Congress of the United States
Washington, DC 20515

January 8, 2019

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

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

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

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

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

We write to request further information regarding the Administration's Final Rule on Short-Term, Limited Duration Insurance issued on August 3, 2018 (the Final Rule). We have written to you on multiple occasions regarding the Administration's actions to promote these junk plans, and we have not received a substantive response. We request an immediate response to our previous letters, dated April 12, 2018 and May 31, 2018, which are appended here, and we request additional information regarding each agency's process for promulgating the Final Rule. Families and patients across the country deserve transparency around decisions, such as the finalization of this rule, that jeopardize their ability to get quality, affordable health care. This is particularly of concern in light of the requirements of the Administrative Procedure Act (APA).

The Administration's Proposed Rule on Short-Term, Limited Duration Insurance (the Proposed Rule), issued on February 21, 2018, proposed to allow for these unregulated short-term, limited-duration insurance (STLDI) plans to be sold for up to 12 months in the individual market. As we stated in our April 12, 2018 comment letter, these discriminatory, deceptive, and insufficient plans will leave consumers exposed to great financial risk and will increase costs for individuals with preexisting conditions who need comprehensive coverage. Expanding STLDI plans will take us back to the days when consumers could be denied coverage entirely, charged more based on age, gender, or health status, or denied access to basic health care benefits such as prescription drugs, maternity coverage, and treatment for substance use disorders.[1] Since STLDI plans is not subject to the prohibition on annual and lifetime coverage limits and the annual out-of-pocket limits that protect consumers from large, unexpected health care costs, consumers will

[1] Kaiser Family Foundation, *Understanding Short-Term Limited Duration Health Insurance* (Apr. 23, 2018) (www.kff.org/health-reform/issue-brief/understanding-short-term-limited-duration-health-insurance).

be left paying exorbitant amounts in deductibles and out-of-pocket costs.[2] Moreover, as these junk plans lure healthy people out of the risk pool, working families who want or need comprehensive coverage will see their premiums increase substantially.[3]

In our May 31, 2018 letter, we raised concerns regarding the flawed economic analysis in the Proposed Rule, which appeared to significantly underestimate the number of individuals who will sign up for STLDI plans, and the impact of the Proposed Rule on premiums in the individual market. We noted that the substantial differences between the non-partisan Centers for Medicare & Medicaid Services (CMS) Chief Actuary's estimates and other non-partisan estimates and the Administration's economic impact analysis in the Proposed Rule raise serious questions about how the Departments conducted the analysis. Therefore, we requested additional information regarding the analysis and how it was conducted. To date, we have not received a response to our inquiry.

During the comment period on the Proposed Rule, more than 300 patient and consumer advocates, physician and provider organizations, and other health care stakeholders submitted comments criticizing or opposing the proposal.[4] Despite the overwhelmingly negative response, the Administration finalized the proposal to allow these junk plans to be sold for up to 12 months, and went further by finalizing a policy that was not presented in the Proposed Rule—allowing STLDI plans to be renewed for up to 36 months. We believe allowing for renewal or extension of short-term policies for up to 36 months is contrary to law, and that the creation of an entirely unregulated parallel market competing against the market for Qualified Health Plans (QHPs) goes against Congressional intent in enacting the comprehensive consumer protections embodied in the Affordable Care Act (ACA).

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[2] The Commonwealth Fund, *New Executive Order: Expanding Access to Short-Term Health Plans Is Bad for Consumers and the Individual Market* (Oct. 11, 2017) (www.commonwealthfund.org/publications/blog/2017/aug/short-term-health-plans#/).

