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Christopher D. Palmieri, Chair | Margaret A. Murray, Chief Executive Officer

March 21, 2023

The Honorable Xavier Becerra  
Secretary  
Department of Health & Human Services  
200 Independence Ave SW  
Washington, DC 20201

The Honorable Julie Su  
Acting Secretary  
Department of Labor  
200 Constitution Ave NW  
Washington, DC 20210

The Honorable Janet Yellen  
Secretary  
Department of the Treasury  
1500 Pennsylvania Ave NW  
Washington, DC 20220

RE: New Rulemaking on Short-Term, Limited Duration Insurance

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

Over the next year, millions of consumers are expected to lose their Medicaid and CHIP coverage beginning in April as states begin Medicaid redeterminations for the first time since the onset of the pandemic. They will be forced to begin the search for new health insurance by looking online or reaching out to brokers. While the goal is to connect these people with affordable coverage through the Affordable Care Act (ACA) Marketplaces, many will be at high risk of remaining uninsured or being lured into low-cost products that won't protect them.

ACAP is an association of 79 not-for-profit and community-based Safety Net Health Plans (SNHPs). Our member plans provide coverage to more than 20 million individuals enrolled in Medicaid, the Children's Health Insurance Program (CHIP) and Medicare Special Needs Plans for dually-eligible individuals, including approximately 900,000 Marketplace enrollees. Nationally, Safety Net Health Plans serve almost half of all Medicaid managed care enrollees. 25 of ACAP's Safety Net Health Plan members and partner plans offer Qualified Health Plans (QHPs) in the Marketplaces. Accordingly, we write to you about an issue affecting our member plans and the consumers they serve, particularly those who may lose Medicaid coverage in the coming year.

As you know, short-term, limited duration insurance (STLDI) plans have been on the docket for review since President Biden's Executive Order on January 28, 2021. ACAP urges the Administration to act now to issue new rulemaking limiting STLDI plans in advance of the upcoming Medicaid and CHIP redeterminations, slated to begin next month. STLDI plans are rife with misleading marketing materials and provide limited policy information available prior to purchase. Even the most educated consumers often don't realize the limitations of



short-term plans and consumers with low health literacy who are losing their Medicaid or CHIP coverage are especially at risk. While some may postulate that uptake of such plans may be low because of the subsidies available for low-income consumers, the promise of low premiums and often deceptive marketing practices of such coverage places consumers with low health literacy at particular risk.

As you know, STLDI plans are currently exempt from ACA- consumer protections such as the requirement to cover pre-existing conditions; the prohibition on coverage rescissions; coverage of essential health benefits such as prescription drug coverage, behavioral health services, substance use disorder coverage, and maternity coverage; prohibitions on underwriting; and no annual or lifetime limits on coverage. These plans are also exempt from medical loss ratio requirements, providing a profit motive to limit benefits and deny coverage. Further, such plans often mislead consumers into believing they are purchasing ACA-compliant plans; often their marketing representatives and brokers provide verbal assurances of coverage in case of accident or illness.

Historically, STLDI plans were intended to serve as a stopgap for consumers whose employer-sponsored insurance required a waiting period.<sup>1</sup> With the passage of the ACA, this use became moot, as employer-sponsored waiting periods are now limited and consumers can now access subsidized comprehensive coverage in the Marketplace as stopgap protection.

With millions of consumers slated to begin losing Medicaid in the coming months, it is past time that this Administration issue a new rule limiting STLDI plans to their intended purpose: short in term and limited in duration. We urge you to act to protect consumers from being duped into buying policies that won't cover their health needs if they become sick or injured by moving quickly to implement a new rule limiting STLDIs and improving regulation of non-ACA-compliant coverage.

We urge you to consider implementing the following provisions as part of any new rule:

- **Limit STLDI plan terms.** Following both the letter and spirit of the ACA, we urge CMS to limit STLDI plans to no longer than 3 months and prohibit renewability, consistent with the 2016 rule issued under President Obama. STLDI plans initially served as a form of gap-filler coverage, intended to serve as a stopgap for consumers whose employer-sponsored insurance (ESI) posed a waiting period. With the passage of the ACA, this use became moot, as ESI waiting periods were limited and consumers could access subsidized comprehensive coverage on the Exchanges through open enrollment or special enrollment periods. With ESI waiting periods limited to 90 days by the ACA, any such need for an STLDI plan should also be limited to 90 days.

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<sup>1</sup> U.S. House of Representatives, Conference Report: Health Insurance Portability and Accountability Act of 1996: <https://www.govinfo.gov/content/pkg/CRPT-104hrpt736/pdf/CRPT-104hrpt736.pdf>



- **Improve consumer disclosures.** Require that all non-ACA-compliant plans disclose specifically *how* they do not comply with the ACA so that consumers are aware of exactly what they are purchasing. Currently, STLDI plans, for example, must only disclose that they *may* not comply with all aspects of the ACA, but such limited information does not elucidate what the key differences are.
- **Require coverage terms end on December 31<sup>st</sup>.** We urge CMS to require all STLDI coverage terms to end by December 31<sup>st</sup> of any given calendar year, so that benefit years better align consumers coverage options with open enrollment. One of the biggest arguments in support of STLDI and other non-compliant plans is that they can be purchased at any time of year, rather than just during open enrollment. Unfortunately, consumers that do so ultimately get stuck in a cycle in which their coverage term again ends outside of open enrollment, with their only option at that point to purchase another non-compliant plan. If the benefit term must end at the end of the calendar year, consumers with low health literacy are less likely to purchase an ACA-compliant plan during open enrollment.
- **Prohibit the sale of non-ACA compliant plans during open enrollment.** Many consumers end up in non-compliant plans after doing an internet search for “ACA insurance,” only to be duped into a non-compliant plan that they think is an ACA plan—either through deceptive marketing and ad searches or from direct outreach from brokers who may receive higher commissions for non-compliant plans. Prohibiting the sale of STLDIs and other non-compliant plans during open enrollment will prevent consumers from accidentally purchasing such coverage when they are trying to buy ACA coverage, while at the same time limiting the detrimental impact on the risk pool of products being marketed as “alternatives” to ACA coverage.
- **Limit other non-ACA compliant “junk” insurance.** While STLDI plans are some of the most talked about forms of non-compliant coverage, consumers are more and more falling prey to other similar products, such as fixed indemnity or limited medical and Health Care Sharing Ministries. We urge CMS to consider what other types of non-compliant “insurance” are proliferating that put consumers at risk and draw them away from the individual market risk pool, thereby increasing premiums for ACA-compliant plans.
- **Improve data collection.** Finally, we urge CMS to improve data collection requirements for STLDI and other non-compliant plans. Unfortunately, no one has a complete understanding of how much such products are being sold, with limited NAIC reporting requirements and no CMS reporting requirements. We urge CMS to institute data collection and reporting requirements for all non-compliant coverage. For example, STLDI meets the definition of both health insurance and creditable coverage under HIPAA and we urge CMS to use its authority to require improved data collection and reporting.



Thank you for your consideration of these important issues; please reach out with any questions to Heather Foster at [hfooster@communityplans.net](mailto:hfooster@communityplans.net) or at 202-204-7510.

Sincerely,

/s/

Margaret A. Murray

CEO, ACAP