September 11, 2023

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS–9904–P
P.O. Box 8010
Baltimore, MD 21244–8010

RE: Short-Term, Limited-Duration Insurance; Independent, Noncoordinated Excepted Benefits Coverage; Level-Funded Plan Arrangements; and Tax Treatment of Certain Accident and Health Insurance (26 CFR Parts 1 and 54; 29 CFR Part 2590; 45 CFR Parts 144, 146, and 148) CMS-9904-P

To Whom It May Concern:

On behalf of the undersigned organizations, representing school superintendents, school business officials, and state school board associations, we write in response to the proposed Tri-Agency Federal Regulations. Earlier this summer, the Department of Health and Human Services (HHS), the Department of Labor, and the Department of the Treasury (collectively, the Departments) released a notice of proposed rulemaking (NPRM). The NPRM proposes to modify the definition of short-term, limited-duration insurance (STLDI) and modify the conditions for hospital indemnity or other fixed indemnity insurance to be considered an excepted benefit. It also solicits comments regarding specified disease excepted benefits coverage and comments regarding level-funded plan arrangements. Lastly, it includes a proposal from the Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) that would clarify the tax treatment of certain benefit payments in fixed amounts received under employer-provided accident and health plans.

Related to the proposed beneficiary protections, STLDI is not individual health insurance coverage and generally exempt from the applicable Federal individual market consumer protections and requirements for comprehensive coverage. We support beneficiary protections that prevent beneficiaries from being misled. We also share concerns with practices such as those described within the NPRM which states, "[t]he Departments have also become aware of potentially deceptive or aggressive marketing of STLDI and fixed indemnity excepted benefits coverage to consumers who may be unaware of the limits of these plans or the availability of Federal subsidies that could reduce the costs of premiums and out-of-pocket health care expenditures for comprehensive coverage purchased through an Exchange." In addressing these concerns, we support the Departments' efforts to put in place beneficiary protections including limiting the plans in duration and renewals.

However, in putting in place these valuable beneficiary protections, we urge the Departments to strike the appropriate balance and ensure the least financial hardship and impact on beneficiaries. We look forward to working with the Departments on this vital work, and want to take this opportunity to express concern for any efforts that may increase the financial impact on schools and educators. While we lack exact data on the scope of supplemental insurance plans in schools, we do know that it is a nearly universal experience for school districts to offer supplemental benefits in addition to the underlying comprehensive major medical coverage they offer employees. We may not know the exact national number of supplemental policies in force in the K-12 education market, but based on the size and number of large carriers competing in the market and the consistent popularity of the supplemental plans over the past several decades, it is safe to estimate that the number of plans in play for school employees is in the multi-millions.

We are concerned that the proposal, as drafted, would increase income taxes for insureds and impose significant recordkeeping and tax withholding obligations on employers. Specific to benefits being taxed as wages, the proposed rule provides that any benefit payments received by insureds from insurance carriers under supplemental benefit products sold pre-tax via a cafeteria plan would be considered taxable wages for income tax withholding and employment tax and changes the benefit margin to the employee. In the context of schools as

employers, they would be subject not only to additional administrative compliance burdens but also increased taxation. Specifically, employers would be required to collect, compile and maintain records sufficient to determine the correct amount of income tax withholding and employment taxes; withhold the correct amount of such taxes; timely deposit such taxes to the Internal Revenue Service; file payroll tax returns with the Internal Revenue Service; pay the employer's share of FICA taxes and the employer FUTA tax; and comply with any resulting applicable state or local requirements. Failure to comply with these requirements will subject employers to potential penalties and associated interest. These requirements will also require the expenditure of significant costs and expenses associated with developing appropriate information collection systems and processes, which may be challenging given potential HIPAA and other privacy limitations.

With regard to the financial impact that this proposal would have on school employees (e.g., teachers, principals, counselors, administrators, and other professionals who participate in district section 125 plans), treating supplemental benefits as taxable income reduces employees' take-home pay, which may make it more difficult for districts to recruit and retain high-quality educators in an already tight K-12 labor market.

Beyond the very real administrative burden to employers and the fiscal impact on employees, we also note that the proposed timeline for implementation is very unrealistic. The proposed rule has an effective date of "the later of the date of publication of the final rule or January 1, 2024" requiring taxpayers and employers to develop these systems and processes in a very short time frame.

We appreciate your thoughtful consideration of these issues. Please feel free to contact Noelle Ellerson Ng (nellerson@aasa.org) if you have any comments or questions.

Sincerely,

AASA, The School Superintendents Association
Association of School Business Officials International
National School Boards Association