



pennsylvania
INSURANCE DEPARTMENT

Strengthening Our Health Care System: Legislation to Reverse
ACA Sabotage and Ensure Pre-Existing Conditions Protections
Testimony Before the House Energy and Commerce Committee
Subcommittee on Health

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Good morning Chairwoman Eshoo, Ranking Member Burgess, and members of the Health Subcommittee of the House Energy and Commerce Committee. My name is Jessica Altman and I serve as the Insurance Commissioner for the Commonwealth of Pennsylvania. Thank you for convening today's important discussion regarding short-term limited duration insurance, and for the opportunity to voice concerns about the potential harms it may cause for consumers and the health insurance market more broadly. Pennsylvania supports all three pieces of legislation under discussion today, largely due to extensive concerns about the proliferation of short-term limited duration insurance outlined in my testimony.

As the primary regulator of health insurance in Pennsylvania's market, the Pennsylvania Insurance Department works to ensure consumers are protected and that insurers can compete in a stable, predictable market. Short-term limited duration insurance presents a challenge to both of these goals though, as our authority under state law regarding these plans is limited.

As its name plainly indicates, short-term limited duration insurance, or STLDI, was created to provide temporary health coverage to individuals who have an unexpected gap in coverage or need health insurance coverage for a brief period. The plans generally have lower premiums but significant coverage limitations, as the protections of the Affordable Care Act, or ACA, do not extend to STLDI.

By recently extending the duration and renewability of STLDI, the federal Administration is seeking to make short-term plans look and act like a viable alternative to purchasing comprehensive, major medical insurance without extending the protections of the ACA to STLDI. This is being reinforced by the rhetoric that these are "true alternatives" to comprehensive health insurance coverage. We reject the notion that STLDI is an affordable alternative to comprehensive insurance that includes the benefits and protections of the ACA. Consumers may experience an upfront savings in premiums, but the affordability of STLDI plans will likely prove to be illusory: those who need health care will run up against exclusions and limitations on coverage that, while making the purchase price more affordable, will do so only as a trade-off for benefit coverage and provider access.¹

Some advance the proposition that pushing STLDI into the individual marketplace will help to address affordability issues, especially for those individuals who do not receive subsidies to help pay for coverage. While we agree that we should be pursuing solutions to address affordability, we do not believe that STLDI is a plausible solution. Rather, STLDI has the potential to drive up costs, especially for individuals with pre-existing conditions. Of note, in Pennsylvania, over a quarter of the population is estimated to have a pre-existing condition. For these individuals, STLDI would not prove to be a meaningful option for coverage because of pre-existing condition exclusions, while coverage in the ACA individual market would guarantee that their pre-existing conditions are covered according to the benefits of their selected plan.

At the same time, the scenario in which healthier individuals pursue STLDI while those with pre-existing conditions remain on ACA coverage will result in higher premiums for that coverage and resulting instability in the ACA market. We recommend a different approach: focus on actual solutions to

¹ Department Comments on Proposed Rule, CMS-9924-P (April 20, 2018), <https://www.regulations.gov/document?D=CMS-2018-0015-8446>.

address affordability for consumers – not the perpetuation of substandard products that only cost less because they cover less.

In Pennsylvania, our efforts in these areas are working. Our final 2019 approved rates for the individual ACA market resulted in an aggregate statewide decrease of 2.3 percent. All insurers offering individual plans in 2018 continue to do so, and a new insurer entered our state. Governor Wolf’s aggressive support for the ACA and expanded Medicaid has pushed our uninsured rate to an all-time low of 5.5 percent.

Benefit Limitations

Short-term policies generally cover some major-medical benefits, though limits often apply as the protections of the ACA do not extend to STLDI. For example, the plans are often medically underwritten: therefore, applicants with health conditions can be turned down or charged higher premiums, without limit, based on health status, gender, age, and other factors.

STLDI plans do not have to cover essential health benefits. Consequently, typical short-term policies do not cover maternity care, prescription drugs, mental health care, preventive care, and other important benefits such as substance use disorder services, which is exactly the opposite of what we should do as we battle the opioid crisis. STLDI plans may limit coverage in other ways. According to an April 2018 study performed by the Kaiser Family Foundation, of the STLDI plans sold in Philadelphia, only 57% of the plans included mental health benefits, 33% of the plans covered substance use disorder treatment, 33% of the plans covered prescription drugs and *none* of the plans covered maternity.²

The plans can also impose lifetime and annual limits. For example, many policies cap covered benefits at \$2 million or less. The plans are also not subject to cost sharing limits, and some short-term policies may require cost sharing in excess of \$20,000 per person per plan period, compared to the ACA-required annual cap on cost sharing of \$7,350 in 2018.

