

United States Senate
WASHINGTON, DC 20510

June 8, 2017

The Honorable Tom Price, M.D.
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Secretary Price:

As the Trump Administration continues to work on repairing the damage caused by the Affordable Care Act (ACA), we must consider solutions that will increase consumer choice in the health care markets and, ultimately, decrease health care costs. We write to urge the Department of Health and Human Services (HHS) to reverse a regulation from the Obama Administration that inhibits consumers' ability to choose a health insurance plan that is better for themselves or their families.

Short-term, limited duration (STLD) insurance plans provide consumers with "valuable protection against out-of-pocket costs in case of unexpected injury or hospitalization."¹ STLD plans last less than 12 months and offer consumers a variety of medical benefits including physician and specialist visits, hospitalization, emergency treatment, and prescription drug discounts.² These plans have offered great value to people, real protection, and broad provider networks.³

Although STLD plans do not meet ACA requirements for minimum essential coverage, making consumers of STLD plans potentially liable for tax penalties under the ACA,⁴ these products afford greater flexibility in the choice of health benefits than on-exchange plans.⁵ In fact, despite the tax penalty, thousands of consumers still purchased these short-term plans.⁶ Presumably these plans would be even more popular if they qualified for an exception to the individual mandate tax penalty. These plans are particularly attractive to people in between jobs, people who have missed Open Enrollment, and people who want to pay less for health

¹ eHealth, *3 Steps to Understanding Short-Term Health Insurance* at 3 (2017),

<https://www.ehealthinsurance.com/short-term-health-insurance/short-term-health-insurance-guide.pdf>.

² Amy Fletcher, *Short-Term Health Plans Ideal Summer Coverage for College Students & Grads*, Market Wired (May 5, 2017) at <http://www.marketwired.com/press-release/short-term-health-plans-ideal-summer-coverage-for-college-students-grads-2214385.htm>.

³ See e.g. eHealth, *Short Term Health Insurance*, <https://www.ehealthinsurance.com/short-term-health-insurance>.

⁴ eHealth, *3 Steps to Understanding Short-Term Health Insurance* at 3 (2017),

<https://www.ehealthinsurance.com/short-term-health-insurance/short-term-health-insurance-guide.pdf>.

⁵ *Id.* at 4-5.

⁶ eHealth, *Costs and Trends in the Short-Term Health Insurance Market, 2013-2016* at 2 (March 2017); Telephone Call by Chairman Johnson's Staff, S. Comm. on Homeland Sec. & Governmental Affairs, with Kev Coleman, Head of Research and Data, HealthPocket, Inc. (May 31, 2017).

insurance.⁷ According to eHealth, an online marketplace for health insurance, a consumer who has short-term coverage pays, on average, about one-third of what a consumer with major medical coverage pays per month.⁸ In addition, between 2015 and 2016, eHealth reported that average monthly short-term premiums “decreased 5% for individuals (from \$116 to \$110) and 2% for families (from \$283 to \$276).”⁹

STLD plans remained a viable health coverage option for consumers until an HHS regulation went into effect on April 1, 2017 that greatly restricted the use of these policies.¹⁰ The regulation decreased the maximum policy length of STLD plans from 364 days to 90 days.¹¹ According to estimates, prior to April 1, at any given point, the market for short-term plans likely consisted of 650,000 to 850,000 enrollees with the average coverage duration lasting five to six months.¹²

This change could have serious consequences for the STLD market, particularly young and unemployed consumers of STLD products. According to the Wisconsin State Insurance Commissioner’s Office, “there are many plans sold to students studying in a foreign country [that] are regulated as short term plans. As a result, the . . . regulation would limit a student’s coverage in a foreign county to only three months. This creates a significant burden on these students and their families.”¹³ In addition, STLD plans serve as a cost-friendly alternative to COBRA continuation coverage for individuals who are in between jobs that offer employer-sponsored coverage. Commenters on the proposed rule noted that “some individuals who lose their employer-sponsored coverage may not be able to obtain COBRA continuation coverage and that a job search can often take longer than three months.”¹⁴

