U.S. Health Reform—Monitoring and Impact

The Marketing of Short-Term Health Plans: An Assessment of Industry Practices and State Regulatory Responses

January 2019

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Robert Wood Johnson Foundation

Support for this research was provided by the Robert Wood Johnson Foundation. The views expressed here do not necessarily reflect the views of the Foundation.

URBAN INSTITUTE

With support from the Robert Wood Johnson Foundation (RWJF), the Urban Institute is undertaking a comprehensive monitoring and tracking project to examine the implementation and effects of health reform. The project began in May 2011 and will take place over several years. The Urban Institute will document changes to the implementation of national health reform to help states, researchers and policymakers learn from the process as it unfolds. Reports that have been prepared as part of this ongoing project can be found at **www.rwjf.org** and **www.healthpolicycenter.org**.

EXECUTIVE SUMMARY

A 2018 federal rule changing the definition of short-term limited-duration insurance (STLDI) has created a new marketing opportunity for insurance companies and brokers. STLDI, once limited to a three-month contract duration, can now be sold as full-year substitute coverage for traditional health insurance. STLDI is also exempt from the consumer protections and standards prescribed by the Affordable Care Act (ACA).

STLDI, depending on how it is marketed and sold, can be risky for consumers because many buy these plans mistakenly believing that they are as comprehensive as traditional, ACA-compliant plans. A growing market for STLDI plans also places new demands on state insurance departments, which are responsible for overseeing insurers and consumer protection. This study assesses short-term limited-duration insurers' marketing tactics in the wake of the new federal rules and, through interviews with insurance officials in Colorado, Florida, Idaho, Maine, Minnesota, Missouri, Texas, and Virginia, how regulators have evaluated and prepared for this new market. Key findings include the following:

- State officials have mixed views on short-term plans' benefits for consumers but generally agree they pose several risks, including coverage denials because of health status, refusal to cover services because of a preexisting condition, the retroactive cancellation of coverage for enrollees with certain medical claims, and surprise balance billing because of a lack of in-network providers. Some states have issued warnings and advisories to help educate consumers about the benefits and risks, but their capacity to widely disseminate educational materials and fully inform consumers is limited.
- State officials lack comprehensive data about which insurers actively market STLDI to their residents, with one official calling it "one of our biggest blind spots." However, most state regulators report that they have begun to, or plan to, identify the short-term limited-duration insurers operating in their state.
- Our marketing scan suggests that consumers shopping online for health insurance, including those using search terms such as "Obamacare plans" or "ACA enroll," will most often be directed to websites and brokers selling STLDI or other non–ACA compliant products. These websites and brokers often fail to provide consumers with the plan information necessary to inform their purchase. Brokers selling STLDI over the phone push consumers to purchase the insurance quickly, without providing written information.
- State insurance departments generally lack the authority and/or capacity to engage in preemptive regulatory oversight that would prevent deceptive marketing tactics before they occur.
- In most states, plan and marketing standards will primarily be enforced retroactively, after insurance regulators receive complaints. Resolving the complaint in favor of the consumer is often challenging because little of the purchase transaction is documented in writing.

Without state oversight of STLDI and insurers' and brokers' marketing tactics, consumers are at risk of being underinsured, and both consumers and providers face significant financial liability if a high-cost medical event occurs.

INTRODUCTION

A 2018 federal rule changing the definition of short-term limited-duration health insurance (STLDI) has created a new marketing opportunity for insurance companies and brokers.[1] Short-term health plans, once limited to a three-month contract, can now be sold as full-year substitute coverage for traditional health insurance. Short-term plans are also exempt from Affordable Care Act (ACA) standards that prohibit eligibility and price discrimination against people with preexisting conditions, as well as requirements to cover a minimum set of essential health benefits and cap enrollees' out-of-pocket costs.

Short-term plans, depending on how they are marketed and sold, can be risky for consumers because many buy these plans mistakenly believing that they are as comprehensive as traditional, ACA-compliant plans. The growing market for these plans also places new demands on state insurance departments, which are primarily responsible for overseeing insurers and consumer protection. This study assesses insurers' tactics for marketing short-term plans in the wake of the federal rule and how insurance regulators in eight states have evaluated and prepared for this new market.

