

October 23, 2020

The Honorable Marcia Hultman
Secretary, South Dakota Department of Labor and Regulation
South Dakota Division of Insurance
Administrative Rules
124 South Euclid Avenue, 2nd Floor
Pierre, South Dakota 57501

Re: Rulemaking to “Clarify the duration of short term limited duration plans and short term major medical plans”

Dear Secretary Hultman:

Thank you for the opportunity to submit comments on the Division of Insurance’s (DOI) proposed new rule (Clarify the duration of short term limited duration plans and short term major medical plans, Chapters 20:06:10:08.03, 20:06:39:34.01, 20:06:39:34.02, and 20:06:40:02).

Our organizations serve thousands of individuals facing serious, acute and chronic health conditions across South Dakota. We have an informed perspective on what people with pre-existing conditions and their families need to prevent disease, cure illness, and preserve health and well-being over their lifetimes. Substandard health coverage products have significant limitations and pose significant harms to people with pre-existing conditions, including the patients we represent. We appreciate your consideration of public input prior to finalizing these draft rules.

Short-Term Plans Should Remain Short-Term

Short-term major medical plans (STMMPs) were originally meant to be a temporary stop-gap option for people who had lost their regular coverage. However, they have become more available since federal rules were finalized in 2018 to extend the duration for which they can be offered. We oppose DOI’s proposal to extend the length of these plans to twelve (12) months and instead urge DOI to use its authority to limit the duration of STMMPs to three months. State law defines the products as a “policy that is issued for a limited duration of less than twelve months,” but does not set a threshold for the maximum required duration.

Research has demonstrated that short-term plans are often marketed aggressively and with misleading messages, depriving consumers of the transparency needed to know what they are actually purchasing.^{i,ii} In August 2020, the U.S. Government Accounting Office reported findings from a secret-shopper test where GAO staff posed as persons with pre-existing conditions who needed to buy health coverage. In more than 25 percent of tests, sales representatives engaged in potentially deceptive practices that steered the secret shoppers toward coverage that would not meet their stated needs for their pre-existing conditions.ⁱⁱⁱ

The premiums for short-term plans are often cheaper compared to comprehensive health plans, but the benefits are so narrow in scope that these plans can trigger severe financial and medical consequences for consumers who wind up with major medical issues. This is because short-term plans are not required to comply with the Affordable Care Act’s (ACA’s) patient protection standards, including coverage for the ten essential health benefit categories, guaranteed issue, age and gender rating, prohibitions on discrimination against people with pre-existing conditions, annual out of pocket maximums, prohibitions on annual and lifetime coverage limits, and many other critical patient and consumer protections. In fact, two separate studies found

that a majority do not cover all of the essential health benefits – particularly prescription drugs and mental health.^{iv,v}

According to a 2020 study commissioned by The Leukemia & Lymphoma Society (LLS), a patient newly diagnosed with lymphoma while covered by a short-term plan could pay up to \$45,800 in out-of-pocket expenses, while a patient with an ACA-compliant bronze plan could pay \$6,300, on average. And a patient newly diagnosed with lung cancer who has a short-term plan risks facing out-of-pocket expenses of more than \$100,000 in six months.^{vi}

The risks of these plans extend to the wider health coverage market, as well. The 2020 LLS study reported that in states with unrestricted access to short-term plans rate filings show that insurers filed premiums an average of 5% higher due to regulatory actions, compared to rates filed in states that banned or significantly restricted STLD policies. These premium increases historically have been associated with decreased enrollment in the individual market: LLS reported that extrapolating its findings to the expected impact of deregulated short-term-plan markets “would lead to enrollment deterioration of approximately 6% by 2021 in the ACA individual market.”^{vii}

The overwhelming majority of healthcare groups share our concerns about deregulation of this market. Out of 340 healthcare groups who commented on the federal government’s 2018 short-term rule proposal, more than 98 percent issued critical comments, including every patient, physician, nurse and hospital organization that commented on the proposal.^{viii}

Short-Term Plans are not Major Medical Coverage

The phrase “short term major medical plan” describes a product that should in no way be mistaken for major medical coverage. SDCL 58-17-66(9) excludes STMMPs from the definition of “health benefit plan,” and a 2018 survey of short-term plans sold in the Sioux Falls market showed that none of these plans provided coverage for prescription drug and other essential health benefits.^{ix} Especially during the current global pandemic, when drug therapies are essential to one’s care and recovery, STMMPs are a high-risk alternative to ACA-based health insurance coverage and should not be mislabeled as a comparable product. We urge DOI to remove the term “major medical” from the rule, and more important, refrain from using the expression “short-term major medical” in consumer-facing documents. It is clear that short term health plans mimic qualified health plans in key regards but do not deliver the same full benefits and protections. To most consumers, the phrase “major medical” will imply a level of coverage that short term plans do not deliver.

Consumer Information and Disclosure

Ensuring consumers have comprehensive, accurate information before purchasing a plan is critically important. In section 20:06:10:08.03, the draft rule does not provide full and clear disclosure of the limitations and effective value of these products, nor does it require insurers to provide standardized overviews of STMMP coverage details. Without access to detailed and consistent plan information, consumers cannot conduct the kind of comparison shopping needed to help them make informed decisions.