It appears that HHS ignored these consequences and, despite the popularity and usefulness of STLD plans, viewed short-term, limited coverage as a threat to the longevity of the ACA. In its regulation, HHS admitted as much, writing: “healthier individuals may be targeted

⁷ HealthPocket, *Short-term Health Insurance Pros and Cons*, <https://www.healthpocket.com/short-term-health-insurance/pros-and-cons#.WS7MX9y1uUk>; UnitedHealthcare, *Short Term Health Insurance Frequently Asked Questions*, <https://www.uhone.com/insurance/short-term/short-term-medical-insurance-faqs#rightchoice>; eHealth, *3 Steps to Understanding Short-Term Health Insurance* at 3 (2017), <https://www.ehealthinsurance.com/short-term-health-insurance/short-term-health-insurance-guide.pdf>.

⁸ eHealth, *3 Steps to Understanding Short-Term Health Insurance* at 3 (2017), <https://www.ehealthinsurance.com/short-term-health-insurance/short-term-health-insurance-guide.pdf> at 4. (A consumer with an STLD plan would pay, on average, \$110 per month, while a consumer with major medical coverage would pay, on average, \$321 per month).

⁹ eHealth, *Costs and Trends in the Short-Term Health Insurance Market, 2013-2016* at 2 (March 2017).

¹⁰ 81 FR 75316, at 75318-20, available at <https://www.federalregister.gov/documents/2016/10/31/2016-26162/excepted-benefits-lifetime-and-annual-limits-and-short-term-limited-duration-insurance>.

¹¹ Health Deals, *Need Short Term Insurance Coverage? Don't Miss the Deadline*, available at <http://www.healthdeals.com/articles/need-short-term-insurance-coverage-deadline>.

¹² Telephone Call by Chairman Johnson’s Staff, S. Comm. on Homeland Sec. & Governmental Affairs, with Kev Coleman, Head of Research and Data, HealthPocket, Inc. (May 31, 2017).

¹³ State of Wisconsin Office of the Commissioner of Insurance, *Re: Wisconsin Office of the Commissioner of Insurance (OCI) Comments on proposed regulation 135702-15* at 2 (August 9, 2016).

¹⁴ 81 FR 75316, at 75318, available at <https://www.federalregister.gov/documents/2016/10/31/2016-26162/excepted-benefits-lifetime-and-annual-limits-and-short-term-limited-duration-insurance>.

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for this type of [short-term] coverage, thus adversely impacting the risk pool for Affordable Care Act-compliant coverage.”¹⁵ Essentially, HHS has sought to eliminate a viable and useful health care alternative in order to force individuals to purchase ACA-compliant coverage in an attempt to prop up the failing ACA exchanges.

As a result of this regulation, providers that once offered short-term plans may exit the market, leaving consumers in some locations with even fewer options for health insurance. Recently, Tokio Marine HCC – Medical Insurance Services Group announced that “it will no longer issue Short Term Medical policies because of new rules from the federal government that limits their duration to less than 90 days.”¹⁶ At a time when many states are on the brink of losing individual insurance carriers, it is urgent that consumers in those areas are provided with more, not fewer, health insurance options to choose from.¹⁷

This significant restriction of STLD plans is yet another example of the Obama Administration’s policies that inhibited consumer choice and harmed the market for health care products. On January 20, 2017, President Trump issued an Executive Order calling on the head of each department to “encourage the development of a free and open market in interstate commerce for the offering of healthcare services and health insurance, with the goal of achieving and preserving maximum options for patients and consumers.”¹⁸ This regulation is inconsistent with the President’s vision of greater choices for consumers and lower costs.

