September 11 , 2023

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS å9904åP
P.O. Box 8010
Baltimore, MD 21244 å8010

Via Regulations.gov

To Whom it May Concern :

Thank you for the opportunity to comment on the proposed regulations on Short-Term, Limited-Duration Insurance; Independent, Noncoordinated Excepted Benefits Coverage; Level -Funded Plan Arrangements; and Tax Treatment of Certain Accident and Health Insurance , published in the Federal Register on July 12, 2023. These comments are submitted on behalf of the members of the National Association of Insurance Commissioners (NAIC), which represents the chief insurance regulators in the 50 states, the District of Columbia, and the United States territories.

As state insurance regulators, we have the primary responsibility for regulating our insurance markets , ensuring consumer protection a nd market competition . We appreciate the Tri -Departmentsí attention to the risks of consumer confusion between comprehensive health insurance coverage and more limited plans and arrangements that may not offer the same level of protection against health care expenses. Consumers should be able to understand the coverage they enroll in and should not be misled into choosing a more limited benefit product than they intend to buy. We also acknowledge that due to the underwriting frequently associated with these limited benefit produc ts, some consumers may not have the option to purchase such coverage. At the same time, consumers should have meaningful choices in coverage that are tailored to the markets and consumers in the state. Banning certain plan features at the federal level would limit currently available options for consumers in many states and could lead them to seek coverage in unregulated markets.

Further,

Short-Term, Limited Duration Insurance

As federal regulation of short-term, limited duration insurance has tightened and loosened over the past several years, the NAIC has consistently commented in favor of statesí ability to make their own choices in regulating these products. Because the maximum length of short-term plans is not specified in federal law, we believe it is more appropriate to recognize the role of states as the primary regulators of insurance products and allow states to set their own limits. The states are the more responsive regulator and know better what their individual markets can provide and what their respective consumers need.

Many states have actively considered and chosen to develop their own regulations for short-term, limited duration insurance (STLDI). Some have effectively banned the products or mandate that certain benefits are covered. Several have established time limits of approximately three months, six months, one year, or until the end of the calendar year. Other states have created new regulatory structures that extend important consumer protections and rating rules to STLDI plans. Under these state laws, short-term plans serve consumers who experience gaps in other coverage sources. There is no guarantee that such a gap will last only three or four months. With a federal four-month time limit, consumers in many states will lose plan options currently available to them. Consequently, they will go uncovered or what is worse go without treatment until they can enroll in an approved plan. Allowing for different state choices like these is precisely why the McCarran-Ferguson Act reserves the regulation of insurance for the states.

State regulators strongly request that their flexibility to determine whether, and under what conditions, STLDI is appropriate for their markets and consumers be retained. We request that the proposed rule be revised to continue state flexibility in this area. If the Departments determine that a change to current regulations is necessary, we suggest the Departments adopt either of the following alternative approaches that better protect state choices:

A. Returning the definition of short-term, limited duration insurance to the pre-2016 language, specifically êhealth insurance coverage provided pursuant to a contract with an issuer that has an expiration date specified in the contract (taking into account any extensions that may be establish greater state authority over lead generators, which are often responsible for the initial contacts that may confuse consumers about the extent of coverage under short-term plans.

We seek greater collaboration with federal officials in our efforts to combat misleading marketing. We appreciate efforts to aid states in reining in improper activity by licensed or registered agents and brokers. But much of the misleading marketing comes from non-licensed entities. We urge the Tri-Departments to work with states as well as the Federal Communications Commission, the Federal Trade Commission, and the Federal Bureau of Investigation to investigate and stop lead generators and sales agents who use deceptive marketing techniques through websites, social media, phone calls, and other means.

NAIC supports strong disclosure language in marketing materials and short-term plan policies. Clear disclosures can help mitigate improper marketing practices, but they are only part of the solution. The updated notice language and additional materials where the NPRM proposes disclosures be required to appear represent improvements. We encour3526.54 Td [(lan)8.004 (guag)-3.004 (e)3.004 (e2g0 10.02 Tf 331 526.54 T

Some state regulators believe additional safeguards are needed to better protect against the risks of level-funded arrangements. These regulators support federal action to require disclosures to plan sponsors about fede30.9649C2 (fed)4.002 (e30.9649C2 (fed)4.002 (e30.9649C2 (fe (e30.964.wt6a6(sponsors ) 0 0 612 79