

**Congress of the United States**  
**Washington, DC 20515**

April 12, 2018

The Honorable Steven Mnuchin  
Secretary  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

The Honorable R. Alexander Acosta  
Secretary  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Washington, DC 20210

The Honorable Alex M. Azar  
Secretary  
U.S. Department of Health & Human Services  
200 Independence Ave, SW  
Washington, DC 20201

Dear Secretary Mnuchin, Secretary Acosta, and Secretary Azar:

We write to express our strong concerns regarding the proposed rule, published on February 21, 2018, to extend the allowable duration of short-term, limited-duration insurance (STLDI) from 3 months to up to 12 months. This proposed rule would expand the availability of discriminatory, deceptive, and insufficient plans—like those that existed before the Affordable Care Act (ACA)—that deceive consumers into thinking they are covered for major medical expenses, and is yet another attempt to sabotage the health care markets on which millions rely for coverage. Expanding the use of STLDI will undermine consumer protections, disrupt the individual health insurance Marketplaces, and expose consumers to great financial risk. We ask that the Departments withdraw the proposed rule in its entirety.

As the rule acknowledges, STLDI is completely exempt from basic consumer protections. Expanding STLDI would take us back to the days when consumers could be denied coverage or charged more based on age, gender, or health status and when they had no guarantee of coverage for basic benefits, such as maternity care, mental health and substance use disorder, prescription drugs coverage, and preventive services. These junk policies fail to cover needed benefits, particularly for people with preexisting conditions.

STLDI undermines the individual insurance market and raises costs for consumers. Under the proposed rule, STLDI would be sold alongside plans that comply with Federal consumer protections, creating an un-level playing field. This disparity will result in the adverse selection that once plagued the individual insurance market and make it harder for insurers to offer coverage that meets the current legal standards. For example, while individual market plans are prohibited from instituting annual and lifetime limits on coverage and charging people more for having a preexisting condition, insurers offering STLDI will be able to: limit necessary care, discriminate against individuals with preexisting conditions, charge higher premiums based on age, gender, and health status, or deny coverage altogether.

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Working families who need comprehensive coverage will see their premiums skyrocket as junk, low-cost plans lure healthy people out of the risk pool. The proposed rule itself conservatively estimates that between 100,000 and 200,000 individuals previously enrolled in Marketplace coverage will purchase STLDI instead in 2019, causing average individual market premiums to increase. This prediction appears to wildly underestimate the effect of the regulation as compared to many independent analysts who have estimated a much greater impact. For example, the Urban Institute found that, under the proposed rule, 4.3 million people will enroll in STLDI in 2019.<sup>1</sup> This increase in STLDI enrollment will spike premiums and contribute to an increase in the number of uninsured Americans. The same Urban Institute report found that the proposed rule, taken together with the repeal of the individual mandate and other policy changes, will result in 6.4 million more uninsured compared to prior law.<sup>2</sup>

The proposed rule asserts that Marketplace consumers will be largely protected from rising premiums by an increase in tax credits that corresponds with the increase in premiums. However, not all Marketplace consumers will be protected because many do not qualify for tax credits. The parallel market of insufficient coverage that would be created by this proposed rule will harm consumers, especially middle-income families who purchase insurance without subsidies. The Urban Institute estimates that premiums will rise an additional 18 percent on average in states that do not prohibit or limit STLDI as a result of this proposed rule and other policy changes; these premium hikes will disproportionately affect middle class families earning incomes over 400 percent of the Federal Poverty Level (FPL).<sup>3</sup> These are the exact enrollees that Centers for Medicare & Medicaid Services Administrator Seema Verma expressed concern about on March 22 when discussing the impact of “silver-loading” the cost of CSR non-payment, saying, “...it also has an impact on the unsubsidized population. That is where we really continue to be concerned about the folks that are not being subsidized, where they are going.”<sup>4</sup> The Departments cannot on the one hand express concern about premiums paid by consumers who do not get financial help in the Marketplace, while on the other hand promulgate a rule that will significantly increase their premiums.