BACKGROUND

Short-Term Plans Versus ACA-Compliant Coverage: Key Differences

Short-term health insurance products are not new. Before the ACA, people used short-term health insurance to fill gaps in coverage, such as when transitioning between school and a job or during a waiting period for an employer-sponsored plan. Under existing federal law, however, short-term policies are not considered individual health insurance coverage, and thus are exempt from federal health insurance standards.[2]

When categorized as short-term coverage, STLDI plans do not have to comply with the ACA, including standards such as banning preexisting condition exclusions and rescissions, covering a minimum set of essential health benefits, and limiting enrollees' annual out-of-pocket costs (Exhibit 1). STLDI may also be exempt from many states' health insurance regulations, such as the requirements to annually file policy forms, undergo rate review, and meet state-established benefit mandates.

Because short-term plans cover less and can exclude people with health conditions, they tend to have lower premiums than ACA-compliant options. Proponents of extending short-term plans to 12 months argue that STLDI can be a more affordable alternative to ACA-compliant coverage and provide greater choices for consumers, particularly for those ineligible for ACA marketplace subsidies.[3] Critics, however, argue that short-term plans can expose consumers to financial liability if they have an unexpected medical event. They further argue that the proliferation of short-term plans siphons healthy risk away from ACA-compliant plans, resulting in adverse selection and higher premiums for those products.[4]

Exhibit 1. Federal Consumer Protection Standards for ACA Plans Compared with Short-Term Coverage

Consumer Protection	ACA Plans	Short-Term Coverage
Must issue policies to all applicants, regardless of health status?	Yes	No; can deny coverage to an applicant for any reason, including current or past health status or risk for future health expenses
Includes coverage for preexisting conditions?	Yes	No; can decline coverage or issue policies that exclude coverage for preexisting conditions
Prohibits higher rates based on health status?	Yes	No; can charge a higher rate based on a person's health status
Covers essential health benefits?	Yes	No, coverage varies by plan; benefits like maternity care, mental health care, and prescription drugs are often excluded
Prohibits dollar caps on coverage of services?	Yes	No; can include a dollar cap on covered services and stop paying medical bills after cap is reached
Caps enrollees' out-of-pocket expenses?	Yes	No; may not limit consumer out-of-pocket costs

Just as with ACA-compliant health insurance, consumers can purchase short-term plans through an insurance broker or directly from an insurance company. Many consumers purchase short-term policies through web-based brokers and even over the phone.[5] For short-term plans with a January 1, 2019, effective date, federal rules require the application materials to include the following disclosure:

> *This coverage is not required to comply with certain federal market requirements for health insurance, principally those contained in the Affordable Care Act. Be sure to check your policy carefully to make sure you are aware of any exclusions or limitations regarding coverage of preexisting conditions or health benefits (such as hospitalization, emergency services, maternity care, preventive care, prescription drugs, and mental health and substance use disorder services). Your policy might also have lifetime and/or annual dollar limits on health benefits. If this coverage expires or you lose eligibility for this coverage, you might have to wait until an open enrollment period to get other health insurance coverage.*[6]

One national web broker reported short-term plans as an increasing portion of its commercial business, with as many as 70 percent of unsubsidized customers opting for short-term plans over ACA-compliant coverage for 2019.[7,8] Many insurance brokers report receiving higher commissions from short-term plan insurers than from selling ACA-compliant policies.[3]

The State Role in Regulating Short-Term Plans

States can set standards for STLDI, including contract duration length (several states set a three- or six-month limit), required benefits, minimum medical loss ratios, and prohibit the use of preexisting condition exclusions or rescissions.[9] They can ban the sale of these plans outright, as California has done.[10] States may also oversee these products' marketing and ensure that companies communicate with consumers accurately and honestly. States have several tools to enforce standards and consumer protections, including licensing short-term plan insurers, reviewing short-term plan contracts and rates, and fines or injunctions for deceptive marketing practices or violations of state standards. Further, state insurance departments are responsible for licensing insurance brokers and can withdraw the licenses of, or refer for criminal prosecution, brokers violating the law or engaging in deceptive practices.

