



September 11, 2023

The Honorable Xavier Becerra
Secretary
U.S. Department of Health and Human Services
Hubert H. Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201

The Honorable Janet Yellen
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable Julie Su
Acting Secretary
U.S. Department of Labor
Frances Perkins Building
200 Constitution Avenue, NW
Washington, DC 20210

RE: File Code: RIN 0938-AT48: Short-Term, Limited-Duration Insurance; Independent, Noncoordinated Excepted Benefits Coverage; Level-Funded Plan Arrangements; and Tax Treatment of Certain Accident and Health Insurance

Dear Secretary Becerra, Secretary Yellen, and Acting Secretary Su:

The undersigned members of the Habilitation Benefits (HAB) Coalition appreciate the opportunity to provide comments on the U.S. Department of Health and Human Services, Department of the Treasury, and Department of Labor’s (“the Departments”) Proposed Rule entitled, *Short-Term, Limited-Duration Insurance; Independent, Noncoordinated Excepted Benefits Coverage; Level-Funded Plan Arrangements; and Tax Treatment of Certain Accident and Health Insurance*.

The HAB Coalition membership includes national non-profit consumer and clinical organizations focused on securing and maintaining appropriate access to, and coverage of, habilitation benefits within the category known as “rehabilitative and habilitative services and devices” in the essential health benefits (“EHB”) package under existing federal law.¹ The HAB Coalition has worked tirelessly over the past several years to ensure full and appropriate implementation of the ACA’s reforms at the federal and state levels with the ultimate goal of eliminating discrimination based on health status in the individual and small group markets, which disproportionately impacts people with disabilities and chronic conditions.

¹ Patient Protection and Affordable Care Act (“ACA”), Section 1302.

Short-Term, Limited-Duration Insurance

Short-Term, Limited-Duration Insurance (“STLTI”) is a type of health insurance that opponents often refer to as “junk” health plans because they are exempt from offering the essential health benefits package and can leave enrollees unprotected when certain benefits are needed most. Habilitation and rehabilitation benefits tend to be prime targets for reductions in benefits under these plans and this was validated under earlier versions of the proposed and final rules that loosened the rules surrounding STLTI insurance over the past several years.

Under current rules, STLTI plans offer limited coverage and benefits to policyholders for a period of less than one month to as long as three years. These short-term plans may offer coverage for some of the same types of health care services as traditional comprehensive health insurance; however, they have very different plan designs and are not regulated with the same consumer protections as comprehensive health coverage. For example, under current federal regulations, STLTI policies are often medically underwritten, exclude coverage for pre-existing conditions, do not always cover essential health benefits such as rehabilitative and habilitative services and devices, prescription drugs, or mental health care, can impose annual and lifetime limits, and are not subject to other ACA market requirements. Because STLTI plans offer less protection, they can offer lower monthly premiums than ACA-compliant plans and may therefore be attractive to some consumers.

Habilitation Services and Devices as an Essential Health Benefit

Habilitation services and devices are provided by appropriately credentialed (licensed, accredited, and certified) providers to individuals with many types of developmental, cognitive, physical, and mental health conditions that, in the absence of such services, prevent those individuals from acquiring certain skills and functions over the course of their lives. Habilitation services are closely related to rehabilitation services, although there are key differences between the two. Whereas *rehabilitation services* are provided to help a person regain, maintain, or prevent deterioration of a skill that has been acquired but then lost or impaired due to illness, injury, or disabling condition, *habilitation services* are provided in order for a person to attain, maintain, or prevent deterioration of a skill or function never learned or acquired due to a disabling condition.