Appeal rights established by the ACA do not extend to STLDI, which means that the internal and external appeal opportunities presented to consumers enrolled in ACA compliant coverage do not extend to enrollees of STLDI plans. Consequently, following a denial of benefits, consumers enrolled in STLDI plans may find themselves without opportunity to challenge their benefit denial.

Finally, STLDI plans are not subject to other ACA market requirements, such as minimum medical loss ratios. For example, while ACA-compliant non-group policies are required to pay out at least 80% of premium revenue for claims and related expenses, the average loss ratio for individual market short-term medical policies in 2016 was 67%; while for the top two insurers, who together sold 80% of all short-term policies in this market, the average loss ratio was 50%.³ This means that for enrollees in those plans, less than .50 of every premium dollar went to pay claims.

Recently, my Department worked with an STLDI plan enrollee who fainted at work and hit her head, which resulted in an emergency transport to a local hospital’s intensive care unit. The STLDI plan paid

² Kaiser Family Foundation analysis of short-term health insurance plans on eHealth and Agile Health Insurance websites, April 2018, available at: <https://www.kff.org/health-reform/issue-brief/understanding-short-term-limited-duration-health-insurance/>.

³ National Association of Insurance Commissioners, Accident and Health Policy Experience Report for 2016, available at http://www.naic.org/prod_serv/AHP-LR-17.pdf.

\$200 for the ambulance services, leaving the patient responsible for \$1250 for the ride. At the emergency room, the plan provided a maximum payable benefit of \$250, while the bill for the emergency care was over \$2,400. Then, she was admitted to the inpatient intensive care unit, where the STLDI plan's maximum benefit was \$1,250, while the bill was \$9,300. Finally, the maximum payable benefit for the outpatient test was \$1,250, while the bill for the outpatient procedure was \$4,900. After considering cost-sharing, to include the payable benefits being applied to the consumer's deductible and coinsurance, the STLDI plan covered just over \$1,300 and the consumer was stuck with a bill of over \$16,000.

Consumer Disclosure

Our Department works tirelessly to inform consumers about their insurance coverage options to enable them to make the best decision for their specific circumstances. We believe that consumers should be armed with an in-depth understanding of how their insurance coverage will protect them in times of need *prior* to purchasing coverage, as the time when using insurance coverage is *not* the time to learn of its limitations. While the federal government required STLDI to include a brief notice which encourages consumers to check their policies carefully, the notice requirement has limited effect when not coupled with access to provider directories, formularies, sample coverage documents, summaries of benefits and coverage, and a uniform glossary – all of which are required by the ACA for comprehensive insurance, but none of which are required of STLDI.

Given the lack of access to such fundamental documents that explain the benefits of the underlying insurance plan, we have found that many consumers purchase STLDI without a full understanding of the product's limitations. We have received numerous complaints from consumers whose STLDI plans failed to provide coverage for services that were excluded based on the fine print of those policies. In fact, in the past two years, our Department has suspended the licenses of eight producers who misrepresented the coverage available to consumers who purchased STLDI. But, even in cases where there is no misrepresentation to consumers, it is difficult to understand the extent of the benefit limitations included in these plans until a consumer needs health care and tries to use them. We will continue to respond to consumer complaints about their lack of understanding of benefit limitations and take action when we learn of misleading information or misrepresentation.

The lack of consumer disclosure is so troubling in the STLDI market that we have undertaken the creation of a consumer awareness campaign to teach consumers the right questions to ask when contemplating purchasing STLDI coverage. In addition to easy-to-read brochures, we have more recently embarked upon the creation of a video campaign that will capture testimonials of individuals who have purchased STLDI and found the benefits to be illusory. By deploying such a strategy, we hope to arm consumers with the right questions to ask before purchasing a plan they later regret.

Reaching consumers and ensuring truly accurate representation in the marketplace remains an uphill battle. Between robo-calls, well-placed advertising, misleading website URLs, and a lot of fine print, consumers are being bombarded with solicitations to purchase these plans and are deprived of robust information to inform their purchasing decisions. A recent Georgetown University study found that consumers shopping online for health insurance, including those using search terms such as "Obamacare plans" or "ACA enroll," will most often be directed to websites and brokers selling STLDI or

other non-ACA compliant products.⁴ Unfortunately, this distraction campaign comes at a time when the federal government reduced funding for marketing and advertising in the federally-facilitated marketplace (FFM) by 90% and reduced funding for the navigator program by 84%. Marketing, outreach and navigator funding are some of the core functions of operating the FFM, and the federal government is falling short of meeting those expectations. In Pennsylvania, we have stepped up by funding and operationalizing our own open enrollment outreach campaign to make sure accurate information is reaching consumers, but not every federal marketplace state has the ability to do this and our state resources are more limited than the federal government's. The federal government should not only increase its efforts to inform consumers, it should focus on explaining the benefits of comprehensive coverage through the ACA, and alert consumers to the shortcomings of substandard coverage.

