FAMILIESUSA
THE VOICE FOR HEALTH CARE CONSUMERS

September 11, 2023

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare and Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

The Honorable Lisa Gomez
Assistant Secretary
Employee Benefits Security Administration
200 Constitution Ave. NW
Washington, DC 20210

The Honorable Danny Werfel
Commissioner
Internal Revenue Service
1111 Constitution Ave. NW
Washington, DC 20224

Submitted via Regulations.gov

Re: CMS-9904-P

Dear Administrator Brooks-LaSure, Assistant Secretary Gomez, and Commissioner Werfel:

Families USA is a leading national, non-partisan voice for health care consumers, dedicated to achieving high-quality, affordable health care and improved health for all. Families USA strongly supports the proposed rules, identified below, that restrict the sale of short-term limited duration insurance (STLDI) to three months and require fixed indemnity insurance to be treated as an excepted benefit. Families USA also recommends revising the notice provisions for both STLDI and fixed indemnity insurance to utilize stronger language to better protect consumers. Families USA greatly appreciates the opportunity to comment on these important proposed rules that will protect consumers.

Short Term Limited Duration Insurance (26 CFR 54.9801-2, 29 CFR 2590.701-2, and 45 CFR 144.103)

Short-term, limited duration insurance does not generally cover all essential health benefits or pre-existing conditions, and often omit coverage for vital needs related to pregnancy, mental health, or prescription drugs, among others. Accordingly, regulation of these plans is needed to protect unwary consumers and ensure a well-functioning ACA plan Marketplace.

Families USA supports limiting the duration of the coverage period for STLDI.

Families USA strongly supports the proposal to limit the coverage period for STLDI to three months, with the option to renew for one more month, with no more than four months of total coverage.

STLDI often leads to people suffering terrible financial consequences and inadequate access to care. For example, the U.S. House Committee on Energy and Commerce report cites cases in which consumers in STLDI plans were billed $280,000 and $190,000 respectively for allegedly failing to disclose pre-existing conditions, and their coverage was then rescinded; it also cites a case in which a heart attack victim was left with $900,000 in medical bills after his STLDI insurer refused to cover bypass surgery.[i] Families USA's

research shows that short term plans regularly exclude preexisting conditions, prescription drugs, coverage of behavioral health services, and injuries arising from self-harm, even though these are among the nation's urgent health needs.[ii] Kaiser Family Foundation found that in 2018, STLDI commonly had out-of-pocket maximums as high as $30,000, coverage caps that ranged from $250,000 to $2 million, and significant benefit gaps.[iii]

Despite offering inadequate health insurance coverage, STLDI plans can be highly profitable. As noted at 88 FR 44641, 2021 data that shows a loss ratio of 70 percent for STLDI in 2021 – that is, only 70 percent of premium dollars in STLDI plans were spent on medical care – the rest went to profit and administrative expenses. In contrast, in comprehensive coverage, at least 80 to 85 percent of premium dollars must be spent on medical care and quality improvement.[iv] Profit margins in STLDI plans were even higher and spending on medical care was even less in 2017, when the average medical loss ratio for STLDI plans was 65%, with three of the largest STLDI insurers offering STLDI plans recording medical loss ratios of 44%, 34% and 52%.[v]

The proposed limiting of coverage period for STLDI is critical to end these consumer abuses. It will protect consumers from purchasing STLDI mistakenly believing they offer the financial protection and access to health care services of traditional health insurance. In addition, ensuring consumers access high quality health insurance that provides real financial protections will improve the risk pool for all consumers in traditional insurance from Employer Sponsored Insurance to ACA plans, bringing insurance premium costs down for these consumers.[vi] The proposed STLDI limitations also will encourage people to buy comprehensive plans during open enrollment periods, and help to prevent agents, brokers, and insurers from taking advantage of consumers through inappropriate sales of STLDI.

It is important to note that, some states have gone further than these proposed regulations: 12 states disallow health status underwriting for STLDI policies, which effectively bans the sale of these types of plans.[vii] Many of these states provide other mechanisms for people to avoid gaps in comprehensive coverage – such as providing generous open enrollment and special enrollment periods, or serving people who are ineligible for the marketplace through other state programs.[viii] In future federal regulations, CMS should adopt successful state strategies to reduce gaps in comprehensive coverage. To assure that people who must special enroll in the marketplace mid-year receive benefits that are valuable to them, CMS should also consider offering a part-year plan through the marketplace with a lower deductible and out-of-pocket maximum.

