In recent months, the Trump administration has taken several actions to advance the use of insurance products that would not adhere to federal Affordable Care Act (ACA) consumer protections. Such plans would leave families exposed to considerable risk:

- On January 4, 2018, the Department of Labor issued a proposed rule to allow for the expanded use of Association Health Plans (AHPs), and

- On February 20, 2018, the Internal Revenue Service (IRS), the Employee Benefits Security Administration, and the US Department of Health and Human Services (HHS) issued a proposed rule to lengthen the maximum time limit of short term, limited duration (STLD) insurance plans.

This follows the December 22, 2017 enactment of the Tax Cut and Jobs Act, which zeroed-out the ACA individual mandate penalty for 2019, meaning that beginning in 2019 individuals without “minimum essential coverage” will no longer pay a penalty for either being uninsured or underinsured.

Also, on April 9, 2018 HHS released its final Notice of Benefit and Payment Parameters (NBPP) for 2019, which further undermines ACA protections, including that of essential health benefits (EHB). AAP guidance on this Payment Notice is under development.

States have also taken steps this year to allow for increased use of insurance products that are not ACA compliant. Idaho released plans to allow for state-tailored health insurance plans that do not comply with the ACA, a proposal that has since been rejected by the Trump Administration. Meanwhile, Iowa has enacted legislation to allow for the sale of both AHPs and Iowa Farm Bureau insurance plan coverage; neither of these would be ACA-compliant.

The Trump Administration’s proposed regulatory actions on AHPs and STLD plans would expand health insurance options without critical ACA protections. These non-ACA compliant plans would likely appeal to younger, healthier consumers, thereby exposing more children and families to less robust coverage and increased risk. Importantly too, the use of such plans would also make ACA-compliant plans more expensive and the ACA market less stable. Given these federal efforts to expand access to such plans, state action may be necessary to bolster insurance plan consumer protections and prevent expansion of plans that could harm children and families.

Association Health Plan (AHP) Proposed Rule

An Association Health Plan (AHP) is held by an organization that covers its individual members. The association could be a legitimate business/trade association, professional employer organization, or other entity.
Current law limits the ability of AHPs to act as large employer for purposes of coverage and gain exemption from state and federal ACA protections. The newly proposed AHP regulation would allow more individuals and small businesses to access AHPs by permitting employers “in the same trade, industry, line of business or profession” or those businesses that have a principal location within a specific region to band together for the sole purpose of acting as an employer to offer AHP coverage.

Those banding together in the same trade, industry, line of business or profession could offer AHP coverage across state borders. Employers banding together would be required to meet specific business conditions to guard against fraud and would be required to form an organization to administer the AHP plan. The rule would also clarify that sole proprietors and their dependents would be eligible to participate in an AHP.

While questions remain as to the interplay between state and federal AHP regulation under the proposed rule, this rule creates significant concern as AHPs would likely be exempt from important state and federal protections such as the ACA essential health benefit (EHB) requirement, guaranteed issue, rating rules, and others. A recently released Avalere study indicates as many as 4.3 million individuals could move to AHP coverage by 2022 if the rule is finalized as proposed.

**Short Term, Limited Duration (STLD) Insurance Proposed Rule**

Short term, limited duration (STLD) insurance is designed to provide bridge coverage during periods of uninsurance, such as when one is between jobs or when a student takes a semester off from school. STLD insurance plans are not considered individual coverage, and therefore are exempt from ACA individual plan consumer protections.

Existing 2016 federal regulations limit the maximum time length of STLD insurance products to less than 3 months. The proposed rule would significantly expand this cap to allow for STLD insurance plans of less than 12 months and make it easier to renew such plans. This would allow consumers to purchase STLD insurance products instead of purchasing ACA-compliant plans.

A new Urban Institute report estimates that 4.2 million people would enroll in STLD coverage in 2019, including 1.7 million who would go otherwise uninsured, and 2.5 million who would leave ACA marketplace plan coverage.

**Guidance for AAP Chapters**

Taken together, these rules allow for expanded use of insurance products that do not offer critical ACA protections. AHP and STLD plans will likely be less expensive because they will offer considerably less coverage than would ACA-compliant insurance, thus exposing families to significant health and financial risk. Moreover, greater use of such plans by younger, healthier enrollees will raise premiums for ACA-compliant plans, thus destabilizing marketplace coverage. AAP chapters may take different approaches at the state level to address these plans:

**Association Health Plans**

Under current law and without a federal preemption, states have authority to regulate AHP financial solvency, marketing and rating practices, and contracts. States also have the authority to require AHPs to adhere to state insurance plan benefit mandates and meet other standards, such as rating rules and other individual/small group market rules.
It is not yet clear how far the administration’s proposed rule goes in upending state authority over AHPs. The AAP has submitted comments to the federal government on the proposed rule highlighting significant concerns with the risk AHP coverage would pose to children and families.

We will provide an update to AAP chapters when the final rule is published, with information on steps states might take within the final rule’s framework to prevent harmful changes that result from expanded availability of AHPs. For the moment, chapters should remain vigilant for state legislation/regulation that would expand availability of AHPs and or exempt them from further state authority.

Short Term, Limited Duration (STLD) Insurance

The newly proposed STLD insurance regulation would not change state authority to regulate these plans. States have several tools at their disposal to limit the expansion of STLD insurance products, including:

- **Limiting the sale of STLD plans**: 3 states (MA, NJ, NY) have placed conditions on insurance products that effectively disallow the sale of STLD plans in the state\(\text{ii}\)

- **Limiting the duration of STLD plans**: States can limit the duration of a STLD plan to a period less than the 12 months, as 12 states (AZ, CA, CO, CT, IN, MI, MN, NV, NH, ND, OR, SD) have already done\(\text{iii}\)

- **Limiting renewals or total amount of STLD coverage**: States can limit STLD plan renewals or total lengths of STLD coverage, as 8 states (CO, ME, MI, MN, NV, NH, OR, WI) have done\(\text{iv}\)

- **Requiring compliance with other rules**: States can require STLD plans to meet rules for the individual market, which would make enrollment in ACA plans more attractive

States have a number of other options to protect consumers from these plans. Of note, Illinois is currently considering legislation that would limit the duration of STLD plans to 3 months and require other consumer protections, including the addition of a plain language warning of the risks of such coverage.

The AAP has submitted comments to the federal government on the STLD proposed rule and will provide an update to AAP chapters when the final rule is published, with information on additional steps states might take to prevent some of the rule’s harmful changes.

We’re Here to Help

These proposed rules are some of the latest federal attempts to weaken ACA protections and to expand access to cheaper, less robust coverage. AAP chapters are encouraged to work with other physician and patient and family advocacy organizations in advocating for state proposals to ensure individuals and families are protected from the increased risk AHPs and STLD plans pose.

AAP chapters are also encouraged to contact the AAP at stgov@aap.org with questions or for consultation and technical assistance on these issues. We will provide updated information to chapters as these rules are finalized.

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1 For a detailed analysis of ACA reforms applicable to AHP large group coverage, see Exhibit 2 of State Regulation of Coverage Options Outside of the Affordable Care Act: Limiting the Risk to the Individual Market, Commonwealth Fund, March 2018.
2 For a detailed analysis of state limits on STLD plans, see Appendix of State Regulation of Coverage Options Outside of the Affordable Care Act: Limiting the Risk to the Individual Market, Commonwealth Fund, March 2018.
\(\text{ii}\) Ibid.
\(\text{iii}\) Ibid.
\(\text{iv}\) Ibid.