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NY State of Health Comments on the Proposals for Short-Term, Limited-Duration Insurance; Independent, Noncoordinated Excepted Benefits Coverage; Level-Funded Plan Arrangements; and Tax Treatment of Certain Accident and Health Insurance

NY State of Health, the State's Official Health Plan Marketplace is responding to the request for comments on the Proposed Rule for Short-Term, Limited-Duration Insurance (STLDI); Independent, Noncoordinated Excepted Benefits Coverage; Level-Funded Plan Arrangements; and Tax Treatment of Certain Accident and Health Insurance by the Internal Revenue Service (IRS), the Employee Benefits Security Administration (EBSA), and the Health and Human Services Department (HHS).

Short-term insurance plans are not permitted in New York, regardless of duration.¹ New York State law requires that all health insurance policies must 1) be renewable – that is have a continuous option to renew at the end of the contract term and 2) be comprehensive – provide consumers with essential health benefits.²

As the Notice of Proposed Rulemaking suggests, there are multiple risks to consumers associated with STLDI as important consumer protections in the Affordable Care Act are not applicable to these plans, such as prohibiting the denial of coverage based on a pre-existing condition.³ These plans may exclude coverage for benefits such as mental health services.⁴ As a result, these plans present risks to consumers, particularly vulnerable populations, including uncovered medical bills, high out-of-pocket costs, and high premiums relative to the value of benefits provided.⁵ STLDI have been shown to increase the risk of adverse selection — when given the option,

¹ See N.Y. Ins. Law §3216(g)(1); §3216(l); §3221(h); §3221(p); §4303(l); §4304(b); §4304(c); §4304(l); §4305(j); §4328(b). See also 11 NYCRR § 52.71. See also *Prohibition on Short-Term Limited Duration Plans*, NY Circular Letter No. 2018-7.

² *Id.*

³ See 45 CFR 148.102(a)(excludes short-term, limited-duration coverage from applicability to the ACA). See also Section 1101(d)(3) of the Patient Protection and Affordable Care Act of 2010, codified at 42 U.S.C. § 18001.

⁴ See Sarah Lueck, *Key Flaws of Short-Term Health Plans Pose Risks to Consumers*, CEN. ON BUDGET AND POLICY PRIORITIES, Sep. 20, 2018 at <https://www.cbpp.org/research/health/key-flaws-of-short-term-health-plans-pose-risks-to-consumers>.

⁵ *Id.*

healthy individuals may purchase STDLI as opposed to participating in the Marketplace, effectively raising individual health insurance coverage premiums in the Marketplace.⁶

To protect consumers, NY State of Health supports changes to STLDI regulation, including shortening contract terms for short-term plans to no more than three months and amending the definition of limited-duration to mean the maximum permitted duration is four months in total, including any renewals or extensions, as well as reversing the 2018 rule designed to expand the marketing and sale of STLDI. While New York State law and regulation prohibits the sale of short-term insurance plans, anecdotal reports suggest such plans are still being marketed in an attempt to circumvent protections in New York. Tightening the federal regulation of these products will help to protect the health of all New Yorkers. We appreciate the attention of HHS, IRS, and ESBA to this important issue and the opportunity to share our comments.

⁶ See Gabriela Diequez & Dane Hansen, *The impact of short-term limited-duration policy expansion on patients and the ACA individual market*, MILLIMAN, Feb. 25, 2020, at <https://www.milliman.com/en/insight/the-impact-of-short-term-limited-duration-policy-expansion-on-patients-and-the-aca-individual-market>.