Consumer notices

Families USA supports revising the notice to consumers related to short-term limited duration insurance. However, Families USA requests that the alternative version of the notice found at 88 FR 44617 be required. This version provides better clarity to the reader about the nature of the insurance product by using the term "WARNING" instead of "IMPORTANT," and including a table that describes the differences between STLDI and comprehensive health insurance available at the Marketplace.

Additionally, the notices should be required to be provided in the 5 most common languages other than English spoken in homes in the United States. Census data indicates that 1 in 5 Americans speak a language other than English in the home.[ix] Nearly 50 million Americans speak one of the 5 most common languages other than English spoken in the home. These languages are Spanish, Chinese, Tagalog, Vietnamese, and Arabic, and each language is spoken by over 1 million people in the U.S.

Moreover, at least 30 percent of the Americans who speak these languages in the home speak English at a level of "less than very well," and at least 50 percent of Americans speaking Chinese and Vietnamese in the home speak English at a level of "less than very well." Accordingly, translating the notices for these consumers is particularly important to avoid confusion and prevent predatory practices.

Fixed Indemnity Plans as Excepted Benefits (45 CFR 146.145 and 148.220; 29 CFR 2590.732 and 2590.736; 26 CFR 54.9831.1)

Fixed indemnity insurance policies pay people cash in the event of a particular health event, such as a hospitalization or illness. The policies may help compensate people to offset some lost income, but they are not designed to provide comprehensive health coverage. This means consumer protections are also needed for fixed indemnity insurance to avoid confusion among consumers and predatory practices by the insurance industry.

Families USA supports the proposed restrictions on fixed indemnity plans.

Families USA supports the proposed rule that requires fixed indemnity plans to only provide income replacement in order to remain classified as an excepted benefit that is not subject to various federal protections that apply to comprehensive health coverage. Families USA agrees that allowing indemnity plans to pay for some items on a per service basis blurs the distinction between fixed indemnity plans and health insurance, and should not be allowed. Plans that provide coverage for particular health services should be subject to federal rules regarding preexisting conditions, benefit requirements, and transparency of coverage, among others.

People generally have no idea what health services are likely to cost them.[x] Though transparency rules are beginning to make some health care pricing data available, pricing of many services is not yet publicly available. Indemnity plans that advertise that they will pay, for example, $25 for a doctor visit, $100 for a diagnostic exam, and $300 for neonatal intensive care, do not give people any idea of their exposure to further costs.[xi] A quick look at one hospital's pricing schedule for NICU service, Level 4, shows that a consumer with such fixed indemnity coverage alone could still face $8,500 daily for NICU services, for example.[xii] The Summary of Benefits and Coverage for another group indemnity plan is particularly confusing: it states, for example, that for the common medical event of a visit to a provider's office or a diagnostic test, what you will pay is "no charge" – but a careful reader will see that the column heading indicates this is so only if the provider charges at or below the Benefit Amount.[xiii] This is misleading marketing: the plan has no listed network of providers that accept its benefit amount, so new enrollees will likely be surprised when they face charges for tests and office visits.

Moreover, Families USA agrees that group plans that offer benefits for health care services must be subject to federal protections that allow enrollment without discrimination, cover mother and newborn hospital stays, adhere to parity requirements, and adhere to claims and appeals rules. Plans in the individual and small group markets that offer benefits for health services must additionally be subject to ACA protections regarding essential health benefits.

Currently, fixed indemnity policies – including those that cover services - commonly exclude payments for a number of health events that would not be allowable exclusions in comprehensive policies (e.g., suicide attempts, self-inflicted injuries, overweight).[xiv] Such exclusions should not be permitted in any

plan that is covering health services. These plans must not be allowed undermine risk pools for comprehensive coverage, nor leave unsuspecting consumers without important health benefits.

Evidence shows that despite these significant gaps in protections, consumers confuse fixed indemnity policies with health insurance.[xv]

Consumer notices

Families USA supports revising the notice to consumers related to fixed indemnity insurance. However, Families USA requests that the alternative version of the notice found at 88 FR 44628 be required. This version provides clarity to the reader about the nature of the insurance product by using the term "WARNING" instead of "IMPORTANT."

