

The TL;DR On 2023 STM & FE Proposed Rule

CMS 9904-P - As of 7/17/2023 | By Joshua Brooker

This outline is specific to provisions related to the Individual and Family Markets

Need For Rulemaking

“[T]he Departments are of the view that it is necessary to amend the Federal definition of STLDI to ensure that consumers can clearly distinguish STLDI from comprehensive coverage, protect the risk pools and stabilize premiums in the individual market, and promote access to affordable comprehensive coverage.”

“In light of the Departments’ ongoing concerns about the numerous negative impacts of STLDI and fixed indemnity excepted benefits coverage being offered as an alternative to comprehensive coverage, as well as the significant changes in market conditions and in the legal landscape since the Departments’ last regulatory actions addressing these products, the Departments are proposing changes to the Federal individual and group market regulations governing STLDI and fixed indemnity excepted benefits coverage.”

“Short Term” & “Limited Duration” - 3 & 4 Mths Respectively

- They don’t think current duration laws (less than 12 months, stacked for 36 months total) are in best interest of consumers. (pg. 43)
- HHS **proposes an insured can’t be covered for more than 4 months** in a 12 month period by the same STLDI carrier to prevent stacking plans.
- CMS rationalizes that with current limits, “In some instances, **individuals may mistakenly purchase STLDI as long-term health insurance coverage**” (pg. 46) Citing GAO report¹²⁰
- Resources Cited:
 - 120 Government Accountability Office (2022). "Private Health Insurance: Limited Data Hinders Understanding Short-Term Plans Role and Value During the COVID-19 Pandemic," available at: <https://www.gao.gov/assets/730/720774.pdf>

STLDI Sales & Marketing – Aggressive & Deceptive

- “Departments are concerned by reports of aggressive and deceptive sales and marketing practices related to STLDI.¹³⁰” (pg. 53)
- “These practices prevent consumers from making an informed choice about their coverage¹³⁶”
- Examples they define:

- Designing websites to suggest the product for sale is comprehensive coverage and using the websites to gather personal information for call centers or brokers that later push consumers to make quick decisions about purchasing STLDI without disclosing that the insurance is not comprehensive coverage
- “low levels of health insurance literacy, particularly among younger adults and underserved populations, exacerbate the harm caused by deceptive marketing practices of STLDI by issuers and agents and brokers.^{137”}
- “brokers engaging in deceptive marketing practices that misrepresented or omitted information about products or claimed that preexisting conditions were covered when plan documents reflected that they were not.^{133”}
- Resources Cited:
 - 130 Federal Trade Commission (2018). “FTC Halts Purveyors of Sham Health Insurance Plans,” available at: <https://www.ftc.gov/news-events/news/press-releases/2018/11/ftc-halts-purveyors-sham-health-insurance-plans>
 - 136 Palanker, Dania, JoAnn Volk, and Maanasa Kona (2019). “Seeing Fraud and Misleading Marketing, States Warn Consumers About Alternative Health Insurance Products,” Commonwealth Fund, available at: <https://www.commonwealthfund.org/blog/2019/seeing-fraud-and-misleading-marketing-states-warn-consumers-about-alternative-health>.
 - 133, 137 Government Accountability Office (2020). “Private Health Coverage: Results of Covert Testing for Selected Offerings,” available at: <https://www.gao.gov/products/gao-20-634r>.

STLDI Broker Comp Conflicts of Interest

- “Compensation for agents and brokers from sales of STLDI can also be significant, incentivizing aggressive and/or deceptive marketing tactics that may mislead customers into enrolling in STLDI instead of comprehensive coverage.^{241,242,243”}
- **“the financial incentive could be up to 10 times higher commissions when compared to individual market QHPs purchased through an Exchange^{135”}**
- “One study suggests that commissions for STLDI are up to 10 times higher than those obtained for enrollment in individual health insurance coverage (averaging approximately 23 percent for STLDI, compared to 2 percent for individual health insurance coverage).^{244”}
- Resources Cited:
 - 135 Keith, Katie (2020). “New Congressional Investigation of Short-Term Plans,” Health Affairs, available at: <https://www.healthaffairs.org/doi/10.1377/forefront.20200626.227261/full/>
 - 241 See, e.g., Appleby, Julie (2018). “Short-Term Health Plans Boost Profits For Brokers And Insurers,” NPR, available at: <https://www.npr.org/sections/health-shots/2018/12/21/678605152/short-term-health-plans-boost-profits-for-brokers-and-insurers>.
 - 242 Government Accountability Office (2020). “Private Health Coverage: Results of Covert Testing for Selected Offerings,” available at: <https://www.gao.gov/products/gao-20-634r>.
 - 243 However, even as some issuers offer higher compensation for STLDI, many brokers

