

ORAL ARGUMENT HELD MARCH 20, 2020

No. 19-5212

**UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF
COLUMBIA CIRCUIT**

ASSOCIATION FOR COMMUNITY AFFILIATED PLANS, ET AL.,
Plaintiffs-Appellants,

v.

UNITED STATES DEPARTMENT OF THE TREASURY, ET AL.,
Defendants-Appellees.

Appeal from the United States District Court for the District of Columbia
Case No. 1:18-cv-02133-RJL, Hon. Richard J. Leon

BRIEF FOR AMICI CURIAE

**AMERICAN CANCER SOCIETY, AMERICAN CANCER SOCIETY
CANCER ACTION NETWORK, AMERICAN HEART ASSOCIATION,
AMERICAN LUNG ASSOCIATION, CYSTIC FIBROSIS FOUNDATION,
EPILEPSY FOUNDATION, HEMOPHILIA FEDERATION OF AMERICA,
JUDGE DAVID L. BAZELON CENTER FOR MENTAL HEALTH LAW,
LEUKEMIA & LYMPHOMA SOCIETY, MARCH OF DIMES INC.,
NATIONAL COALITION FOR CANCER SURVIVORSHIP, AND
NATIONAL MULTIPLE SCLEROSIS SOCIETY IN SUPPORT OF
PLAINTIFFS-APPELLANTS' PETITION FOR REHEARING EN BANC**

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

A. Parties and Amici. All parties, intervenors, and amici appearing before the district court and in this Court are listed in plaintiffs-appellants' petition for rehearing en banc.

B. Ruling Under Review. References to the rulings at issue appear in plaintiffs-appellants' petition for rehearing en banc.

C. Related Cases. References to any related cases appear in plaintiffs-appellants' petition for rehearing en banc.

Dated: August 31, 2020

/s/ Joseph R. Palmore

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and D.C. Circuit Rule 26.1, amici curiae hereby state that no party to this brief has a parent corporation, no publicly held corporation has a 10% or greater ownership interest in any party to this brief, and no party to this brief includes members that have issued shares or debt securities to the public.

Dated: August 31, 2020

/s/ Joseph R. Palmore

STATEMENT REGARDING CONSENT TO FILE AND SEPARATE BRIEFING

Pursuant to D.C. Circuit Rule 29(b), counsel for amici curiae states that plaintiffs-appellants have consented to amici curiae's participation and the filing of this brief. The government defers to the Court's judgment whether to invite amicus briefs in support of plaintiffs' rehearing petition.¹

Pursuant to D.C. Circuit Rule 29(d), counsel for amici curiae certifies that, to his knowledge, no other amicus brief addresses the precise factual questions addressed in this brief—namely, the harm that will arise from the challenged rule. Accordingly, filing a joint brief would not be practicable.

Dated: August 31, 2020

/s/ Joseph R. Palmore

¹ No counsel for a party authored this brief in whole or in part, and no party or counsel for a party, nor any person other than amici curiae or their counsel, contributed money intended to fund preparing or submitting this brief.

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GLOSSARY

ACS	American Cancer Society
ACS CAN	American Cancer Society Cancer Action Network
ACA	Affordable Care Act
AHA	American Heart Association
ALA	American Lung Association
CFF	Cystic Fibrosis Foundation
HFA	Hemophilia Federation of America
LLS	Leukemia & Lymphoma Society
NCCS	National Coalition for Cancer Survivorship
NMSS	National Multiple Sclerosis Society

INTEREST OF AMICI CURIAE

Amici represent millions of patients and consumers across the country facing serious, acute, and chronic health conditions. Amici have a unique perspective on what individuals and families need to prevent disease, manage health, and cure illness—and a deep understanding of the resulting harm if the challenged rule stands. The identity and interest of each amicus appears in an appendix to this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

Short-term, limited-duration insurance plans are intended to address temporary gaps in coverage between other, more comprehensive plans. Given their stop-gap nature, these plans are not required to meet important standards in the ACA, including requirements to cover essential health benefits without lifetime or annual limits and prohibitions on discrimination against people with pre-existing conditions.

