furthermore, granting states the authority to tailor regulations to their unique healthcare landscapes is a vital step towards fostering a healthcare system that is sensitive to individual requirements. By embracing these recommendations, we remain committed to advancing a healthcare system that protects informed consumer choices.

We fully endorse the positions put forth by ACLI and AHIP in relation to the Proposed Rule on Supplemental Benefits. We strongly urge the agencies to carefully consider the viewpoints expressed by these coalitions. Their extensive research and expertise make their positions representative of the entire industry, warranting significant attention.

We appreciate the Agencies' work on these important issues and extend our gratitude for their time and consideration. We look forward to continuing dialogue and welcome the opportunity for further discussions. If you have any questions or comments please contact Jordan Canter, Allstate's Head of Federal Affairs at jordan.canter@allstate.com.

Sincerely,

David Essary
President, Allstate Benefits, Allstate Health Solutions and Allstate Digital Life