continue to refuse to sell products they view as overly risky for consumers, like STLDI. See, e.g., Corlette, Sabrina, Erik Wengle, Ian Hill, and Olivia Hoppe (2020). "Perspective from Brokers: The Individual Market Stabilizes While Short-Term and Other Alternative Products Pose Risks," Urban Institute, available at: <https://www.urban.org/research/publication/perspective-brokers-individual-market-stabilizes-while-short-term-and-other-alternative-products-pose-risks>.

- 244 U.S. House of Representatives Committee on Energy and Commerce (2020). "Shortchanged: How the Trump Administration's Expansion of Junk Short-Term Health Insurance Plans is Putting Americans at Risk," available at: <https://democrats-energycommerce.house.gov/newsroom/press-releases/ec-investigation-finds-millions-of-americans-enrolled-in-junk-health>.

STLDI Consumer Literacy "Notices"

- CMS drafted two proposed notices, one is primary, and one is an alternative, that insurers would be required to display in areas where STLDI is discussed.
- Areas include putting the notice on Insurer marketing materials, Insurer applications, and web broker sites where STLDI plans are displayed.

STLDI Market Size is uncertain

- "Projections by the Congressional Budget Office (CBO) and the Joint Committee on Taxation (JCT) suggest that 1.5 million people could currently be enrolled in STLDI,²²³"
- "and CMS previously estimated that 1.9 million individuals would enroll in STLDI by 2023.²²⁴"
- Resources Cited:
 - 223 Congressional Budget Office (2020). "CBO's Estimates of Enrollment in Short-Term, Limited-Duration Insurance," available at: <https://www.cbo.gov/publication/56622>. CBO and JCT projected that enrollment in STLDI would reach 1.6 million by 2028.
 - Congressional Budget Office (2019). "How CBO and JCT Analyzed Coverage Effects of New Rules for Association Health Plans and Short-Term Plans," available at: <https://www.cbo.gov/publication/54915>.
 - 224 CMS Office of the Actuary (2018). "Estimated Financial Effects of the Short-Term, Limited-Duration Policy Proposed Rule," available at: <https://www.cms.gov/Research-Statistics-Data-and-Systems/Research/ActuarialStudies/Downloads/STLD20180406.pdf>.

Proposed that STLDI is Junk Insurance

- "Given that STLDI generally is not subject to the Federal consumer protections and requirements for comprehensive coverage sold in the individual market, STLDI policies tend to offer limited benefit coverage and have relatively low actuarial values.²²⁵"
- "lead-generating websites direct consumers to insurance brokers selling both STLDI and other types of non-comprehensive coverage, including fixed indemnity excepted benefits

coverage, and that both types of coverage are often marketed to resemble comprehensive coverage.²⁴⁵

- Resources Cited:
 - 225 Dieguez, Gabriela and Dane Hansen (2020). "The Impact of Short-Term Limited-Duration Policy Expansion on Patients and the ACA Individual Market," Milliman, available at: <https://www.milliman.com/en/insight/the-impact-of-short-term-limited-duration-policy-expansion-on-patients-and-the-aca-individual-market>.
 - 245 Corlette, Sabrina, Kevin Lucia, Dania Palanker, and Olivia Hoppe (2019). "The Marketing of Short-Term Health Plans: An Assessment of Industry Practices and State Regulatory Responses," Urban Institute, available at: <https://www.urban.org/research/publication/marketing-short-term-health-plans-assessment-industry-practices-and-state-regulatory-responses>.

