



*The Commonwealth of Massachusetts
Commonwealth Health Insurance Connector Authority
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September 1, 2023

Center for Medicare and Medicaid Services
Department of Health and Human Services
ATTN: CMS-9904-P
P.O. Box 8010
Baltimore, MD 21244

Re: Notice of Proposed Rulemaking, “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 Federal Register Volume 88, Number 132, page 44596 on July 12, 2023)

Dear Secretary Becerra:

The Massachusetts Health Connector (“Health Connector”), a state-based Marketplace (SBM) authorized under the Patient Protection and Affordable Care Act of 2010 (“ACA”), appreciates the opportunity provided by the Department of Health and Human Services (HHS) to comment on the proposed rule, **“Short-Term, Limited-Duration Insurance; Independent, Noncoordinated Excepted Benefits Coverage; Level-Funded Plan Arrangements; and Tax Treatment of Certain Accident and Health Insurance”**.

Founded in 2006 as part of bipartisan state health reform, the Massachusetts Health Connector is the longest-running State-Based Marketplace (SBM) in the country. The Health Connector is designed to connect Massachusetts residents and small businesses with high quality, affordable health coverage and to promote universal health coverage in the Commonwealth. Today, the Health Connector serves over 232,000 individuals and over 13,000 small business employees from over 2,200 businesses.¹ The Health Connector’s efforts have contributed to the Commonwealth’s status as the healthiest state in the nation,² with a nation-leading health insurance rate over 97%,³ and among the lowest-cost average Marketplace premiums in the country in 2023.⁴

¹ See Massachusetts Health Connector August 2023 Board Meeting Records (August 2023 Summary Report), at https://www.mahealthconnector.org/wp-content/uploads/board_meetings/2023/08-14-23/Board-Summary-Report-August-2023.pdf

² See [Sharecare-Community-Well-Being-Index-2021-state-rankings-report.pdf](#)

³ Kaiser Family Foundation analysis of U.S. Census Bureau data, at <https://www.kff.org/other/state-indicator/health-insurance-coverage-of-the-total-population-cps/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>

⁴ Kaiser Family Foundation analysis of data from Healthcare.gov, state rate review websites, and state plan finder tools. [Analysis of CMS Public Use Files](#).

The Health Connector strongly supports efforts by the Department of Health and Human Services, the Treasury Department, and the Department of Labor (the Departments) to collect additional information about expanded use of level-funded arrangements among small groups and we strongly support any action to improve affordability for small groups. Massachusetts small businesses continue to struggle with the high cost of health coverage. In response to the Health Connector’s 2022 Small Group Survey, 63% of small groups indicated that the affordability of health insurance was the greatest challenge in obtaining and offering health insurance as a benefit to employees.⁵ Small groups in Massachusetts want to offer coverage and according to CHIA’s Massachusetts Employer Survey, of those small groups offering coverage, they report doing so because “it’s the right thing to do” and to support retention and recruitment.⁶

While the Health Connector does not have data to report to the Departments on small group use of level-funded arrangements, we are interested in understanding how the expanded use of such arrangements may be impacting affordability for small groups. As the Departments note, expanded use of such arrangements may lead to adverse selection and rising premiums for small employers. The Health Connector looks forward to any information the Departments collect on how increased use of level-funded arrangements impact small employers, employees, and affordability in small group markets. This data will help Massachusetts better understand market dynamics and inform state efforts to support small businesses as they struggle with affordability.

The Health Connector strongly supports actions proposed by the Departments that will make it easier for consumers to (1) understand their coverage options (2) enroll in and retain comprehensive, affordable coverage, and (3) avoid the consequences of enrolling in non-comprehensive coverage. The Health Connector supports finalization of the proposed rules to alter federal regulation of certain non-comprehensive coverage options, including short-term limited duration insurance (STLDI) and hospital and fixed indemnity policies. The Departments’ proposed changes will help consumers more clearly distinguish between non-comprehensive products and robust ACA-compliant plans. In addition, the changes will help to protect markets from adverse selection and maintain stability.