METHODOLOGY

Marketing Scan

To assess short-term health plan sellers' marketing tactics, including potential changes to those tactics during open enrollment for 2019 ACA-compliant coverage, we conducted an online marketing scan in two phases: before and during open enrollment. We conducted our first marketing scan, Phase I, between October 22 and 26, 2018. We conducted Phase II between November 11 and 16, 2018. Overall, we analyzed 256 search results and 65 unique websites.

To limit regional bias, we used Google Incognito to search the following terms for each of our eight study states:

- "Cheap health insurance"
- "Short-term health insurance"
- "Obamacare plans"
- "ACA enroll"

Each search term was followed by a study state name (i.e., "cheap health insurance Missouri"). However, Google Incognito does not completely hide the searcher's location, so our marketing scan includes some infrequent geographically irrelevant search results, such as insurance products not for sale within the selected study state. We then analyzed the first four search results, which are often paid advertisements.

Many of these sites are "lead-generating" websites, which do not sell a product. Rather, they ask shoppers to share a phone number and other demographic information, after which the consumer is either directed to another site that sells insurance products or contacted directly by an insurance broker. We created a profile of a consumer seeking health insurance who was age 29, in good health, currently uninsured, and had an estimated yearly income of $20,000 for 2019 (making her potentially eligible for premium subsidies for ACA-compliant coverage). We also used a standardized set of questions a consumer might ask as a guideline for the phone calls with brokers. The questions included:

- "What are my cheapest options?"
- "What does the health plan cover?"
- "Is this health plan Obamacare, or is it something else?"
- "If I have [example of unexpected medical event], will it be covered?"

We answered six broker calls after entering a phone number into these sites between October 26 and December 3, 2018. We took detailed notes of these interactions.

In addition to the Google Incognito scan, we compared information on short-term plans from the websites of the following top-selling short-term health plan insurers, both before and during open enrollment:

- IHC Group
- Pivot Health
- Everest Re Group
- National General
- UnitedHealthOne

Interviews with State Officials

To assess how state regulators prepared for the new market for short-term health insurance, we conducted structured interviews with department of insurance officials in eight states (Colorado, Florida, Idaho, Maine, Minnesota, Missouri, Texas, and Virginia) between October 26 and December 3, 2018. We selected these states to reflect diverse geography and regulatory approaches. Of the eight states, Colorado and Minnesota require short-term plans to adhere to a shorter contract duration than required by federal law (Exhibit 2).

Exhibit 2. State Laws Limiting Short-Term Health Plans' Contract Duration

State	Does State Limit Initial Contract Duration of Underwritten Short-Term Coverage to Less Than 364 Days?
Colorado	Yes (six months)
Florida	No
Idaho	No
Maine	No
Minnesota	Yes (185 days)
Missouri	No
Texas	No
Virginia	No

Source: Georgetown University Center on Health Insurance Reforms and The Commonwealth Fund. What is Your State Doing to Affect Access to Adequate Insurance?" https://www.commonwealthfund.org/publications/interactive/2018/nov/what-your-state-doing-affect-access-adequate-health-insurance. Published November 15, 2018. Accessed December 31, 2018.

FINDINGS

State Officials Have Mixed Views of the Benefits of the Short-Term Health Insurance Market

In all eight study states, insurers can market short-term health plans. In several study states, officials expressed concerns about the marketing of short-term plans as a "replacement coverage" option for ACA-compliant plans, but without the accompanying consumer protections. "We prefer people to have ACA-compliant coverage," one official said. However, most interviewed regulators were not unduly alarmed by the potential expansion of the short-term health plan market.

A few state regulators noted that the short-term market long predated the ACA and provides an option for consumers who can't afford ACA-compliant plans or need to fill a short gap in coverage. Some were also skeptical that the short-term market would grow enough to create adverse selection in the ACA-compliant market. One official said their department "is not anticipating a huge short-term market," noting further that many consumers ineligible for ACA subsidies have already dropped out of the ACA-compliant market. In this view, even a short-term plan with limited financial protection is better than no insurance.

A few state regulators voiced concerns that many consumers will not understand what they are purchasing, and that some may mistakenly believe they are buying ACA-compliant coverage. Regulators agreed that several common industry practices pose risks to consumers seeking or enrolled in short-term health plans, including coverage denials because of health status, refusal to cover services because of a preexisting condition, the rescission of coverage for enrollees with certain medical claims, and surprise balance billing because of a lack of in-network providers.