While disclosure alone is not sufficient to fully protect consumers, it is a critical component, and we urge DOI expand its disclosure requirements. As an example, in December 2019 the Texas Department of Insurance adopted regulations requiring carriers to provide a detailed, standardized benefits document to prospective consumers for each short-term plan sold on the market.^x The document, which must be signed and returned by the consumer prior to purchase, asks “Is this short-term health insurance plan right for me?” and requires carriers to list key aspects of coverage, such as:

- Availability and limits placed on all essential health benefits;
- Required deductibles and other out-of-pocket expenses;
- Maximum policy caps; and
- Information on provider networks, including a link to a full list of in-network providers.

The document makes it possible for consumers to compare plans side-by-side without confusion, and also includes information about the next ACA open enrollment period.

Additionally, during the committee discussions on Senate Bill 181, the legislation necessitating this draft rule, bill sponsors and allies spoke repeatedly to the need for temporary insurance options for people who were between jobs or who missed ACA open-enrollment periods. What is often misunderstood is that loss of employer-based coverage, moving to a new ZIP code, and aging out of coverage through a parent’s health plan are some of the qualifying life events for a special open enrollment period.^{xi} In fact, there are many opportunities to enroll in a comprehensive ACA plan. We urge DOI to include information about open enrollment and special enrollment periods so that consumers are aware of all of their options.

Thank you for your consideration of our comments on the proposed rule concerning STMMPPs. If we can be of further assistance, please do not hesitate to contact any of our organizations. For questions or to discuss our comments further, please contact Dana Bacon, Regional Director, Government Affairs, The Leukemia & Lymphoma Society, at dana.bacon@lls.org or 612.308.0479.

Sincerely,

The AIDS Institute
 American Cancer Society Cancer Action Network
 American Diabetes Association
 American Heart Association
 American Kidney Fund
 American Lung Association
 Arthritis Foundation
 Chronic Disease Coalition
 Cystic Fibrosis Foundation
 Epilepsy Foundation South Dakota
 Hemophilia Federation of America

Hemophilia Foundation of Minnesota/Dakotas
 The Leukemia & Lymphoma Society
 NAMI South Dakota
 National Kidney Foundation, Dakotas
 National Multiple Sclerosis Society
 National Organization for Rare Disorders
 National Psoriasis Foundation
 South Dakota Biotech
 South Dakota Psychiatric Association
 Susan G. Komen

ⁱ S. Corlette, K. Lucia, D. Palanker, O. Hoppe, “The Marketing of Short-Term Health Plans: An Assessment of Industry Practices and State Regulatory Responses.” *Urban Institute*, January 2019. https://www.urban.org/sites/default/files/publication/99708/moni_stldi_final_0.pdf.

ⁱⁱ C. L. Young, K Hannick, “Misleading marketing of short-term health plans amid COVID-19.” *USC-Brookings Schaeffer on Health Policy*, March 24, 2020. <https://www.brookings.edu/blog/usc-brookings-schaeffer-on-health-policy/2020/03/24/misleading-marketing-of-short-term-health-plans-amid-covid-19/>.

ⁱⁱⁱ S. Bagdoyan, H. Arp, “Private Health Coverage: Results of Covert Testing for Selected Offerings.” *U.S. Government Accounting Office*, August 24, 2020. <https://www.gao.gov/assets/710/708967.pdf>

^{iv} D. Hansen, G. Dieguez, “The impact of short-term limited-duration policy expansion on patients and the ACA individual market.” *Milliman*, February 2020. <https://www.lls.org/sites/default/files/National/USA/Pdf/STLD-Impact-Report-Final-Public.pdf>.

^v U.S. House of Representatives Committee on Energy and Commerce, “E&C INVESTIGATION FINDS MILLIONS OF AMERICANS ENROLLED IN JUNK HEALTH INSURANCE PLANS THAT ARE BAD FOR CONSUMERS & FLY UNDER THE RADAR OF STATE REGULATORS.” June 25, 2020. <https://energycommerce.house.gov/newsroom/press-releases/ec-investigation-finds-millions-of-americans-enrolled-in-junk-health>.

^{vi} D. Hansen et al.

vii Ibid.

viii N. Levey, "Trump's new insurance rules are panned by nearly every healthcare group that submitted formal comments." *The Los Angeles Times*, May 30, 2018. <https://www.latimes.com/politics/la-na-pol-trump-insurance-opposition-20180530-story.html>.

ix K. Pollitz, M. Long, A. Semanskee, R. Kamal, "Understanding Short-Term Limited Duration Health Insurance." *Kaiser Family Foundation*, April 23, 2018. <https://www.kff.org/health-reform/issue-brief/understanding-short-term-limited-duration-health-insurance/>.

x K. Sullivan. "Commissioner's Order No. 2019-6189." *Texas Department of Insurance*, December 27, 2019. <https://www.tdi.texas.gov/rules/2019/documents/20196189.pdf> (Sample disclosure form available at: <https://texreg.sos.state.tx.us/fids/201905008-1.pdf>.)

xi "Qualifying Life Event (QLE)." *HealthCare.gov*. <https://www.healthcare.gov/glossary/qualifying-life-event/>