Fixed Indemnity – Per-Period Payments

- "HHS [and the Departments] proposes to reinstate the condition that to qualify insurance must pay fixed benefits only on a per-period basis and to remove the current option for such coverage to pay fixed benefits on a per-service basis." (pg. 72)
- "HHS [and the Departments] proposes to remove the language that permits individual market fixed indemnity excepted benefits coverage to provide fixed benefits on a per-service basis. ... benefits are paid in a fixed dollar amount per day (or per other time..." (pg. 75)
- "The Departments are aware ... For example, a policy may provide a fixed payment of \$25 "per day" that a participant or beneficiary fills a prescription, receives a medical exam, or undergoes a wellness screening... typically an individual does not fill a prescription or receive a medical exam or wellness screening more than once per day; therefore, merely affixing "per day" (or per other period) to the benefit description does not serve to limit payment to a per-period" (pg. 79)
 - "The Departments will closely examine... whether any product offered as fixed indemnity... that claims to provide benefits per day... is in effect making payment on any other basis, such as a per-service or per-item basis"
 - "benefits based on items or services increases the risk that consumers will confuse fixed indemnity excepted benefits coverage with comprehensive coverage,"

Fixed Indemnity Sales & Marketing – Aggressive & Deceptive

- "The Departments are concerned about the practice among some issuers, employers, agents, brokers, and associations of offering fixed indemnity excepted benefits coverage as a package in combination with other products (including other excepted benefits) in order to appear to provide comprehensive coverage.¹⁸²"
- "the Departments are aware that some employers offer employees a "package" of

coverage options that include a non-excepted benefit group health plan that provides minimal coverage (for example, coverage of preventive services only) with fixed indemnity insurance that provides benefits associated with receiving a broad category of other services, but is labeled as an excepted benefit.” (pg. 97)

- “This is particularly concerning if the employees are under the impression or are misled to believe that their employee health benefits package or plan provides comprehensive coverage and therefore forgo pursuing other available options that would provide comprehensive coverage.” (pg. 97)
- Resources Cited:
 - 182 Palanker, Dania and Kevin Lucia (2021). “Limited Plans with Minimal Coverage Are Being Sold as Primary Coverage, Leaving Consumers at Risk,” Commonwealth Fund, available at: <https://www.commonwealthfund.org/blog/2021/limited-plans-minimal-coverage-are-being-sold-primary-coverage-leaving-consumers-risk>.

Fixed Indemnity – Literacy “Notices”

- “Departments also propose to require a consumer notice be provided when offering fixed indemnity excepted benefits coverage in the group market, in alignment with the existing requirement to provide such a notice in connection with fixed indemnity excepted benefits coverage offered in the individual market.” (pg. 71)
- About the notice:
 - Text of primary notice: “**IMPORTANT:** This is fixed indemnity insurance. **This isn’t comprehensive health insurance and doesn’t** have to include most Federal consumer protections for health insurance...” (pg. 90)
 - Text of alternate notice: “**WARNING This is not comprehensive health insurance.** This is fixed indemnity insurance. This may provide a cash benefit when you are sick or hospitalized. It is not intended to cover the cost of your care. Contact your State department of insurance if you have questions or complaints about this policy.” (pg. 94)
 - “issuers prominently display the notice (in either print or electronic form) in at least 14-point font on the first page of any marketing, application, and enrollment materials that are provided at or before the time an individual has the opportunity to enroll or re-enroll in coverage,” (pg. 92)
 - “the individual market notice must also be provided on the first page of the policy, certificate, or contract of insurance, including any documents related to renewals or extensions” (pg. 92)

Fixed Indemnity (is not) Comprehensive

- “Rather than transferring risk for health care costs from a participant, beneficiary, or enrollee to the issuer or plan sponsor or otherwise providing comprehensive coverage, fixed indemnity

excepted benefits coverage is intended to provide a fixed, pre-determined level of cash benefits.” (pg. 77)

- “fixed indemnity excepted benefits coverage typically provides benefits that are far below actual medical expenses, individuals who rely on this type of coverage as their primary form of health insurance are at risk of financial harm.¹⁶⁸”
- Payment structures are no longer fixed
 - “some issuers now offer individual market fixed indemnity policies that pay benefits on the basis of extensive, variable schedules with tens or hundreds of thousands of different benefit amounts that vary by item or service.¹⁷¹”
 - “Some benefits associated with particular items and services appear to be based on Medicare fee-for-service or Diagnosis Related Group (DRG) service descriptions.¹⁷²”
 - “Some marketing materials claim that benefits are based on “relative value units,” an apparent reference to an element of Medicare’s physician fee schedule formula, and that exact benefits will vary by the Current Procedural Terminology® (CPT) code submitted by the health care provider furnishing the relevant service, suggesting that benefit levels are based on either actual or estimated costs of care.”
- Payments being made directly to provider or facility
 - “some hospital indemnity or other fixed indemnity insurance pay benefits directly to the health care provider or facility that furnished services to the covered individual” (pg. 75)
- Resources Cited:
 - 168 Young, Christen Linke and Kathleen Hannick (2020). “Fixed Indemnity Coverage is a Problematic Form of “Junk” Insurance,” USC-Brookings Schaeffer Initiative for Health Policy, available at: <https://www.brookings.edu/blog/usc-brookings-schaeffer-on-health-policy/2020/08/04/fixed-indemnity-health-coverage-is-a-problematic-form-of-junk-insurance>.
 - 171 Appleby, Julie (2021). “New Health Plans Offer Twists on Existing Options, With a Dose of ‘Buyer Beware’,” KFF Health News, available at: <https://khn.org/news/article/new-health-plans-offer-twists-on-existing-options-with-a-dose-of-buyer-beware>.
 - 172 Young, Christen Linke and Kathleen Hannick (2020). “Fixed Indemnity Coverage is a Problematic Form of “Junk” Insurance,” USC-Brookings Schaeffer Initiative for Health Policy, available at: <https://www.brookings.edu/blog/usc-brookings-schaeffer-on-health-policy/2020/08/04/fixed-indemnity-health-coverage-is-a-problematic-form-of-junk-insurance>.