In the challenged rule, the Departments of Treasury, Labor, and Health and Human Services authorized a vast increase in such plans. The rule allows short-term, limited-duration plans to be sold for a term of up to a year, to be renewed for up to 36 months, and to be purchased *seriatim* indefinitely. It thus effectively authorizes these plans to replace the generally accessible and comprehensive plans sold in ACA-created markets.

Amici agree with plaintiffs-appellants that the challenged rule is inconsistent with the ACA's text and purpose and is arbitrary and capricious, and the panel majority erred in concluding otherwise. In this brief, Amici highlight the harms all but certain to follow if the panel decision stands. The availability of affordable, accessible, and adequate health insurance is critical to health outcomes. The challenged rule, however, ensures that more individuals will end up purchasing plans that deny coverage for (and thus access to) critical treatments, and that individuals with pre-existing health conditions will pay more for, discontinue, or forgo treatments altogether. The rule thus threatens the health of millions of Americans. This is a case of exceptional importance, meriting en banc review.

ARGUMENT

I. ADEQUATE INSURANCE IS CRITICAL TO HEALTH OUTCOMES

Nearly everyone will require health care at some point in their lives. *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 547 (2012). More than 1.8 million new cancer diagnoses are expected in the U.S. in 2020, and roughly four out of ten Americans will develop cancer in their lifetimes. ACS, *Cancer Facts & Figures 2020*, at 1-2.² An additional 121.5 million American adults are living with cardiovascular diseases. Salim S. Virani et al., *Heart Disease and Stroke*

² <https://www.cancer.org/content/dam/cancer-org/research/cancer-facts-and-statistics/annual-cancer-facts-and-figures/2020/cancer-facts-and-figures-2020.pdf>.

Statistics—2020 Update, AHA (2020).³ Another 54 million Americans have arthritis, 36.6 million have chronic lung disease, and more than 24 million suffer from autoimmune diseases, including nearly one million with multiple sclerosis (MS). CDC, *How CDC Improves Quality of Life for People With Arthritis*⁴; CDC, *National Health Interview Survey* (2018); National Institute of Environmental Health Sciences, *Autoimmune Diseases*⁵; NMSS, *MS Prevalence*.⁶ Nearly one in five adults lives with a mental illness. National Institute of Mental Health, *Statistics*.⁷

Without insurance, treatment for these conditions is unaffordable for all but the wealthiest individuals. For example, treatment for severe hemophilia averages over \$300,000 per year and must continue for the individual's lifetime. Zheng-Yi Zhou et al., *Burden of Illness: Direct and Indirect Costs Among Persons with Hemophilia A in the United States*, 18 J. MED. ECON. 457, 462 (2015). Annual costs of new cancer treatments routinely exceed \$100,000. Gery P. Guy Jr. et al., *Healthcare Expenditure Burden Among Non-elderly Cancer Survivors, 2008-2012*, 49 AM. J. PREVENTATIVE MED. S489 (2015). And individuals often forgo needed mental health services because of cost. Rabah Kamal et al., *Costs and Outcomes of*

³ <https://www.ahajournals.org/doi/pdf/10.1161/CIR.0000000000000757>.

⁴ <https://www.cdc.gov/chronicdisease/resources/publications/aag/arthritis.htm>.

⁵ <https://www.niehs.nih.gov/health/topics/conditions/autoimmune/index.cfm>.

⁶ <https://www.nationalmssociety.org/About-the-Society/MS-Prevalence>.

⁷ <https://www.nimh.nih.gov/health/statistics/mental-illness.shtml>.

Mental Health and Substance Use Disorders in the US, 318 J. AM. MED. ASS'N 415 (2017).