Monitoring and appropriately addressing all of these activities in the marketplace is and will continue to be challenging for even the most vigilant state, but even more so for states reliant on the FFM. I have committed my Department to doing all that it can to make sure that STLDI are accurately and appropriately represented to Pennsylvanians but remain concerned by the volume of untoward practices in the market.

Post-claims underwriting and claims practices

One of the most concerning aspects of STLDI plans is the use of a practice called post-claims underwriting, which often results in a rescission of coverage. As STLDI plans often exclude coverage for pre-existing conditions, policyholders who get sick may be investigated by the insurer to determine whether the recently-diagnosed condition could be considered pre-existing and so excluded from coverage.

We are currently working with a consumer who purchased an STLDI plan that did not include coverage for pre-existing conditions. During the term of the consumer's plan, he was diagnosed with heart failure. After he filed a claim for medical services, he was denied coverage based on the pre-existing condition exclusion. Even though the consumer had never sought or received care for his condition previously, the insurer indicated that the claim manifested in such a way that an ordinary prudent individual would have sought medical advice and treatment in the twelve months prior to purchasing the STLDI plan for that condition.

Through the course of working to resolve STLDI consumer complaints, the claims practices of STLDI insurers have repeatedly demonstrated an inclination towards a denial of coverage rather than enabling policyholders to avail themselves of the benefits they pay for and deserve. In another example, we are currently working with a consumer who purchased STLDI for five consecutive terms and was hospitalized for a virus. The STLDI insurer demanded three years of medical records to determine if the hospital admission in any way related to a pre-existing condition, significantly delaying payment of the consumer's claims. Claims payments totaling over \$42,000 were finally made on the consumer's behalf only after the involvement of our Department. The Department is troubled by the substandard benefits of STLDI plans, which is only exacerbated when we learn how difficult the insurers currently in the market often make it for consumers to access what little benefits are included in these plans.

⁴ Corlette S, Lucia K, Palanker D, and Hoppe O, *The Marketing of Short-Term Health Plans*, January 31, 2019, available at: <https://www.rwjf.org/en/library/research/2019/01/the-marketing-of-short-term-health-plans.html> .

Ramifications for the health insurance market

Encouraging the proliferation of STLDI has the potential to destabilize our individual market in the immediate and leave individuals without meaningful coverage options in the long term. If the healthiest individuals are lured into purchasing STLDI because of lower premium costs and the unhealthiest individuals are excluded from making that choice due to their pre-existing conditions, the ACA-compliant coverage risk pool becomes an *ad hoc* high-risk pool. This means premium costs will rise, with some projections indicating that rates in Pennsylvania will require a 19 percent increase.⁵ While many people that purchase coverage on their own are eligible for financial assistance through the ACA, about one in five are not. It is that population, and particularly the segment of that population with pre-existing conditions, that expanding access to STLDI purports to help, but that in fact may be most harmed by the resulting market segmentation and higher prices.

Equally concerning is the federal Administration's pairing of STLDI with financing mechanisms such as Health Reimbursement Accounts, or HRAs. Recently, the Departments of Health and Human Services, Labor and Treasury issued a proposed rule which, among other things, would create new "excepted benefit HRA" options that employees could use to pay premiums for STLDI.⁶ If the federal Administration continues its broader push to portray STLDI insurance as meaningful health insurance coverage, the potential destabilizing effects ripple beyond the individual market into the group markets as well.

Further, the federal government continues their push for the proliferation of STLDI in the section 1332 waiver guidance recently released by the federal government, which effectively recognizes STLDI as "coverage" for the purpose of evaluating whether a state's approach meets the guardrails of a waiver. The ACA created the section 1332 waiver concept to provide states the flexibility to innovate and to make changes to their health care system that reflect the unique needs and policy goals of an individual state. I am a firm believer that states know our markets best, that states will be and should be the incubators of new ideas in health policy, and that states should be given the opportunity to allocate resources in the way that best meets the needs of the people we represent. However, the ACA also contains a set of guardrails that are intended to ensure these innovations and changes reflect the goals many of us share and do not undermine the core principles of the ACA. These guardrails are to ensure coverage under the 1332 Waiver when compared to the coverage available through the ACA otherwise is at least as comprehensive in terms of benefits, covers at least as many people, is at least as affordable, and does not increase the federal deficit. The recent guidance diverges from these protections by allowing states to further increase access to STLDI or other non-ACA compliant insurance products and potentially even offer subsidies for the purchase of those types of products. Given our substantial concerns with STLDI, I do not believe such a waiver would be of benefit for Pennsylvania nor do I believe it is aligned with the intentions of the ACA's 1332 waivers.