Protecting Marginalized Populations

- “individuals belonging to historically marginalized populations often experience greater health challenges, as well as greater challenges accessing and using health care services, compared to the general population¹⁸⁸” (pg.89)
- “concerned that members of these populations may be particularly vulnerable to misinformation or misleading or aggressive sales tactics.”
- **“these proposals aim to ensure that all consumers, including those in underserved communities, have the necessary information to make an informed choice after**

considering and comparing the full range of health coverage options available to them.”

- Resources Cited:
 - 188 Office of Minority Health (2022). “The Path Forward: Improving Data to Advance Health Equity Solutions,” available at: <https://www.cms.gov/files/document/path-forwardhe-data-paper.pdf>.
 - 190 Edward, Jean, Amanda Wiggins, Malea Hoepf Young, and Mary Kay Rayens (2019). “Significant Disparities Exist in Consumer Health Insurance Literacy: Implications for Health Care Reform,” Health Literacy Research and Practice, available at: <https://pubmed.ncbi.nlm.nih.gov/31768496/>
 - Villagra, Victor and Bhumika Bhuvra (2019). “Health Insurance Literacy: Disparities by Race, Ethnicity, and Language Preference,” The American Journal of Managed Care, available at: <https://www.ajmc.com/view/health-insurance-literacy-disparities-by-race-ethnicity-and-language-preference>

Personal Comments

Within the various roles Joshua Brooker serves in, all of the following statements are his alone and do not reflect the opinions of any organization, whether public, private, or non-profit.

STLDI Markets

House Energy & Commerce Committee Study,

Market Size - "approximately three million consumers in 2019" (pg 2)

Claims - "Insurers subject consumers to a post-claims review process" "most STLDI insurers rescind the underlying policy if a determination is made that the enrollee has a prior health condition that should have been disclosed" "Insurers systematically exclude coverage for most major medical conditions resulting from pre-existing conditions" "Only 48 percent of premium dollars a consumer pays are paid out in the form of health care claims and medical benefits." (House Energy & Commerce Committee, 2020) "Brokers receive up to ten times the compensation rate for STLDI plans than for ACA-compliant plans. "average commission rate for STLDI plans was 23 percent."

Claims Payments

"Most of the available evidence about STLDI suggesting that it does not constitute health insurance coverage comes from the time before the 2018 rule took effect. [This was where] STLDI typically provided limited coverage for three months or less." (Swagel, Phillip; Congressional Budget Office, 2020)

Short-Term Medical (all durations) Loss Ratio - 72.86% | Table: Aggregated Totals for All Statement Types (National Association Of Insurance Commissioners, 2023)

References

House Energy & Commerce Committee. (2020). *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*. DC: US House. Retrieved July 25th, 2023, from <https://democrats-energycommerce.house.gov/newsroom/press-releases/ec-investigation-finds-millions-of-americans-enrolled-in-junk-health>

National Association Of Insurance Commissioners. (2023). *2022 Accident and Health Policy Experience Report*. Retrieved from NAIC Website: <https://content.naic.org/sites/default/files/publication-ahp-lr-accident-health-report.pdf>

Swagel, Phillip; Congressional Budget Office. (2020). *Letter to US Senate - CBO's Estimates of Enrollment in Short-Term, Limited-Duration Insurance*. DC: CBO. Retrieved from <https://www.cbo.gov/publication/56622>