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September 11, 2023

The Honorable Janet Yellen
Secretary
U.S. Department of the Treasury

The Honorable Julie Su
Acting Secretary
U.S. Department of Labor

The Honorable Xavier Becerra
Secretary
U.S. Department of Health and Human Services

Re: Short-Term, Limited-Duration Insurance; Independent, Noncoordinated Excepted Benefits Coverage; Level-Funded Plan Arrangements; and Tax Treatment of Certain Accident and Health Insurance - CMS–9904–P

Dear Secretary Yellen, Acting Secretary Su and Secretary Becerra:

The American Kidney Fund appreciates the opportunity to provide comments on the Departments' proposed rule referenced above.

The American Kidney Fund (AKF) fights kidney disease on all fronts as the nation's leading kidney nonprofit. AKF works on behalf of the 37 million Americans living with kidney disease, and the millions more at risk, with an unmatched scope of programs that support people wherever they are in their fight against kidney disease—from prevention through transplant. Through programs of prevention, early detection, financial support, disease management, clinical research, innovation and advocacy, no kidney organization impacts more lives than AKF. AKF is one of the nation's top-rated nonprofits, investing 97 cents of every donated dollar in programs, and holds the highest 4-Star rating from Charity Navigator and the Platinum Seal of Transparency from GuideStar.

AKF strongly supports this proposed rule, which would amend the federal definition of short-term limited duration insurance (STLDI) to ensure these short-term plans are truly short-term and used to fill temporary gaps in comprehensive coverage. The proposed rule would also require STLDI and fixed indemnity excepted benefits coverage to make clearer to consumers the differences between these products and comprehensive coverage, including what is covered and how much is covered.

We appreciate that this proposed rule would reestablish consumer protection rules for STLDI that were loosened in the 2018 rulemaking under the prior administration. As we stated in our comment letter opposing that 2018 rulemaking, we were deeply concerned that loosening rules on STLDI would have an adverse impact on access to affordable, comprehensive coverage for individuals with chronic

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conditions. We believe it is imperative to ensure patient protections for people with chronic conditions such as kidney disease and its leading causes, diabetes and hypertension, so that individuals have access to the coverage and services they need to manage their conditions.

Short-term, limited-duration insurance plans are not a realistic option for people with chronic conditions. Because these plans are not considered individual health insurance coverage, they do not have to comply with Affordable Care Act (ACA) market reform rules. Short-term plans can exclude coverage for preexisting medical conditions; do not have to comply with ACA rating rules; can exclude coverage of essential health benefits; can rescind or decline coverage; impose onerous deductibles and cost-sharing obligations beyond the out-of-pocket maximums for ACA-compliant plans; and apply annual and lifetime coverage limits. Short-term plans are also not subject to the ACA single risk pool requirement or risk adjustment program. A person with a chronic condition would most likely be denied coverage for a short-term plan, or if they were offered one, it would be associated with a high premium. Conversely, short-term plans can offer lower premiums for younger and healthier individuals, potentially affecting the risk pool for comprehensive coverage.

Since the 2018 rulemaking that loosened STLDI rules, it has become much more difficult for consumers to distinguish between STLDI and comprehensive ACA-compliant coverage, which has had a detrimental impact on both those who enroll in STLDI and the consumers who rely on comprehensive coverage offered through the ACA Marketplaces.[1] Given the limited value and great risk that STLDI can have on the health and financial well-being of consumers, it is imperative that the Departments reestablish the consumer protection rules for STLDI.

The following are specific provisions in which we support the Departments' proposals or offer our recommendations:

- AKF supports the proposal to limit STLDI contract terms to no more than 3 months. This will help ensure consumers do not confuse STLDI with full-year ACA compliant plans and better serves the purpose of STLDI, which is to bridge a temporary gap in comprehensive coverage.

- AKF recommends that the maximum coverage period for STLDI, including any extensions, should be capped at 3 months, instead of the proposed 4 months. We believe that 3 months is an adequate amount of time to cover short coverage gaps between comprehensive coverage, such as those switching between employer-sponsored coverage or students on summer break.

- AKF supports the Departments' proposal to prohibit the use of stacking by the same issuer, a practice in which a consumer is sold multiple consecutive STLDI policies that when combined, exceed the maximum duration of STLDI coverage.

- AKF urges the Departments to go further with anti-stacking provisions to clarify that it extends to all issuers that are part of the same ownership. We also urge the Departments to prohibit

[1] Partnership to Protect Coverage, *Under-Covered: How 'Insurance-Like' Products are Leaving Patients Exposed*, March 2021. https://www.lls.org/sites/default/files/National/undercovered_report.pdf

all stacking of STLDI policies, whether or not the policies are from the same issuer, subject to a safe harbor. This can be accomplished by requiring those marketing or selling STLDI policies to obtain an attestation from a consumer that they have not been insured by an STLDI policy in the last 12 months. The Departments should develop the attestation language presented to consumers, and it should be made clear that a consumer's attestation is relevant only for the limited purpose of assessing compliance with the anti-stacking safe harbor.

- AKF urges the Departments to prohibit the sale of STLDI during the ACA's annual open enrollment period for comprehensive coverage. This would minimize consumer confusion on what type of coverage is being marketed to them and decrease the likelihood that a consumer inadvertently enrolls in STLDI when they are actually seeking to enroll in comprehensive coverage.

- We recommend the Departments limit the sale of STLDI via the internet and telephone and confine sales of STLDI plans to in-person encounters. This would mitigate the deceptive and abusive sales tactics that are more likely to happen through STLDI sales that are conducted via the internet or telephone.

- We support the adoption of the alternative format for the consumer notice that the Departments offer in the proposed rule. We believe the side-by-side descriptions of STLDI and comprehensive coverage available on Healthcare.gov allows for easier comparison for consumers.

- We urge the Departments to include a prohibition on STLDI recissions. Five states have enacted such a prohibition and we believe that is a base protection all consumers enrolled in a STLDI plan should have.

Thank you for the opportunity to provide comments on this proposed rule.

Sincerely,

Holly Bode

Holly Bode
Vice President of Government Affairs