Health outcomes improve when individuals have access to adequate insurance. Individuals with health insurance are nearly twice as likely to have access to critical cancer early-detection procedures, such as mammography or colorectal screenings. Elizabeth Ward et al., *Association of Insurance with Cancer Care Utilization and Outcomes*, 58 CANCER J. FOR CLINICIANS 9, 21 (2008). By contrast, uninsured patients are twice as likely to be diagnosed with advanced-stage breast cancer and 1.3 times more likely to be diagnosed with colorectal cancer. Elizabeth M. Ward et al., *The Association of Insurance and Stage at Diagnosis Among Patients Aged 55 to 74 Years in the National Cancer Database*, 16 CANCER J. 614, 619 (2010). The five-year survival rates of those diagnosed at later stages are significantly lower than for those diagnosed when their cancer is less advanced. ACS, *Cancer Facts*, at 21. Likewise, uninsured cardiovascular-disease patients experience higher mortality rates and poorer health outcomes than their insured counterparts. Ameen Barghi et al., *Coverage and Access for Americans with Cardiovascular Disease or Risk Factors After the ACA*, 34 J. GEN. INTERNAL MED. 1797 (2019).

Individuals with chronic diseases like MS, cystic fibrosis, epilepsy, and mental illnesses likewise experience improved results when adequately insured.

Most people with MS are diagnosed between the ages of 20 and 50, and early treatment is critical, but few can afford the \$88,000 annual cost without health insurance. NMSS Comment, Apr. 23, 2018, at 8; Multiple Sclerosis Coalition, *The Use of Disease Modifying Therapies in MS: Principles and Current Evidence* 15-18 (2014).⁸ Similarly, individuals with cystic fibrosis risk further progression of their disease if cost concerns force them to take less medication or delay care. CFF Comment, Apr. 23, 2018, at 5.

Access to health insurance is also crucial for pregnant women and their children. Nearly 700 women in the U.S. die each year due to pregnancy or pregnancy-related complications. MMRIA, *Report From Nine Maternal Mortality Review Committees* (2018).⁹ Another 50,000 women annually experience severe maternal morbidity. CDC, *Severe Maternal Morbidity*.¹⁰ Adequate insurance is critical to reduce these preventable deaths and complications. March of Dimes, *Maternal Mortality and Severe Maternal Morbidity* (2018).¹¹ Similarly, insurance is essential for the pre- and post-natal care that helps ensure every child can reach

⁸ https://ms-coalition.org/wp-content/uploads/2019/06/MSCDMTPaper_062019.pdf.

⁹ <https://www.cdcfoundation.org/sites/default/files/files/ReportfromNineMMRCs.pdf>.

¹⁰ <https://www.cdc.gov/reproductivehealth/maternalinfanthealth/severematernalmorbidity.html>.

¹¹ <https://www.marchofdimes.org/materials/March-of-Dimes-Maternal-Mortality-and-SMM-Position-Statement-FINAL-June-2018.pdf>.

their full potential. American Academy of Pediatrics et al. Comment, Apr. 23, 2018, at 3.

II. THE ACA WAS INTENDED TO ENSURE GREATER ACCESS TO ADEQUATE HEALTH CARE

The ACA sought to guarantee Americans meaningful access to adequate health insurance and associated improved outcomes. Two aspects of the ACA are important here.

First, ACA-compliant plans are prohibited from engaging in various forms of discrimination prevalent before the Act’s passage. Before the ACA, individuals with serious health conditions were often denied coverage or charged higher rates. Michelle M. Doty et al., *Failure to Protect: Why the Individual Insurance Market is Not a Viable Option for Most U.S. Families*, COMMONWEALTH FUND (2009).¹² Roughly 27% of adults under 65 have a “declinable” pre-existing condition, and the proportion increases with age. Gary Claxton et al., *Pre-existing Condition Prevalence for Individuals and Families*, KAISER FAMILY FOUND. (2019).¹³ The

¹² https://www.commonwealthfund.org/sites/default/files/documents/___media_files_publications_issue_brief_2009_jul_failure_to_protect_1300_doty_failure_to_protect_individual_ins_market_ib_v2.pdf.

¹³ https://www.kff.org/health-reform/issue-brief/pre-existing-condition-prevalence-for-individuals-and-families/?utm_campaign=KFF-2019-Health-Reform&utm_source=hs_email&utm_medium=email&utm_content=2&_hsenc=p2ANqtz-WXUXBNGEfmzYezTz9s3OXrJwZluaZver07OJKagAYpQn_OR2E2MVPuVDPawicDqGDNCM2qeBnVKZF4bc9vQn6DsRNaw&_hsmi=2.