State Regulators Are Working to Collect Data on Who Is Selling and Buying in the Short-Term Market

In most study states, regulators reported being "in the process" of gathering and assessing data about the companies that market short-term health plans and the consumers who buy such coverage. Though all regulators in our study agreed on the value of having good data about the short-term market, they reported challenges in obtaining the information needed to ensure adequate oversight.

First, though state regulators reported that insurers are required to become licensed in the state and file their plans, they often do not have a mechanism to know what products insurers actively market to consumers. This is "one of our biggest blind spots," said one state official. Second, in at least some study states, officials acknowledged that short-term plans are sold through out-of-state associations that are not required to comply with state standards or to file their products or rates for regulatory review.

However, most study state officials reported that they have begun to, or plan to, better identify the insurers marketing in their state. For example, the Maine and Idaho insurance departments can track short-term plan market growth through annual data submissions on premium revenue and enrollment, respectively.[11] Colorado is requiring short-term plan sellers to file forms and rates annually.[12] In the wake of the new federal standards, Virginia is requiring short-term plan insurers to refile their policies with the state. Another state insurance department is considering withdrawing its approval of all currently approved short-term plans and requiring them to refile. They believe this will "flush out," or reveal, the companies intending to actively market in the state in 2019.

However, though some states are asking insurers to refile their short-term plans and rates because of the new federal rule, many states' regulators lack the authority to reject or require modifications to the policies before they are sold. In addition, short-term plan insurers do not generally have to refile their plans or rates annually with the state (unlike ACA-compliant coverage), unless there is a "material" change in the benefit design or formula by which the insurer sets its rates. Further, states may never conduct a regulatory review of short-term plans sold through out-of-state insurers.

Some States Are Attempting to Educate Consumers about Short-Term Plans

Regulators in our study states acknowledged that many consumers would likely be confused about the differences between short-term plans and ACA-compliant coverage. These concerns prompted the Colorado, Florida, and Maine insurance departments to issue public advisories and frequently asked questions (FAQs) before and during 2019 open enrollment to help consumers better understand their purchases.[13]

Maine instructed brokers to improve consumer disclosures, noting that their "duty of competence includes ensuring that consumers considering [short-term] policies are fully advised of the terms, benefits, and limitations of the coverage."[14] In another study state, local brokers complained to state regulators about potential deceptive and aggressive marketing of short-term plans over the internet and phone. In response, the department of insurance is considering a standard disclosure form that all brokers must follow when counseling consumers on short-term plans.

Marketing Scan Suggests Obtaining Information about Insurance Options Is Difficult

Consumers are likely to have difficulty obtaining the information necessary to make an informed insurance purchase, if the results of our marketing scan are representative of many consumers' experiences. Specifically, our marketing scan found the following:

- Even during ACA open enrollment, only 19 percent of searches using the previously delineated terms (see methodology section) returned sites offering solely ACA-compliant plans. Before open enrollment, the return was less than 1 percent (Exhibit 3).
- Generally, regardless of the search terms used, companies selling short-term plans dominated the returns. However, short-term plan insurers' and brokers' sites appeared more frequently when we searched for "short-term health insurance."
- Lead-generating sites[15] that point consumers to short-term plans or other non–ACA compliant insurance products were the most common search result in every state, representing more than half of all search results before and during open enrollment.
- Lead-generating sites and other sites connecting consumers directly to web brokers or insurers provide limited, if any, information about plan benefits, cost sharing, or rates.
- Of the two web brokers that appeared in our results, the one selling ACA-compliant plans appeared half as often as the web broker selling only short-term plans and did not appear in results before open enrollment.
- The short-term plan insurers' websites provide more information about their plans, such as premiums and plan brochures, than the lead-generating sites, but the insurers' websites do not appear in top search results.
- Many brokers conducting phone sales use aggressive sales tactics, encouraging consumers to purchase coverage over the phone with minimal plan information; most refuse to provide written plan materials or discontinue the call when asked for such materials.
- We posited that STLDI issuers and brokers would more actively market their product as a substitute for ACA coverage (not just as short-term gap insurance) during

Exhibit 3. Search Term Results, Phases I and II

Lead-Generating Websites*	Web Broker	Short-Term Insurer Site	ACA-Compliant Information and Enrollment**	Unrelated to Health Insurance***
Phase I Search Term Results: October 22–26, 2018				
53.9%	14.1%	9.4%	0.78%	21.9%
Phase II Search Term Results: November 11–16, 2018				
55.5%	16.4%	9.4%	18.8%	0%

Notes: *Lead-generating websites require consumers to enter personal information including email, address, and phone number, and then direct consumers to other sites to purchase coverage and/or have brokers reach out to consumers directly.