Accordingly, we respectfully request that you promptly reverse this regulation to allow American consumers more economical and flexible options when it comes to finding the best health care coverage that meet their personal needs and those of their families. Acknowledging Americans’ freedom to avail themselves of these insurance plans is a step the Administration can take quickly to restore additional personal freedom and individual choice in health care markets.

Thank you for your attention to this important issue.

Sincerely,

¹⁵ 81 FR 75316, at 75318, *available at* <https://www.federalregister.gov/documents/2016/10/31/2016-26162/excepted-benefits-lifetime-and-annual-limits-and-short-term-limited-duration-insurance>.

¹⁶ Kevin Knauss, *HCC Exits Short Term Medical Market Because Of Government Rules*, California Health News (May 2, 2017), *available at* <https://calhealthnews.com/hcc-exits-short-term-medical-market-government-rules/>.

¹⁷ Toney Leys, *72,000 Iowans could be first to lose coverage as insurance market collapses*, Des Moines Register (May 4, 2017), <http://www.desmoinesregister.com/story/news/health/2017/05/04/72-000-iowans-fear-theyll-lose-insurance-congress-tries-overhaul-obamacare/310390001/>.

¹⁸ Exec. Order No. 13,765, 82 Fed. Reg. 8351 (January 20, 2017).

Ron Johnson

7-8

Pat Romney

Jimmy Smith

John Risch

William B. Lee

John Kennedy

Rand Paul

M. Michael Bond

John Hope

Thom Tillis

Royce Hunt

John Barrasso

Tom Hbe

United States Senate

WASHINGTON, DC 20510

June 8, 2018

The Honorable Steven Mnuchin
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue N.W.
Washington, D.C. 20220

The Honorable R. Alexander Acosta
Secretary
U.S. Department of Labor
200 Constitution Avenue N.W.
Washington, D.C. 20210

The Honorable Alex M. Azar
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue S.W.
Washington, D.C. 20201

Dear Secretary Mnuchin, Secretary Acosta, and Secretary Azar:

We write to urge the Department of the Treasury, the Department of Labor and the Department of Health and Human Services to extend contract terms for up to 12 months and expand consumer options for enrollees in short-term limited duration (STLD) insurance plans.

In a previous letter with Senate colleagues, we encouraged the administration to restore flexibility for STLD plans in order to return personal freedom and individual choice to health care.¹ Allowing STLD plans to offer terms of up to 12 months along with renewal guarantees, consistent with the October 12, 2017 executive order issued by President Trump,² would allow options for enrollees who face skyrocketing premiums or who have an unexpected gap in coverage.³

The agencies have the authority to allow these consumer options in STLD plans, and these changes are consistent with congressional intent. Indeed, the departments have no statutory authority to regulate, much less ban, renewal guarantees.⁴

For nearly 20 years prior to 2016, including over 80 months since the ACA became law, administrations and Congresses controlled by both political parties accepted that STLD plans could offer contract terms of up to 12 months.⁵ Despite this long-accepted interpretation of

¹ Letter from Sen. Ron Johnson et al. to Tom Price, M.D., Secretary, U.S. Dep't of Health & Hum. Servs., June 8, 2017.

² Exec. Order No. 13,813, 82 Fed. Reg. 48,385 (Oct. 12, 2017).

³ Michael F. Cannon, *A Chance to Overcome ObamaCare*, WALL ST. J. (May 28, 2018), <https://www.wsj.com/articles/a-chance-to-overcome-obamacare-1527517284>.

⁴ Michael F. Cannon, CATO Institute, Comments on Short-Term, Limited Duration Insurance - CMS-9924-P (Apr. 23, 2018), <https://object.cato.org/sites/cato.org/files/pubs/pdf/cannon-short-term-insurance-comment.pdf>.