ACA, however, prohibits insurers from denying coverage based on pre-existing conditions. 42 U.S.C. § 300gg-1(a).

Second, ACA-compliant plans must provide “essential health benefits.” *Id.* § 300gg-6(a). These include “[p]reventive and wellness services,” “[m]aternity and newborn care,” mental-health and substance-use-disorder services, and “[p]rescription drugs.” *Id.* § 18022(b). ACA-compliant plans cannot impose lifetime or annual limits on coverage of “essential health benefits.” *Id.* § 18022(c)-(d). Before the ACA, as many as one in ten cancer patients reported reaching the limit of what their insurers would pay. Kaiser Family Foundation et al., *National Survey of Households Affected by Cancer* (2006).¹⁴ Similarly, only 13% of individual-market plans covered maternity care, 34% did not cover substance-use-disorder treatment, and 18% did not cover mental-health care. March of Dimes, *Affordable Care Is Essential to Moms and Babies* (2017)¹⁵; Richard G. Frank & Sherry A. Glied, *Behavioral Health and the Individual Health Insurance Market: Preserving Key Elements of Reform* (2017).¹⁶

With these and other measures making insurance more accessible, uninsured rates have dropped significantly. Benjamin D. Sommers et al., *Early Changes in*

¹⁴ <https://www.kff.org/wp-content/uploads/2013/01/7591.pdf>.

¹⁵ <https://www.marchofdimes.org/advocacy/affordable-care-is-essential-to-moms-and-babies.aspx>.

¹⁶ https://www.scattergoodfoundation.org/wp-content/uploads/yumpu_files/Behavioral_Health_and_the_Individual_Health_Insurance_Market_03.23.17.pdf.

Health Insurance Coverage under the Trump Administration, 378 NEW ENG. J. MED. 1061 (2018). This increase in coverage has already improved health outcomes. One study found that significantly fewer cancer survivors reported delaying or forgoing care following the ACA's implementation. Xuesong Han et al., *Changes in Noninsurance and Care Unaffordability Among Cancer Survivors Following the Affordable Care Act*, 112 J. NAT'L CANCER INST. 688 (2020). Another demonstrated the ACA's positive effect on HPV vaccination, and early cancer diagnosis among adults aged 19 to 25. Xuesong Han & Ahmedin Jemal, *The Affordable Care Act and Cancer Care for Young Adults*, 23 CANCER J. 194 (2017).

III. THE CHALLENGED RULE HAS ALLOWED SHORT-TERM, LIMITED-DURATION PLANS TO PROLIFERATE

The challenged rule will upend this progress toward greater coverage and better health outcomes by permitting insurers to evade the ACA's requirements through short-term, limited-duration plans.

As the name suggests, short-term, limited-duration insurance is intended to be *temporary*: it is “designed to fill temporary gaps in coverage that may occur when an individual is transitioning from one plan or coverage to another plan or coverage.” Proposed Rule, Short-Term, Limited-Duration Insurance, 83 Fed. Reg. 7437, 7438 (Feb. 21, 2018). Such temporary plans are exempt from many ACA requirements, including the requirement to provide coverage for “essential health

benefits” without annual or lifetime limits and the prohibition against discrimination based on pre-existing conditions. Thus, such plans do not cover many routine medical services, limit the total services they cover, and exclude many consumers with pre-existing conditions entirely. *See* Karen Pollitz et al., *Understanding Short-Term Limited-Duration Health Insurance* (2018).¹⁷ Premiums for such plans therefore tend to be lower. To ensure these short-term plans remain temporary and do not supplant ACA-compliant policies, the Departments previously issued a rule limiting their term to three months and allowing them to be extended only a total of 12 months. *Expected Benefits; Lifetime and Annual Limits; and Short-Term, Limited-Duration Insurance*, 81 Fed. Reg. 75,316 (Oct. 31, 2016).