**ACA-compliant information and enrollment websites provide information or enrollment only for ACA-compliant plans through healthcare.gov or other state-based marketplace websites.

***Results unrelated to health insurance included political campaign, petition, and other websites irrelevant to the sale or purchasing of health insurance.

open enrollment than outside open enrollment. However, in general, we found that the plan descriptions, language, images, and other consumer-facing marketing content did not significantly change between Phases I and II of our scan. In both phases, the marketing content encouraged consumers to consider STLDI as a replacement for ACA-compliant coverage.

Web Searches Point Consumers to Noncompliant Plans and Provide Little Information to Inform Purchases

Across all study states, lead-generating sites were the most common search result.[16] Though several lead-generating sites touted the ACA's open enrollment period to entice consumers to purchase a policy, none directed consumers to healthcare.gov, the official government website where consumers can apply for premium subsidies and enroll in ACA-compliant coverage. Further, these lead-generating sites provide little, if any, information about STLDI plan benefits, cost sharing, or rates. Some of these sites advertise "free" insurance quotes and prompt the consumer to provide personal information, including a phone number. If the consumer enters a phone number, she will usually receive a call from a call center, where an operator will ask screening questions regarding the consumer's age, address, income, and often whether she has any major medical conditions likely to disqualify her from the coverage. From there, the consumer may be connected to an insurance broker.

One website we consider a lead-generating site, healthcare.com, provides some information about rates and cost sharing in specific plans and directs consumers to web brokers and insurer websites once the consumer chooses a plan for purchase. In some, but not all, search results that returned healthcare.com, the site advertised access to ACA "bronze, silver, and gold" plans and short-term plans on the landing page, but only short-term plans appeared for purchase.

Search results and the lead-generating sites raised two web broker sites that allow consumers to enroll in a plan through the website. Agilehealthinsurance.com only sells short-term plans and other non–ACA compliant coverage options. The other web broker site, eHealthinsurance.com, sells short-term plans, ACA-compliant coverage, and other coverage options but appeared in search results half as often as agilehealthinsurance.com during open enrollment and did not appear at all before open enrollment. The web broker sites we viewed provide consumers with access to plan summaries and brochures with some information about covered benefits, cost sharing, and rates. eHealthinsurance.com offers consumers comparative information about both short-term and ACA-compliant plan options. We did not encounter any site that allows consumers to see detailed policy documents, such as a contract of insurance, before sale.

In general, short-term plan insurance companies' websites provide more consumer information and plan details than the lead-generating sites, but these sites made up only 9.4 percent of our search results. However, if a consumer goes directly to these insurance company websites, they may find resources such as FAQs, comparisons with ACA-compliant plans, and blog posts designed to educate consumers shopping for insurance coverage. These sites' content included information about the limits of short-term health plans but primarily highlighted their lower premiums. An FAQ by one short-term insurance company noted that short-term plans are not required to cover the essential health benefits and are not "guaranteed issue," but did not define guaranteed issue. The same FAQs advised readers that the company's short-term plans are less expensive than ACA-compliant plans.

Another insurance company's advice on how to cancel an ACA-compliant plan included the caution that "it's important to carefully consider the potential financial and health consequences of opting out of comprehensive major medical coverage." It then provided information and links to enroll in one of its short-term plans.[17] Another insurance company noted in its FAQs that people "best served" by short-term plans are "those who are not eligible for premium tax credits (Obamacare subsidies) and those in good health that do not have major significant preexisting conditions."[18]

Brokers Try to Make Quick Sales over the Phone, without Providing Written Information

