AMA AMERICAN MEDICAL ASSOCIATION

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September 11, 2023

The Honorable Janet Yellen
Secretary
U.S. Department of Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable Julie A. Su
Acting Secretary
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

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

Re: Short-Term, Limited-Duration Insurance; Independent, Noncoordinated Excepted Benefits Coverage; Level-Funded Plan Arrangements; and Tax Treatment of Certain Accident and Health Insurance (Proposed Rule, RIN 0938-AU67)

Dear Secretary Yellen, Acting Secretary Su, and Secretary Becerra:

On behalf of the physician and medical student members of the American Medical Association (AMA), I appreciate the opportunity to provide comments in response to the above-referenced proposed rule on short-term limited duration insurance (STLDI) issued jointly by the Internal Revenue Service, Department of the Treasury; Employee Benefits Security Administration, Department of Labor; and the U.S. Department of Health and Human Services (HHS) (the "Departments"). The AMA commends the Departments for issuing this proposal, which would effectively reverse a 2018 tri-agency rule that was intended to expand the marketing and sale of STLDI to consumers and also would tighten regulation of "hospital and fixed indemnity" insurance. These insurance products are largely exempt from many state-level and federal consumer protections and due to deceptive marketing, many consumers do not understand that such products do not provide comprehensive coverage. The AMA supports limiting short-term plans to a three-month term limit and ensuring that excepted benefits do not mimic comprehensive coverage.

<u>Changes to Short-Term, Limited Duration Insurance</u>

The Departments are proposing to change the definition of STLDI to help consumers be better able to distinguish between short-term policies and comprehensive, ACA-compliant plans. The proposal also is focused on protecting the individual market risk pool from adverse selection and keeping premiums stable. The AMA strongly supports these goals. Historically, STLDI has served as a short-term bridge when consumers experience a brief gap in coverage, such as between employer-sponsored plans or when a college student must disenroll from their student health plan over the summer months. The proposed rule would revise the federal definition of STLDI adopted under the 2018 rule to limit the length of the initial contract term for new policies to no more than three months and the maximum coverage period to no longer than four months, given any renewals or extensions. In contrast, under the 2018 rule, STLDI was expanded from less than three months to as long as 364 days, considering extensions or renewals. Thus, the proposed rule would reinterpret the phrase "short-term" to how it was defined prior to the 2018 rule.

The AMA opposed the changes made in the 2018 rule as we were concerned that they would undercut crucial state and federal patient protections, create consumer confusion about what the policies covered, disrupt and destabilize the individual health insurance markets, and result in substandard, inadequate health insurance coverage. The 2018 rule essentially sets up a scenario in which STLDI policies, which may be less expensive but also provide fewer benefits, are sold in competition with ACA-compliant plans. Unlike marketplace plans, STLDI plans do not have to comply with the market reforms and consumer protections of the ACA. Rather, STLDI plans can deny coverage or charge higher premiums based on health status; exclude coverage for pre-existing conditions; impose annual or lifetime limits; have higher out-of-pocket limits than the ACA maximums; exclude coverage of Essential Health Benefit categories, such as prescription drugs, maternity benefits, and mental health and substance use disorders; rescind coverage; and not comply with medical loss ratio requirements.

Past arguments that STLDI is inexpensive and thus a necessary option for many consumers are even less relevant than they were when the 2018 rule was released. This is because comprehensive ACA coverage has been made significantly more affordable through policy changes to address gaps in subsidies (e.g., fixing of the family glitch) and expand premium tax credits, most recently under the Inflation Reduction Act. Additionally, states have used waivers to expand subsidized ACA coverage options to new, previously ineligible, populations (e.g., Washington State) and special enrollment periods are more frequent per state and federal regulators. Moreover, an additional 12 states have expanded Medicaid, providing an affordable option for comprehensive coverage to millions more low-income individuals and families. With such expanded access to comprehensive and affordable coverage, STLDI is not a needed option.

By design, STLDI is not meant to serve as comprehensive coverage and these policies can pose risks to consumers, especially when offered as an alternative to comprehensive coverage, which studies have documented. Additional studies, including by the Government Accountability Office, have demonstrated that STLDI is often marketed and sold to consumers in a misleading and deceptive manner, with consumers frequently mistaking STLDI for comprehensive marketplace insurance. As a result, people purchasing these plans are often unaware of the risks or the availability of more comprehensive options and, therefore, are unable to make an informed choice about what plan to purchase. A recent secret shopper study released last month by Georgetown University's Center on Health Insurance Reforms found aggressive and misleading marketing of limited benefit products, including STLDI, that exclude coverage of important services and expose enrollees to significant financial liability. This is particularly concerning given the post-COVID Medicaid redeterminations by states, with millions of people projected to lose Medicaid and searching for new coverage. Historically marginalized and underserved communities of color could be most at risk of ending up with increased financial costs due to purchasing policies that do not provide comprehensive coverage. For all of these reasons, the AMA strongly supports the proposed rule's revision of the definition and duration of STLDI.

The AMA also supports the Departments' proposed redefinition of STLDI to prohibit the same issuer from issuing multiple STLDI policies to the same policyholder within a 12-month period. Known as "stacking," this practice takes advantage of a loophole to provide separate, sequential STLDI policies that collectively evade duration limits. The proposal would allow an individual to enroll in consecutive STLDI contracts that in total exceed four months in duration only if the contracts effective within a 12-month period were sold by different issuers, and if consistent with applicable state law.

Fixed Indemnity Excepted Benefits Coverage

For similar reasons as noted above, the AMA also supports the proposed changes to hospital and fixed indemnity policies, which are intended to reduce the risk that consumers will be misled or confused into buying such products as a substitute for comprehensive health insurance. The purpose of fixed indemnity excepted benefits coverage is to provide income replacement in specific, covered instances, such as hospitalization, not health insurance. Since this coverage provides limited benefits compared to comprehensive insurance, premiums for these plans are typically lower. Similar to STLDI, studies have found aggressive and misleading marketing and sales tactics for these products. As noted by the Departments in the preamble, companies are designing and packaging these policies so that they appear similar to comprehensive health insurance, but without the consumer protections of such coverage, thus putting consumers at risk for increased medical expenses. According to 2021 data from the National Association of Insurance Commissioners (NAIC), such consumers can be left with tens of thousands of dollars in unpaid medical bills. The AMA believes that the proposed payment standards and amendments to consumer notices for fixed indemnity excepted benefits coverage would help consumers be better able to differentiate such coverage from comprehensive coverage and ensure that they can make more informed coverage purchasing decisions.

Thank you for considering the AMA's comments. Should you have any questions, please contact Margaret Garikes, Vice President of Federal Affairs, at margaret.garikes@ama-assn.org or 202-789-7409.

Sincerely,

James L. Madara, MD