The challenged rule makes these “short-term” policies long-term. Under the rule, a plan with a contract term of up to 364 days—one day less than an ACA-qualified health plan—counts as “short-term.” *Final Rule, Short-Term, Limited-Duration Insurance*, 83 Fed. Reg. 38,212, 38,214-15 (Aug. 3, 2018). Such plans may also be renewed for a total of 36 months. *Id.* at 38,215. And consumers may string together such plans, from the same or different issuers, indefinitely. *Id.* at 38,222. One study estimated that as many as 4.3 million people will enroll in these

¹⁷ <http://files.kff.org/attachment/Issue-Brief-Understanding-Short-Term-Limited-Duration-Health-Insurance>.

expanded, effectively indefinite “short-term” plans. Linda J. Blumberg et al., *Updated: The Potential Impact of Short-Term Limited-Duration Policies on Insurance Coverage, Premiums, and Federal Spending*, URBAN INST. (2018).¹⁸

IV. THE CHALLENGED RULE HAS HAD ACKNOWLEDGED HARMFUL EFFECTS

The challenged rule will have two predictable consequences: relatively younger and healthier people will more likely purchase short-term, limited-duration insurance plans instead of ACA-compliant policies; and those with ACA-compliant policies will likely face higher premiums and diminished access. The final rule itself acknowledges both these effects. *E.g.*, Final Rule, 83 Fed. Reg. at 38,217, 38,235. Both consequences would harm individuals needing medical care.

First, the rule will lead many individuals who purchase short-term plans to lack the coverage they may need. As Amici explained in their comments on the proposed rule, many consumers may purchase these plans without realizing they do not cover benefits such as preventive services, maternity care, or new-cancer care. *E.g.*, ACS CAN Comment, Apr. 20, 2018, at 7. Others may purchase these plans unaware that their pre-existing conditions will preclude them from securing treatment they need. *E.g.*, ACS CAN et al. Comment, Apr. 23, 2018, at 6 [“Joint Comment”]. And still others may experience unexpected medical needs not

¹⁸ https://www.urban.org/sites/default/files/publication/96781/2001727_updated_fi nalized.pdf.

covered by these short-term policies—leaving them with a gap in critical coverage until the open-enrollment period for ACA-compliant policies. *E.g.*, Pollitz, *supra* (no available short-term plans cover maternity care); Consortium for Citizens with Disabilities Health Task Force Comment, Apr. 23, 2018, at 3-4 (43% of short-term plans do not cover mental-health services); Emily Curran et al., *In the Age of COVID-19, Short-Term Plans Fall Short for Consumers*, COMMONWEALTH FUND (2020) (11 of 12 short-term plans excluded nearly all prescription-drug coverage).¹⁹ Magnifying such concerns, some insurance brokers fraudulently mislead consumers into believing short-term plans are ACA-compliant. Sabrina Corlette et al., *The Marketing of Short-Term Health Plans* 7-8, URBAN INST. (2019).²⁰

The Departments themselves expressly recognize these likely impacts. Final Rule, 83 Fed. Reg. at 38,231. Yet they provide almost no basis to disregard them. Instead, they repeatedly assert that the rule “empowers consumers to make decisions.” *E.g.*, *id.* at 38,232. But consumers often lack sufficient information about plan limitations to make informed decisions. A recent study of short-term plans determined that “most of the details about plan coverage” were “not made

¹⁹ <https://www.commonwealthfund.org/blog/2020/age-covid-19-short-term-plans-fall-short-consumers>.