Families USA also recommends that the notices for fixed indemnity insurance should be required to be provided in the 5 most common languages other than English spoken in homes in the United States. Again, these languages are Spanish, Chinese, Tagalog, Vietnamese, and Arabic, and each language is spoken by over 1 million people in the U.S.[xvi] As noted above, there are more than 50 million people combined in the U.S. who speak these languages in their household. At least 30 percent of the Americans who speak these languages in the home speak English at a level of "less than very well," and at least 50 percent of Americans speaking Chinese and Vietnamese in the home speak English at a level of "less than very well." These recommendations will help more consumers avoid confusion and prevent predatory practices.

Families USA commends the commitment of CMS, the Employee Benefits Security Administration, and the Internal Revenue Service, and we appreciate the opportunity to provide comments to these important proposed rules. Thank you for your consideration. If there are any further questions, please contact Cheryl Fish-Parcham, cparcham@familiesusa.org.

Sincerely,

Frederick Isasi, JD, MPH
Executive Director
Families USA

[i] US House of Representatives Committee on Energy and Commerce report, "Shortchanged: How the Trump Administration's Expansion of Junk Short-Term Plans is Putting Americans at Risk," June 2020, pp. 9 and 15, https://democrats-energycommerce.house.gov/newsroom/press-releases/ec-investigation-finds-millions-of-americans-enrolled-in-junk-health.

[ii] Families USA, Mental Health America, National Alliance on Mental Illness, and National Council for Behavioral Health, "Short-Term Plans Do Not Cover Life-Saving Mental Health and Substance Use Treatment," June 19, 2018, https://familiesusa.org/resources/short-term-plans-do-not-cover-life-saving-mental-health-and-substance-use-treatment/

[iii] Karen Pollitz, et al, "Understanding Short-Term Limited Duration Insurance," Kaiser Family Foundation, April 2018, https://www.kff.org/health-reform/issue-brief/understanding-short-term-limited-duration-health-insurance/.
[iv] 42 USC §300gg-18.
[v] Katie Keith, "The Short-Term, Limited-Duration Coverage Final Rule: The Background, the Context, And What Could Come Next," Health Affairs, August 1, 2018, citing NAIC data, https://www.healthaffairs.org/content/forefront/short-term-limited-duration-coverage-final-rule-background-content-and-could-come-next.
[vi] US House of Representatives Committee on Energy and Commerce report, "Shortchanged: How the Trump Administration's Expansion of Junk Short-Term Plans is Putting Americans at Risk," June 2020, https://democrats-energycommerce.house.gov/newsroom/press-releases/ec-investigation-finds-millions-of-americans-enrolled-in-junk-health.
[vii] NAIC, "Short-Term Limited Duration Health Plans," Last updated February 1, 2023, https://content.naic.org/cipr-topics/short-term-limited-duration-health-plans
[viii] For example, New Mexico retains a Medical Insurance Pool.
[ix] Sandy Dietrich and Aaron Hernandez, "What Languages Do We Speak in the United States," U.S. Census Bureau, December 6, 2022, https://www.census.gov/library/stories/2022/12/languages-we-speak-in-united-states.html.
[x] Rebecca Silliman, and Chloe Rinehart, *Still Searching: How People Use Health Care Price Information in the United States, New York State, Florida, Texas and New Hampshire* (Public Agenda, Apr. 2017)
[xi] Aflac Group Hospital Indemnity Insurance Mid-Plan brochure, exp 10/23.
[xii] Nationwide Children's Hospital Price Information, https://www.nationwidechildrens.org/your-visit/billing-and-insurance/pay-my-bill/price-information-list, accessed August 9, 2023.
[xiii] Sidecar Summary of Benefits and Coverage PY 2023, Large Group, https://sidecarhealth.com/wp-content/uploads/2023/04/Summary-of-Benefits-and-Coverage-PY2023-OH-Large-group_0_3000_rx.pdf.
[xiv] Aflac brochure, op cit;
[xv] Philadelphia Inquirer, "Pa women was convinced she bought Obamacare," May 22, 2019.
[xvi] Sandy Dietrich and Aaron Hernandez, "What Languages Do We Speak in the United States," U.S. Census Bureau, December 6, 2022, https://www.census.gov/library/stories/2022/12/languages-we-speak-in-united-states.html.