The proposed rules would positively impact the health and wellbeing of individuals and families in the Commonwealth and across the U.S. by making it easier to access affordable health coverage and avoid coverage that does not include important consumer protections under the ACA. STLDI plans, like other alternative products, are exempt from many of the ACA’s consumer protections. This type of coverage was primarily designed to fill short gaps in coverage that may occur when an individual is transitioning between plans; however, misleading marketing practices and an allowance for longer duration STLDI enrollments may direct some consumers to these alternative plans that lack ACA protections in lieu of comprehensive coverage. Many studies have documented how confusing and deceptive marketing practices can lead someone looking for comprehensive coverage into an alternative such as STLDI.^{7, 8} There is evidence that the longer duration of STLDI under the 2018 regulations has increased the number of people enrolled in this form of non-comprehensive coverage. The National Association of Insurance Commissioners (NAIC) reported that the number of individuals in STLDI plans more than doubled between 2018 and 2019.⁹ While there is less known about how many people are enrolled in hospital and fixed indemnity products, similar aggressive and misleading marketing practices that pose significant risks to consumers have been documented.¹⁰

The Health Connector strongly supports adding information about how to contact ACA Exchanges, including contact information for specific state-based Marketplaces, to STLDI notices. This change, as

⁵ 2022 Massachusetts Health Connector for Business (HCB) Annual Small Group Survey

⁶ [2021 CHIA Massachusetts Employer Survey](#)

⁷ [U.S. Government Accountability Office \(2020\)](#)

⁸ [Georgetown University, Center on Health Insurance Reforms \(2023\)](#)

⁹ [National Association of Insurance Commissioners \(2022\)](#)

¹⁰ [Health Affairs \(2023\)](#)

well as clarifying information about the difference between STLDI and comprehensive coverage, will ensure consumers have the information they need to make an informed decision. The Health Connector strongly supports ensuring such information is easily accessible and available in the preferred languages of individuals and families.

While Massachusetts has existing robust merged market rules that prevent high uptake of STLDI, extra consumer protections are especially critical today as Medicaid redeterminations continue and millions of individuals and families across the U.S. undergo coverage transitions. Researchers at Georgetown University recently conducted a “secret shopper” study that suggests former Medicaid enrollees searching for new health plans are facing aggressive and misleading marketing of limited benefit products that fail to protect consumers from high health care costs. For example, a researcher in the study spoke to 20 sales representatives using profiles of consumers losing Medicaid who are eligible for a \$0 premium plan with no deductibles through the Exchange. None of the 20 representatives mentioned the availability of a \$0 marketplace plan with no deductible and over half of the representatives tried to sell consumers limited benefit products. Representatives frequently made false or misleading statements that concealed the restrictions of limited benefit products or misrepresented the availability or affordability of marketplace plans and used aggressive marketing tactics.¹¹

If finalized, the proposed rule would help reduce health inequities across the Commonwealth and across the U.S. The Health Connector shares the Departments’ concern over the disproportionate impact non-comprehensive products may have on consumers with low incomes and members of underserved racial and ethnic groups who are more likely to be uninsured and face barriers in accessing care. As the Departments note, individuals in these populations face the greatest health and financial consequences when STLDI or other non-comprehensive coverage proves inadequate. In addition, practices like post-claims underwriting and rescission that are common in the STLDI market could leave these populations without any coverage in a health crisis.

The Health Connector strongly urges finalization of the proposed rules and sincerely thanks the Departments for addressing the challenges individuals, families, and small businesses face in accessing affordable, high-quality health coverage. We look forward to continued partnership in implementation of the Affordable Care Act and in strengthening access to comprehensive, affordable health care coverage and services.

Sincerely,



Audrey Morse Gasteier
Executive Director

¹¹ [Georgetown University, Center for Health Insurance Reforms \(2023\)](#)