The types of habilitation services and devices include, but are not limited to, physician services; physical therapy; occupational therapy; speech, language and hearing therapies; recreational therapy; music therapy and cognitive therapy for people with brain injuries and other conditions; psychiatric, behavioral and other developmental services and supports; durable medical equipment (DME), including complex rehabilitation technologies; orthotics and prosthetics; low vision aids; hearing aids, cochlear implants, and augmentative communication devices; and other assistive technologies and supplies. Habilitation services:

- Improve long-term function and health status and improve the likelihood of independent living and quality of life;

- Halt or slow the progression of primary disabilities by maintaining function and preventing further deterioration of function; and,
- Enable persons with developmental, intellectual, physical or cognitive impairments to improve cognition and functioning through appropriate therapies and assistive devices.

The ACA created in statute the EHB category of “rehabilitative and habilitative services and devices.” In the February 2015 Notice of Benefits and Payment Parameters Final Rule, the Centers for Medicare and Medicaid Services (CMS) defined “habilitation services and devices” using the definition of “habilitation services” from the National Association of Insurance Commissioners’ *Glossary of Health Coverage and Medical Terms*² and explicitly added habilitation devices, as follows:

“Habilitation services and devices— Covered health care services and devices that help a person keep, learn, or improve skills and functioning for daily living. Examples include therapy for a child who is not walking or talking at the expected age. These services may include physical and occupational therapy, speech-language pathology, and other services for people with disabilities in a variety of inpatient and/or outpatient settings.”³

For the first time, this definition established a uniform, understandable federal definition of habilitation services and devices that became a standard for national insurance coverage. This definition has become a floor for both individual and small group health plans. Coverage of habilitative services and devices without arbitrary age, visit or other limits is especially important for children who may suffer from a condition at birth (such as cerebral palsy, autism or spina bifida) or from an illness or injury that prevents normal skills development and functioning. Receiving sufficient habilitative services and devices that help the child acquire, improve, or retain a skill or level of functioning that they did not previously possess can mean the difference between talking and not talking, walking and not walking. This same definition has also been adopted by States that chose to expand their Medicaid programs under the ACA. Importantly, the definition includes both services *and* devices. The adoption of a federal definition of habilitation services and devices has minimized the variability in benefits across States and the uncertainty in coverage for children and adults in need of these services.

Omission in the Proposed Rule of Certain EHBs: The HAB Coalition does wish to note, however, that throughout the text of this Proposed Rule, the Departments mention EHBs and in each circumstance a list of eight EHBs is provided as examples. The lists that are provided throughout the Proposed Rule include the following EHBs: pediatric, hospital, emergency, maternity, mental health, and substance use services, prescription drugs, and preventive care. In each instance, the Proposed Rule fails to include in the list both “rehabilitation and habilitative services and devices” as well as “laboratory services.” We wish to remind the Departments that these two very important benefits are also deemed essential health benefits guaranteed by the

² <https://www.cms.gov/CCIIO/resources/files/downloads/uniform-glossary-final.pdf>.

³ <http://www.gpo.gov/fdsys/pkg/FR-2015-02-27/pdf/2015-03751.pdf>, at 10871.

ACA, and if EHBs are listed throughout the final rule, we would expect this list to include all ten EHBs in the final rule, including, of course, rehabilitative and habilitative services and devices.

The HAB Coalition Supports the Proposal to Repeal and Amend the 2018 Guidance on STLDI Plans

In October 2018, the Trump Administration revised federal regulations by changing the definition of STLDI to exclude it from the definition of individual health insurance coverage and lengthened the permissible maximum duration of these plans from three months to 364 days with an option to renew for a total coverage period of up to three years. These changes gave insurance companies the ability to sell these short-term plans as a full-year substitute coverage for traditional health insurance, without the need for these plans to adhere to important non-discrimination protections. Given the elimination of the ACA's individual mandate penalty in 2019, these changes increased the likelihood that consumers would forgo health insurance or seek out alternative coverage options, such as STLDI policies. Because of this, the HAB Coalition opposed the Trump Administration's regulations and submitted written comments to that effect. We also engaged with the Center for Consumer Information and Insurance Oversight (CCIIO) on this issue.