⁵ Interim Rules for Health Insurance Portability for Group Health Plans, 62 Fed. Reg. 16,894, 16,928, 16,942, 16,958 (Apr. 8, 1997); Final Regulations for Health Coverage Portability for Group Health Plans and Group Health Insurance Issuers Under HIPAA Titles I & IV, 69 Fed. Reg. 78,720, 78,748, 78,764, 78,783 (Dec. 30, 2004) (“health insurance coverage provided pursuant to a contract with an issuer that has an expiration date specified in the contract (taking into account any extensions that may be elected by the policyholder without the issuer’s consent) that is less than 12 months after the original effective date of the contract.”).

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federal law, a 2016 rule from the outgoing Obama administration arbitrarily prohibited STLD plans from offering contract terms longer than three months and foreclosed the ability of issuers to offer renewal guarantees.⁶ The National Association of Insurance Commissioners (NAIC) complained that the rule provided “no data to support the premise that a three-month limit would protect consumers or markets.”⁷ On the contrary, the NAIC concluded that prohibiting contract terms longer than three months would *harm* many consumers, leaving them with *no* coverage for up to nine months.⁸

Moreover, the NAIC noted that limiting the availability of STLD plans in such a way could harm the ACA’s risk pools and would do nothing to protect individuals who develop an expensive illness: “If consumers are healthy they can continue buying a new policy every three months. Only those who become unhealthy will be unable to afford care, and that is not good for the risk pools in the long run.”⁹ Nonetheless, the departments finalized the rule without changes.

Though the Obama administration significantly restricted the use of STLD plans, including prohibiting the ability of individuals who become sick from renewing their plans, there is now an opportunity to provide real relief to the forgotten men and women President Trump has championed. Restoring consumer choice in the STLD market would provide more affordable alternatives and allow for consumer options in the event individuals in that market develop illnesses. We urge the departments to provide maximum flexibility for patients and consumers in the final rule by allowing STLD insurance plans to offer terms of up to 12 months in addition to renewal guarantees.

Thank you for your attention to this important issue.

Sincerely,

⁶ Excepted Benefits; Lifetime and Annual Limits; and Short-Term, Limited-Duration Insurance, 81 Fed. Reg. at 75,316, 75,324, 75,325 75,326 (Dec. 30, 2016) (“health insurance coverage provided pursuant to a contract with an issuer that has an expiration date specified in the contract (taking into account any extensions that may be elected by the policyholder *with or without* the issuer’s consent) that is less than 3 months after the original effective date of the contract.” (emphasis added)).

⁷ Memorandum from Nat’l Assoc. of Ins. Comm’rs to Internal Revenue Serv. (Aug. 9, 2016), <https://www.regulations.gov/contentStreamer?documentId=IRS-2016-0021-0146&attachmentNumber=1&contentType=pdf>.

⁸ *Id.*

⁹ *Id.*

Ray Johnson

John Barrasso

John Kennedy
Pat Dooney

M. M. S. R.
Ted S.

Jimmy [unclear]

Malcolm S. E.

Mc. H.

Tom [unclear]
Tom Cotton

Art Tucker

Tom Ho

[unclear]

Van [unclear]

Bill Cassidy

Dan Sullivan

[unclear]

John V. Keene

John Boon

Candy Spivey Smith

Thom Tillis

Ben Sasse

Rob Robb

Shelley Moore Capito

David A. Loefer

John Hovener

Jerry Moran

Tom Tillis

Michelle Linn

Robert Wick

Tom Tillis

Richard Shelby

Rand Paul

Byron

Aug. 1, 2018

U.S. Sen. Ron Johnson (R-Wis.) said the following after Secretary of Health and Human Services Alex Azar issued a final rule on short-term limited duration health insurance plans consistent with what the senator has advocated:

“I appreciate the Trump administration providing relief to the forgotten men and women harmed by Obamacare. The final rule expands options for consumers and provides additional flexibility for market-based consumer protections in the short-term market, like guaranteed renewability, that the Obama administration made illegal. Today’s action is a significant step in restoring personal freedom and individual choice in health care.”