Our phone conversations with insurance brokers shared common elements. Most brokers would ask questions about the consumer's health status, age, and income. The broker would then provide some general information about the coverage being offered, such as the names of companies offering products, consumer cost sharing for primary and specialist visits, and deductibles. Brokers did not offer information about the type of insurance product they were offering, such as a "short-term" or "marketplace" plan, unless asked by the consumer. For example, only after being asked if the coverage recommended was "an Obamacare plan," did brokers describe the product type. Of the six brokers we spoke with, three recommended ACA-compliant plans when informed that the consumer's income could make her eligible for the ACA's premium tax credits. Two of the three brokers recommending ACA-compliant plans, however, pushed a "bundled" package that included supplementary insurance products in addition to the ACA-compliant plan. The remaining three brokers recommended non–ACA compliant coverage, even after being informed that the consumer's income made her eligible for subsidies and cost-sharing reductions. "Obamacare is only for sick people," one broker told us.

The brokers generally pressed for a quick decision to purchase coverage, and most refused or were reluctant to send written plan information. One agreed to send plan documents via email, but they never arrived. The only broker who agreed to send plan documents recommended an ACA-compliant plan.

State Enforcement of Marketing Violations Will Be Largely Retroactive

Of the eight study states, only Minnesota requires the insurers selling short-term plans to submit their advertising and marketing materials in advance, but no state reviews or approves them before use. In many cases, state regulators believe they lack the legal authority to require such advance approval. Other officials indicated that, even with legal authority, they would not have the staff capacity to review and assess the marketing materials generated by short-term insurers. No state reported conducting secret shopper surveys or a proactive review of insurer or broker websites to assess how they communicate with consumers. State insurance departments can, however, request that insurers provide advertising and marketing material in response to consumer or other complaints, if they have evidence the information is misleading or deceptive, or as part of a market conduct exam. However, retroactive reviews may not be useful to consumers with unpaid medical bills who believe they've made a purchase based on false or inaccurate information provided by the insurer.

Additionally, state regulators acknowledged that, in many cases, resolution of a marketing complaint is challenging. "We do try to hold the company or agent responsible," one regulator asserted, "but many times, unfortunately, it's a 'he said, she said' thing, and we can't prove anything." As our marketing scan revealed, particularly over the phone, the consumer is often urged to purchase the plan before reviewing written plan materials, making it difficult for insurance regulators to later identify clearly fraudulent or deceptive statements.

CONCLUSION

Our marketing scan suggests that consumers shopping online for health insurance will, more often than not, find websites and brokers selling short-term plans as a replacement for ACA-compliant coverage. These websites and brokers often fail to provide consumers with the detailed plan information necessary to inform their purchase. Most often, brokers push consumers to purchase a plan over the phone without seeing written information or time to think about the decision. However, many interviewed state regulators do not have the tools to know which insurers and brokers actively market short-term coverage to their residents and lack the authority to engage in preemptive regulatory oversight that would prevent deceptive marketing practices. Further, though several departments of insurance in our study states have attempted to educate consumers about the differences between short-term and ACA-compliant plans, their capacity to disseminate educational materials and arm consumers before purchasing is limited. In most states, plan and marketing standards will primarily be enforced retroactively, after insurance regulators receive complaints. Resolving the complaint in favor of the consumer is often challenging because little of the transaction, and the information conveyed to the consumer, is documented in writing. Without oversight of short-term plan marketing, consumers are at risk of being underinsured, with significant financial liability if a high-cost medical event occurs.

NOTES

1. 45 C.F.R. §144.103 (2018).
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15. A lead-generating site does not sell a product. Rather, it is a landing page that collects demographic information about a customer interested in a product or service. Once the consumer fills out the information, she is then directed to other sites to purchase the product and/or have a salesperson reach out directly to the consumer.
16. These sites also offer other types of coverage including memberships in health care sharing ministries; fixed indemnity insurance; and products that bundle multiple insurances that are not subject to the ACA, such as a hospital-only policy, a drug discount plan, and fixed indemnity policy. These products are often marketed to appear to offer similar benefits to those of ACA-compliant plans.
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About the Authors and the Georgetown University Center on Health Insurance Reforms

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Acknowledgments

The authors thank John Holahan and Linda Blumberg for their thoughtful review and comments on drafts of this report. We are also grateful to the state insurance regulators who so generously shared their time and insights with us.

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