²⁰ https://www.urban.org/sites/default/files/publication/99708/moni_stldi_final_0.pdf.

available to individuals shopping for coverage.” ACS CAN, *Inadequate Coverage: An ACS CAN Examination of Short-Term Health Plans* 3 (2019).²¹ And tales abound of individuals induced to purchase short-term plans based on false promises of coverage. *E.g.*, Reed Abelson, *Florida Company Sued Over Sales of Skimpy Health Plans*, N.Y. TIMES (June 12, 2019).²²

Even if fully informed, many individuals will not anticipate *unexpected* health care needs. For example, 45% of pregnancies in the U.S. are unplanned. Lawrence B. Finer & Mia R. Zolna, *Declines in Unintended Pregnancy in the United States, 2008-2011*, 374 NEW ENG. J. MED. 843 (2016). Likewise, most cancer diagnoses are unexpected. ACS CAN Comment at 1. Some individuals with short-term, limited-duration insurance will be unable to afford needed care and will be forced to postpone treatment for the months it may take to secure adequate coverage or will face serious financial hardship paying for care. ALA Comment at 2; *see* ACS CAN, *Inadequate Coverage*, at 13 (out-of-pocket treatment expenses for 57-year-old woman diagnosed with breast cancer could be \$103,000 greater with short-term plan than ACA-compliant plan). Delaying treatment may be even more problematic if, because of short-term plans’ lack of coverage for preventive services, these diagnoses occur at a later stage. As

²¹ <https://www.fightcancer.org/sites/default/files/National%20Documents/ACS%20CAN%20STLD%20Paper.pdf>.

²² <https://www.nytimes.com/2019/06/12/health/insurance-lawsuit-obamacare.html>.

explained above, such delays can be the difference between life and death. *Supra* pp. 4-5.

Second, allowing short-term plans to proliferate will destabilize the markets for ACA-compliant plans, to the detriment of those who purchase them. Short-term, limited-duration plans will attract younger and healthier individuals, leaving older and sicker individuals in the risk pool for ACA-compliant plans. Joint Comment at 6. Premiums for these comprehensive, available-to-all plans thus will rise. One study determined that premiums for consumers remaining in ACA-compliant individual markets have increased by an average of 4.3% due to the challenged rule. Dane Hansen & Gabriela Dieguez, *The Impact of Short-Term Limited-Duration Policy Expansion on Patients and the ACA Individual Market* 17-18, MILLIMAN (2020).²³ Moreover, issuers might leave the market rather than insure this increasingly high-risk pool, leaving vulnerable populations without access to coverage. CMS, *County by County Analysis of Current Projected Insurer Participation in Health Insurance Exchanges* (2017).²⁴

These increases in premiums and decreases in availability will particularly harm those with significant medical needs. While the Departments tout that the

²³ <https://www.ils.org/sites/default/files/National/USA/Pdf/STLD-Impact-Report-Final-Public.pdf>.

²⁴ <https://www.cms.gov/newsroom/press-releases/county-county-analysis-current-projected-insurer-participation-health-insurance-exchanges>.

rule “empowers consumers to make decisions,” Final Rule, 83 Fed. Reg. at 38,232, individuals with serious health conditions have no such choice. Because short-term-plan issuers can discriminate against those with pre-existing conditions, such individuals will remain reliant on access to ACA-compliant plans. *See, e.g.*, ALA Comment at 2 (lung-disease patients “would be rejected for coverage by one of these plans, instead paying more for the comprehensive care they need”). Accordingly, because of the challenged rule, many individuals most in need of comprehensive care will find treatment unaffordable. They will suffer substantial harm as a result.

CONCLUSION

The petition for rehearing en banc should be granted.

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APPENDIX

The American Cancer Society (ACS) combines an unyielding passion with nearly a century of experience to save lives and end suffering from cancer, with a global grassroots force of more than three million volunteers. ACS's extensive scientific findings have established that health insurance coverage status is strongly linked to receipt of medical care and health outcomes, including survival, and that lack of adequate insurance coverage is a major impediment to advancing the fight against cancer. The American Cancer Society Cancer Action Network (ACS CAN) is the nonpartisan advocacy affiliate of ACS. Together, the organizations seek to secure affordable, comprehensive, and accessible health insurance for all Americans.

The American Heart Association, Inc. (AHA) is a voluntary health organization that, since 1924, has been devoted to saving people from heart disease and stroke—the first and fifth leading causes of death in the United States. AHA and its more than 40 million volunteers work to fund innovative research, fight for stronger public health policies, and provide lifesaving tools and information to prevent and treat these diseases. Based on well-documented research that uninsured and under-insured Americans with heart disease and stroke experience higher mortality rates, poorer blood pressure control, greater neurological impairments, and longer hospital stays after a stroke, AHA has worked to represent

the needs and interests of heart disease and stroke patients and advocated making health care more affordable.