The proposed rule would also expose consumers to great financial risk. Because STLDI is not subject to the out-of-pocket limits that protect consumers from large, unexpected health care costs, consumers may be left paying exorbitant amounts in deductibles and out-of-pocket costs.<sup>5</sup> Moreover, consumers may be left without coverage for expensive health care costs if an

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<sup>1</sup> Urban Institute, *Updated: The Potential Impact of Short-Term Limited-Duration Policies on Insurance Coverage, Premiums, and Federal Spending*, (Mar. 14, 2018) available at: <https://www.urban.org/research/publication/potential-impact-short-term-limited-duration-policies-insurance-coverage-premiums-and-federal-spending>

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Washington Examiner, *Seema Verma won't say if Trump administration will limit insurers on Obamacare subsidies*, (Mar. 22, 2018) available at: <https://www.washingtonexaminer.com/policy/healthcare/seema-verma-wont-say-if-trump-administration-will-limit-insurers-on-obamacare-subsidies>

<sup>5</sup> Commonwealth Fund, *New Executive Order: Expanding Access to Short-Term Health Plans Is Bad for Consumers and the Individual Market*, (Oct. 11, 2017) available at: <http://www.commonwealthfund.org/publications/blog/2017/aug/short-term-health-plans#/>

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insurer retroactively or prospectively rescinds or denies coverage for care that may stem from what the insurers have declared a preexisting condition.<sup>6</sup> One major insurer has even defined a preexisting condition as one “that would cause a reasonable person to seek diagnosis, care or treatment,” regardless of whether the individual sought medical care for the condition.<sup>7</sup> The aggressive and predatory practices of STLDI issuers described here are not speculative, but rather are based on the real experiences of consumers with these plans. For example, a heart attack victim was left with \$900,000 in bills after his insurer refused to cover bypass surgery under his short-term plan, and a stroke victim “was left with \$250,000 in unpaid medical bills because the policy did not cover prescription drugs and other basic treatment.”<sup>8</sup> These are precisely the types of situations that will proliferate if the proposed rule is allowed to go into effect.

By avoiding rules that ensure premium dollars go toward actual health care for policyholders, issuers of short-term plans profit at the expense of working families. For example, the National Association of Insurance Commissioners found that the three short-term insurers with the largest enrollment spent just *half* of the premiums they collected on enrollees’ medical claims in 2016, sometimes surprising enrollees by not paying claims at all.<sup>9 10</sup> The average percentage of premiums used on actual care for all issuers of STLDI was just 67.3 percent in 2016.<sup>11</sup> By contrast, issuers in the individual insurance market are required to pay 80 percent of collected premiums toward medical claims and quality improvement activities or pay rebates to their enrollees.<sup>12</sup> STLDI issuers are able to inflate profits by denying access to basic benefits guaranteed under Federal law, such as preventive care, prescription drugs, mental health and substance use disorder treatment, and maternity care. Such limits on coverage, especially for substance use disorder treatment, are especially dangerous given the current opioid crisis.

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> New York Times, *Without Obamacare Mandate, ‘You Open the Floodgates’ for Skimpy Health Plans*, (Nov. 30, 2017) available at: <https://www.nytimes.com/2017/11/30/health/health-insurance-obamacare-mandate.html>

<sup>9</sup> National Association of Insurance Commissioners, *2016 Accident and Health Policy Experience Report*, (Jul. 2016) available at: [http://www.naic.org/prod\\_serv/AHP-LR-17.pdf](http://www.naic.org/prod_serv/AHP-LR-17.pdf)

<sup>10</sup> Center on Budget and Policy Priorities, *Trump Proposal Expanding Short-Term Health Plans Would Harm Consumers*, (Feb. 20, 2018) available at: <https://www.cbpp.org/blog/trump-proposal-expanding-short-term-health-plans-would-harm-consumers>

<sup>11</sup> National Association of Insurance Commissioners, *2016 Accident and Health Policy Experience Report*, (Jul. 2016) available at: [http://www.naic.org/prod\\_serv/AHP-LR-17.pdf](http://www.naic.org/prod_serv/AHP-LR-17.pdf)

<sup>12</sup> Section 2718(b)(1) of the Public Health Service Act

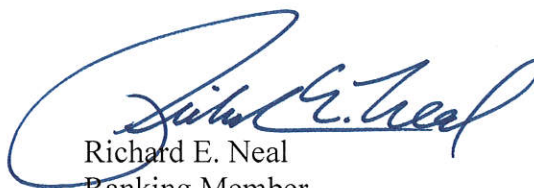
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We are dismayed that the Administration is taking this step in the wrong direction. Instead of finalizing this proposed rule, the Departments should apply all Federal consumer protections to short-term plans and make them truly short-term in nature: limiting their duration so they fill in gaps, without becoming a poor substitute for quality, comprehensive coverage. We urge the Departments to protect access to affordable health coverage for families and reject this ill-advised proposed rule.

Sincerely,



Frank Pallone, Jr.  
Ranking Member  
House Committee on Energy  
and Commerce



Richard E. Neal  
Ranking Member  
House Committee on Ways and  
Means



Robert C. "Bobby" Scott  
Ranking Member  
Committee on Education  
and the Workforce



Patty Murray  
Ranking Member  
Senate Committee on Health,  
Education,  
Labor, and Pensions



Ron Wyden  
Ranking Member  
Senate Committee on Finance