[3] Urban Institute, *Updated: The Potential Impact of Short-Term Limited-Duration Policies on Insurance Coverage, Premiums, and Federal Spending* (Mar. 2018) (www.urban.org/sites/default/files/publication/96781/2001727_updated_finalized.pdf); Centers for Medicare & Medicaid Services, Office of the Actuary (Apr. 6, 2018) (www.cms.gov/Research-Statistics-Data-and-Systems/Research/ActuarialStudies/Downloads/STLD20180406.pdf); Congressional Budget Office, *Federal Subsidies for Health Insurance Coverage for People Under Age 65: 2018 to 2028* (May 2018) (www.cbo.gov/system/files/115th-congress-2017-2018/reports/53826-healthinsurancecoverage.pdf).

[4] *Trump's new insurance rules are panned by nearly every healthcare group that submitted formal comments*, LA Times (May 30, 2018) (www.latimes.com/politics/la-na-pol-trump-insurance-opposition-20180530-story.html).

We are requesting a complete response to our April 12, 2018 and May 31, 2018 letters. In addition, in order to assist the Committees in understanding how the Departments arrived at this Final Rule, please provide the following information to the Committees by January 22, 2019:

1. Please provide all documents and analyses relating to any of the following:

    a. Whether it is consistent with the law, including the ACA, to allow for STLDI plans to bear a contract term of up to 364 days—one day less than a QHP under the ACA.

    b. Whether it is consistent with the law, including the ACA, to allow for the creation of a permanent parallel market for individual market coverage that is entirely exempt from the law's consumer protections for individuals with preexisting conditions.

    c. Whether it is consistent with the law, including the ACA, to allow for STLDI plans to be renewable for up to 36 months.

    d. Whether it is consistent with the law, including the Administrative Procedures Act, to promulgate a Final Rule allowing for STLDI plans to be renewable for up to 36 months, when the Proposed Rule made no mention of the Administration's intent to permit STLDI plans to be renewable for such a term.

2. Please provide any documents and communications pertaining to the potential impact of the Final Rule, including its impact on premiums in the ACA-compliant market and its impact on individuals with preexisting conditions. Please include any actuarial or fiscal impact analyses from CMS, the Office of Tax Analysis, and the Office of Management and Budget (OMB).

3. Please provide a comprehensive list of all agency personnel at the Department of Treasury (Treasury), the Internal Revenue Service (IRS), CMS, The Department of Health and Human Services (HHS), OMB, or the Department of Labor (DOL) who were involved in any way in promulgating, reviewing, or finalizing the Final Rule.

4. Please provide a list of all stakeholder meetings pertaining to the subject matter of the Proposed Rule or Final Rule, including meetings with any health insurance issuers that have sold STLDI plans in the past, or have expressed interest in selling these policies in the future. For each meeting, please provide the date, time, and list of all participants in the meeting, as well as any notes, agendas, follow-up items, or communications relating to such meetings.

5. Please provide all documents and communications with agents and brokers listed on Healthcare.gov relating to the sale of STLDI plans.

6. Please provide all documents and communications between HHS, CMS, Treasury, and DOL employees, and employees of the Executive Office of the President, including OMB, referring or relating to the Final Rule or the Proposed Rule.

In addition, please contact our staffs to set up a briefing with the following agency personnel listed as the relevant contacts for the Final Rule: Amber Rivers and Matthew Litton, DOL; Dara Alderman, IRS; and David Mlawsky, CMS. Should you have any questions, please contact Kevin Barstow of the Democratic Staff of the House Committee on Energy and Commerce at (202) 225-3641, Melanie Egorin of the Democratic Staff of the House Committee on Ways and Means at (202) 225-4021, Udochi Onwubiko of the Democratic Staff of the House Committee on Education and Labor at (202) 225-3725, Arielle Woronoff of the Democratic Staff of the Senate Committee on Finance at (202) 224-4515, or Colin Goldfinch of the Democratic Staff of the Senate Committee on Health, Education, Labor, and Pensions at (202) 224-7675.

Sincerely,

Frank Pallone, Jr.
Chairman
Committee on Energy and Commerce

Richard E. Neal
Chairman
Committee on Ways and Means

Robert C. "Bobby" Scott
Chairman
Committee on Education and Labor

Ron Wyden
Ranking Member
Senate Committee on Finance

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