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Submitted electronically via www.regulations.gov

Alex Azar
Secretary of Health and Human Services
Department of Health and Human Services
200 Independence Avenue SW.
Washington, DC 20201

Alexander Acosta
Secretary of Labor
U.S. Department of Labor
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Washington, DC 20210

Steven Mnuchin
Secretary of the Treasury
Department of Treasury
1111 Constitution Avenue, NW
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Re: Covered California Comments On Short-Term, Limited-Duration Insurance Proposed Regulations; CMS–9924–P (RIN 0938-AT48)

Dear Secretary Azar, Secretary Acosta, and Secretary Mnuchin:

Covered California submits these comments in response to the proposed regulations CMS-9924-P. These comments are informed by Covered California's five-year experience of effectively implementing policies to best serve the needs of California's consumers, and highlight concerns we have with regard to the impacts that short-term, limited-duration insurance (STLDI) could have on consumers and the individual health insurance market. We believe that as proposed, these regulations will have a significant deleterious impact on the entire individual health insurance market and will cause insurance carriers to revert back to a business model that relies on risk selection. To the extent that the Departments of Health and Human Services, Labor and Treasury (Departments) continue to pursue these regulations, we offer the following comments.

Board Members: **Diana S. Dooley, Chair** **Paul Fearer** **Jerry Fleming** **Dr. Sandra Hernandez** **Art Torres** Executive Director: **Peter V. Lee**

Preserving State Flexibility

Covered California appreciates that the Departments will continue to allow state flexibility to regulate STLDI. We believe that states are in the best position to regulate such coverage in their respective markets.

Expanding STLDI Increases Adverse Selection, Erodes Consumer Protections, and Leaves Consumers with Less Coverage for Needed Care

Historically, STLDI has been utilized to fill short gaps in health coverage, allowing consumers to access cheap coverage without many of the protections afforded to ACA-compliant plans. STLDI is excluded from the definition of individual health insurance under the Public Health Service Act, and thus is not required to provide various and important consumer protections that apply to ACA-compliant plans. As such, the business model for STLDI has historically been driven by medical underwriting, allowing carriers to deny coverage to applicants with pre-existing conditions. Additionally, carriers have been able craft policies which provide less coverage, impose annual and lifetime limits on benefits, and set excessive cost-sharing limits.

STLDI is also not subject to the federal Medical Loss Ratio (MLR) requirement that health plans spend at least 80 cents of every premium dollar on medical costs and quality care improvements. The Kaiser Family Foundation recently reported that the MLR for the top two STLDI carriers, which accounted for 80 percent of policies sold in 2016, was 50 percent.[1] This provides an opportunity for issuers to heavily market their products to young and healthy individuals. We are concerned that the proliferation of these plans will result in carriers competing on risk selection, not price and quality.

While this business model may work for some health insurance companies, consumers who enroll in STLDI will likely have less coverage and be left with uncovered medical bills when accessing needed care. As noted in the preamble, consumers who switch from ACA-compliant health coverage will likely lose access to certain essential services and providers, and may be exposed to high out-of-pocket costs and greatly increased deductibles. Consumers may also face increased financial liability if they get sick or are injured while covered under a STLDI plan.

Moreover, it is estimated these regulations would increase the number of people without comprehensive, minimum essential coverage by 2.6 million in 2019. Of the 36.9 million people without minimum essential coverage, 32.6 million would be completely uninsured.[2]

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[1] Understanding Short-Term Limited Duration Health Insurance

[2] Updated: The Potential Impact of Short-Term Limited-Duration Policies on Insurance Coverage, Premiums, and Federal Spending

Comprehensive Noticing Needed

The lack of consumer protections offered in STLDI plans underscores the need for clear and thorough noticing requirements. The proposed rule would revise the required notice that must appear prominently in the STLDI plan contract and in any application materials.

We agree with the Departments' concerns that expanding STLDI coverage to last almost 12 months may make it more difficult for consumers to distinguish it from ACA-compliant coverage. As such, we are particularly concerned that the proposed notice requirements do not go far enough to ensure proper disclosure of the differences between STLDI and ACA-compliant insurance. Specifically, the proposed notice language does not clearly indicate to consumers that STLDI does not provide many of the core ACA consumer protections, such as essential health benefit requirements, out-of-pocket cost limits, premium rating ratios, MLR standards, prohibitions on underwriting, and guaranteed availability. We are concerned that the current notice requirements will create a false assurance for consumers that they have coverage for benefits they do not have.

We recommend that the required federal disclosures for STLDI include understandable cost scenarios that illustrate how certain conditions; such as, childbirth, managing diabetes, a cardiac event or cancer, would be covered. This will ensure consumers can make informed choices and understand the tradeoff between premiums and out-of-pocket costs. Furthermore, we recommend that the Departments provide states with the flexibility to modify the required federal notice as long as the state-required notice is at least as consumer protective as the federal notice. States may take different approaches to regulating STLDI plans and depending on how a state implements these regulations, the required federal notice language may not be sufficient or applicable. By granting flexibility to states, notice requirements could better account for variations in state implementation of STLDI.

Potential for Negative Impact to Risk Pool

In the preamble, the Departments acknowledge that individuals who may be inclined to purchase STLDI plans are likely to be relatively young or healthy. Although California has a successful marketplace, with a healthy risk pool mix, we are concerned about healthy consumers being drawn away from the individual market and into STLDI plans. When combined with other recent policy changes, such as the elimination of the individual mandate penalty, the decrease in federal investment in advertising and enrollment assistance, and the loosening of restrictions on association health plans, marketplaces could face both a rise in premiums, as well as a decrease in enrollment in 2019.

To the extent there is a reduction in enrollment due to the availability of STLDI plans, it will result in a worsening of the risk pool and higher premiums for the entire individual market in future years. While subsidized consumers would be insulated from these

premium increases, the nearly 6 million unsubsidized, middle-income Americans in ACA-compliant plans will pay for 100 percent of premium increases resulting from disruption in the risk pool. This means that unsubsidized consumers who are not young and healthy, or, consumers who are young and healthy and want minimum essential health coverage that protects them when they need it, will have to pay more for it. These are not high-income individuals, as they have median incomes of $75,000 ($66,000 for individuals aged 19–64).[3]

Finally, we want to underscore that more choice does not always equate to better choice. While STLDI may provide healthy consumers with more coverage options, less healthy consumers, particularly those who do not qualify for premium tax credits or cost-sharing reductions, would either face higher premiums or be ineligible for STLDI plans.

Thank you for your consideration of our comments. If you have any questions or would like more information, please feel free to contact me.

Sincerely,

Peter V. Lee
Executive Director

cc: Covered California Board of Directors

[3] The Roller Coaster Continues — The Prospect for Individual Health Insurance Markets Nationally for 2019: Risk Factors, Uncertainty and Potential Benefits of Stabilizing Policies