

Congress of the United States

Washington, DC 20510

May 31, 2018

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

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

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

The Honorable Mick Mulvaney
Director
The Office of Management & Budget
725 17th Street, NW
Washington, DC 20503

Dear Secretary Azar, Secretary Acosta, Secretary Mnuchin, and Director Mulvaney,

We write to express our concern about the flawed analysis provided in the Economic Impact and Paperwork Burden section of the proposed rule on Short-Term, Limited-Duration Insurance (STLDI) issued on February 21, 2018 (CMS-9924-P).¹ This rule would affect millions of people and should not rely on a faulty, biased or incomplete analysis. There are wide differences between the analysis prepared by the Departments of Health and Human Services, Labor, and Treasury (“Departments”) and analyses prepared by nonpartisan sources that show the rule would actually cause serious harm to our health care system. We urge you to re-publish the proposed rule with an updated analysis of the regulation’s economic impact and re-open the comment period before finalizing this rule.

On May 15th, the New York Times reported that the Chief Actuary at the Centers for Medicare & Medicaid Services (CMS) had issued a report that the proposed rule could have a substantial effect on the individual insurance market.² Only after the New York Times report did CMS post the Chief Actuary’s analysis even though it was issued on April 6, 2018, weeks before the comment period for the proposed rule closed on April 23, 2018.³ The Chief Actuary’s report found that approximately 1.4 million people would sign up for short-term, “junk” insurance in 2019, increasing to 1.9 million by 2022. The Chief Actuary estimated that most of the individuals who would shift to these short-term plans would be younger and healthier, leaving the risk pool in the individual insurance market older and sicker. As a result, the Chief Actuary projected that premiums in the individual insurance market would be three percent higher in

¹ <https://www.federalregister.gov/documents/2018/02/21/2018-03208/short-term-limited-duration-insurance>

² https://www.nytimes.com/2018/05/15/us/politics/trump-health-insurance-costs.html?action=click&contentCollection=politics&contentPlacement=1&emc=edit_cn_20180516&module=stream_unit&nl=first-draft&nid=84076584&pgtype=sectionfront®ion=stream&rref=collection%2Fsectioncollection%2Fpolitics&te=1&version=latest

³ <https://www.cms.gov/Research-Statistics-Data-and-Systems/Research/ActuarialStudies/Downloads/STLD20180406.pdf>

2019 and six percent higher by 2022. The increasing premiums would result in the Federal government paying more in advance premium tax credits: in 2019 alone, spending on tax credits would increase by \$1.2 billion. Ultimately, expanding the use of short-term, “junk” coverage would increase the federal deficit by \$38.7 billion over the next ten years.

The CMS Chief Actuary’s analysis, as well as outside analyses conducted by Oliver Wyman⁴ and the Urban Institute,⁵ all stand in stark contrast to the analysis provided in the Departments’ proposed rule. The rule estimated that only 100,000 to 200,000 people would switch to short-term plans and that individual market premiums would increase between \$2 and \$4 per month. Finally, it estimated that Federal spending would only increase by between \$96 million and \$168 million annually.

At the time the proposed rule was published, the Washington Post reported, “Government actuaries predict that the number is likely to be 100,000 to 200,000, said Verma, who added that ‘the shift will have virtually no impact’ on insurance premiums in the Affordable Care Act marketplaces.”⁶ More recently, the Congressional Budget Office estimated that upwards of 2 million individuals would sign up for STLDI and that this would increase premiums between two and three percent as a result of healthy enrollees leaving the individual market.⁷ The substantial differences between the estimates prepared by the CMS Chief Actuary and other non-partisan estimates and the economic impact analysis in the proposed rule raise serious questions about how the Departments conducted the analysis.

CMS received thousands of comments from insurers, providers, patients, and Members of Congress opposing the rule. Notably, a group of 113 patient organizations wrote a letter to Congressional leaders expressing concern that the rule would undermine critical consumer protections for people with pre-existing conditions.⁸ These stakeholders should be able to take into account an unbiased and complete analysis from this Administration’s own CMS Chief Actuary when submitting comments. As a result of these discrepancies, we request that you re-publish the proposed rule with an updated economic impact analysis and re-open the comment period so that stakeholders can provide input with the benefit of a full analysis. Additionally we request that you answer the following questions by June 14, 2018:

1. Did the Departments consult the CMS Chief Actuary in the development of the proposed rule’s economic impact analysis? Is it common practice to publish a proposed regulation and economic impact analysis without taking into account the Chief Actuary’s analysis?
2. What data did the Departments use and which experts did they consult in formulating the assumption that only 100,000 to 200,000 would purchase short-term coverage? Did the

⁴<https://hbx.dc.gov/sites/default/files/dc/sites/hbx/publication/attachments/OWReview%20of%20Impact%20of%20Short%20Term%20Duration%20Plans%204.11.2018%20%28002%29.pdf>

⁵ https://www.urban.org/sites/default/files/publication/96781/2001727_updated_finalized.pdf

⁶ <https://www.cms.gov/Research-Statistics-Data-and-Systems/Research/ActuarialStudies/Downloads/STLD20180406.pdf>

⁷ <https://www.cbo.gov/system/files/115th-congress-2017-2018/reports/53826-healthinsurancecoverage.pdf>


⁸ <http://www.nationalhealthcouncil.org/public-policy/letters-comments/letter-congress-expressing-concern-short-term-limited-duration-plans>

Departments contract with an outside firm for its analysis? If so, which firm? If so, please provide the outside analysis in full.

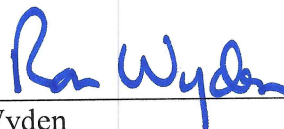
3. In light of estimates by the CMS Chief Actuary, the Urban Institute, and the consulting firm Oliver Wyman that all indicate that the proposed rule's economic impact analysis underestimated the impact of the regulation, do the Departments still believe that this is a realistic projection of the rule's effects?

We appreciate your prompt response to these questions. If you have any questions, please have your staff contact Colin Goldfinch with Ranking Member Murray at 202-224-7675, Arielle Woronoff with Ranking Member Wyden at 202-224-4515, Melanie Egorin with Ranking Member Neal at 202-225-4021, Una Lee with Ranking Member Pallone at 202-225-3641 and Carrie Hughes with Ranking Member Scott at 202-225-3725.

Sincerely,




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



Ron Wyden
Ranking Member
Senate Committee on Finance



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
House Committee on Education and the
Workforce

CC: Seema Verma
Administrator, Centers for Medicare and Medicaid Services