The HAB Coalition is very pleased with and supports the Departments' proposal to repeal and amend the Trump-era federal definition of STLDI to limit the length of the initial contract period to no more than three months and the maximum coverage period to no more than four months. This change would reduce the maximum length of STLDI from the current initial contract term length of less than 12 months and maximum total duration of up to a total of 36 months, including renewals and extensions. These proposed changes would more clearly differentiate STLDI plans from comprehensive coverage, realign the federal definition of STLDI with its traditional purpose of bridging short term gaps in continuing coverage, and ultimately reduce the financial risk associated with enrolling in this limited coverage as a long-term alternative to a comprehensive benefits package. Each of these reasons align with the goals of the HAB Coalition and the ACA by increasing access to affordable and comprehensive coverage, strengthening health insurance markets, and promoting consumer understanding of coverage options.

Furthermore, appropriate limits on the duration of STLDI plans are even more important as states conduct their Medicaid eligibility redeterminations as a result of the end of the Public Health Emergency's Medicaid continuous enrollment protection ("unwinding"). As the unwinding unfolds, we are seeing a disproportionate number of children being disenrolled with children accounting for over four in ten (43%) of Medicaid disenrollments in the 15 states reporting age breakouts as of Aug. 24⁴. Rolling back the expanded availability of STLDI plans will help protect both children and adults who have lost their Medicaid coverage from mistakenly enrolling into a private plan that does not provide the services or protections they need.

⁴ KFF. [Medicaid Enrollment and Unwinding Tracker](#). Aug. 23, 2023

Annual and Lifetime Limits

While the Proposed Rule does not seek to affirmatively ban annual or lifetime limits in the proposed revised definition of STLDI, which the HAB Coalition would prefer, it does propose various reforms to be made to consumer notices and marketing materials to ensure consumers receive clear information about the differences between STLDI and comprehensive coverage. Specifically, the proposed revised consumer notice must include plain, readable language, in 14-point bold font on the first page of the policy, certificate, or contract of insurance, including for renewals and extensions, stating that the STLDI plan is temporary and might limit coverage for preexisting conditions or EHBs. Issuers must also prominently display the notice in any marketing and application materials provided in connection with enrollment in such coverage, including on websites that advertise or enroll individuals in STLDI.

The HAB Coalition is supportive of these proposed consumer notice changes; however, we remind the Departments of the importance of protecting families from potentially-bankrupting out-of-pocket costs when significant illness or injury strikes. Enrollment in STLDI plans not subject to the prohibition of annual and lifetime limits on the cost of benefits is potentially dangerous and could financially overwhelm an individual who requires extensive health care services or medications.

Under the ACA, most health plans and insurance policies may not set annual or lifetime limits for EHBs, including for rehabilitative and habilitative services.⁵ However, this same rule does not apply to STLDI. As such, the HAB Coalition strongly encourages CMS to bring STLDI plans under the same rules as all other comprehensive individual and small group plans by banning annual and lifetime limes and requiring full coverage of all EHBs in the revised final definition of STLDI.

We greatly appreciate your attention to our comments on this proposal. Should you have further questions regarding this information, please contact Peter Thomas or Michael Barnett, coordinators for the HAB Coalition, by e-mailing Peter.Thomas@PowersLaw.com or Michael.Barnett@PowersLaw.com, or by calling 202-466-6550.

Sincerely,

The Undersigned Members of the Habilitation Benefits Coalition

ACCSES

American Academy of Physical Medicine and Rehabilitation

American Association of People with Disabilities

American Association on Health and Disability

American Cochlear Implant Alliance

American Music Therapy Association

American Occupational Therapy Association

⁵ Patient Protection and Affordable Care Act (“ACA”), Section 2711.

American Speech-Language-Hearing Association
American Therapeutic Recreation Association
Child Neurology Society
Children's Hospital Association
Lakeshore Foundation
National Association of Social Workers
United Cerebral Palsy

CC: Administrator Chiquita Brooks-LaSure