⁵ Linda J. Blumberg, Matthew Buettgens, & Robin Wang. Potential Impact of Policies on Coverage, Premiums, Federal Spending, The Urban Institute (updated, Mar. 2018)(https://www.urban.org/sites/default/files/publication/96781/2001727_updated_finalized.pdf).

⁶ Health Reimbursement Arrangements and Other Account-Based Group Health Plans, <https://www.govinfo.gov/content/pkg/FR-2018-10-29/pdf/2018-23183.pdf>.

The Pennsylvania Insurance Department's approach to STLDI

Pennsylvania state law does not currently contain restrictions on STLDI, so our Department is taking a two-fold approach to reviewing and monitoring STLDI. First, as the federal rule change required all STLDI to amend their policy form language, we are reviewing each STLDI plan that has been re-filed or newly filed with an eye toward clear consumer disclosures and proper explanation of the benefits covered by the plan, and possibly more importantly, the benefit limitations. We published filing guidance to explicitly outline for insurers our expectations of documents for review, including the schedule of benefits, marketing materials, and a summary of benefits and coverage. We recognize that STLDI is a necessary corollary to the ACA's open enrollment periods, as consumers who are not eligible for a special enrollment period but who, for various reasons – extenuating health or family circumstances or lack of awareness – did not enroll in comprehensive health insurance in the open enrollment season, may need some interim coverage. We view STLDI as a bridge to getting a consumer to the next ACA open enrollment season or their next source of coverage (such as employer-based coverage), and at least providing minimal protection when compared to living without health insurance through that short time period. Therefore, we created an expedited review path for policy filings that remained three months or less in duration and non-renewable, with the new required disclosure being the only change to the policy, to at least facilitate the presence of STLDI as an option in our marketplace until coverage through the ACA could be secured. For STLDI plans availing themselves of the longer duration permitted by the federal rule change and informed by the tragic complaints we are seeing all too often, we are reviewing the plans with an acute awareness of the confusion consumers may face when purchasing such a plan that is longer term, but yet does not include the comprehensive protections of the ACA.

Second, our Department is probing how STLDI is currently sold in our marketplace to make sure consumers are fully informed *prior* to their purchase of STLDI, while also monitoring the market for the sale of unapproved plans. We are monitoring the practices of producers who sell STLDI to ensure clear, understandable information is presented to consumers prior to commencement of the sale, especially in light of the fact that producer commissions for STLDI are typically higher than commissions for ACA plans, providing an incentive to those producers to sell STLDI plans. Additionally, we are using the strategic resources of our market conduct area to monitor the companies selling STLDI in our Commonwealth, as we have repeatedly learned of STLDI being sold within Pennsylvania that has not been approved by our Department. Where warranted, we have immediately acted to halt these sales.

In addition to using our authority to review STLDI before the sale of the products and take enforcement action when the products are out of compliance, as well as our consumer protection efforts, we also look forward to working with the Pennsylvania legislature to codify and strengthen protections for consumers with regard to STLDI. In addition to duration and renewability restrictions to alleviate confusion with major medical products, we would like to codify additional required consumer disclosures and a prohibition on post-claims underwriting.

Conclusion

To summarize, instead of providing more options at lower cost, STLDI actually increases premiums for consumers who have health care needs, while risking the deterioration of meaningful coverage options for people when they need it potentially leaving them to bear exorbitant medical bills. Consumers are

being harmed as they face confusing products and less transparency. Unfortunately, we fully expect an increase in consumer complaints on STLDI as consumers attempt to access benefits under their plan throughout this year, only to find that they've been misled to purchase a plan that has illusory benefits or that they are denied coverage because of the gimmicky exclusions of the plan. Simultaneously, the proliferation of STLDI risks generating harmful consequences for the comprehensive individual market, as insurers will have to account for potential adverse selection when calculating their individual market rates for truly comprehensive coverage.

To protect against the potential harms of STLDI, we recommend returning to previous guidance that facilitated a clearer delineation between STLDI and comprehensive major medical insurance.⁷ That guidance coordinated well with the construct of the ACA. By limiting the duration of STLDI and also preventing the renewability of these policies, the distinctions between STLDI and comprehensive health insurance will be more evident to the consumer. In addition, the individual market will be more stable, making more affordable and comprehensive coverage available to consumers. Thank you for the time to speak with you today and the opportunity to highlight our concerns with STLDI. I look forward to working with you to protect consumers and welcome any questions you may have.

⁷ Excepted Benefits; Lifetime and Annual Limits; and Short-Term, Limited-Duration Insurance, 81 Fed. Reg. 75316 (October 31, 2016), <https://www.govinfo.gov/content/pkg/FR-2016-10-31/pdf/2016-26162.pdf>.