

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).

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