The American Lung Association (ALA) is the nation's oldest voluntary health organization, representing the 36.6 million Americans with lung disease in all 50 states and the District of Columbia. Because people with or at risk for lung cancer and lung diseases—such as asthma, Chronic Obstructive Pulmonary Disease (COPD) and pulmonary fibrosis—need quality and affordable health care to prevent or treat their disease, ALA strongly supports increasing access to health care.

The Cystic Fibrosis Foundation (CFF) is a nonprofit whose mission is to cure cystic fibrosis and to provide all people with CF the opportunity to lead long, fulfilling lives by funding research and drug development, partnering with the CF community, and advancing high-quality, specialized care. The CFF advocates for policies that promote affordable, adequate, and available health care coverage for people with cystic fibrosis.

The Epilepsy Foundation is the leading national voluntary health organization that speaks on behalf of more than 3.4 million Americans with epilepsy and seizures. Uncontrolled seizures can lead to disability, injury, and even death. Epilepsy medications are the most common and most cost-effective treatment for controlling and/or reducing seizures—making timely access to

quality, affordable, physician-directed care and effective coverage for epilepsy medications vital for people living with epilepsy.

Hemophilia Federation of America (HFA) is a community-based, grassroots advocacy organization that assists, educates, and advocates for people with hemophilia, von Willebrand disease, and other rare bleeding disorders. HFA works for patient access to quality and affordable care and coverage—priorities that reflect the nature of bleeding disorders as serious, life-long, and expensive health conditions. Quality and affordable healthcare coverage is indispensable for people living with bleeding disorders.

The Judge David L. Bazelon Center for Mental Health Law, founded in 1972 as the Mental Health Law Project, is a national non-profit advocacy organization that advances the rights of individuals with mental disabilities in health care, community living, housing, employment, education, parental and family rights, and other areas. Expanding the availability of community-based mental health services has been central to the Center's mission and focus.

The Leukemia & Lymphoma Society (LLS) is the world's largest voluntary health agency dedicated to fighting blood cancer and ensuring that the more than 1.3 million blood cancer patients and survivors in the United States have access to the care they need. The significant costs associated with essential blood cancer treatments—particularly hospitalization, stem cell transplantation, and anti-cancer

drug therapies—put even routine cancer care out of reach for those patients without comprehensive and stable health insurance. LLS and its network of more than 100,000 advocacy volunteers promote policies that ensure access to quality insurance coverage and reduce barriers to vital cancer care.

March of Dimes Inc. is a nonprofit organization that leads the fight for the health of all moms and babies. March of Dimes educates medical professionals and the public about best practices, supports lifesaving research, provides comfort and support to families in neonatal intensive care units, and advocates for moms and babies. Ensuring that pregnant women and their children have access to timely, affordable, and high-quality healthcare is essential to achieving its goals.

The National Coalition for Cancer Survivorship (NCCS) is a national organization that advocates for access to quality care for survivors of all forms of cancer. The cancer survivors represented by NCCS have a pre-existing condition from the day of diagnosis and rely on affordable and adequate health insurance.

The National Multiple Sclerosis Society (NMSS) mobilizes people and resources so that everyone affected by multiple sclerosis (MS) can live their best lives, while also seeking to end MS forever. To fulfill this mission, the NMSS funds more MS research and provides more programs for people with MS and their families than any other voluntary health organization in the world. The NMSS

works to ensure that all people with MS have access to affordable high-quality health care.

CERTIFICATE OF COMPLIANCE WITH RULE 32(a)

This brief complies with the type-volume limitations of Fed. R. App. P. 29(a)(5) because it contains 2,598 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii) and D.C. Cir. R. 32(e)(1), as determined by the word-counting feature of Microsoft Word.

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface, including serifs, using Microsoft Word 2016 in 14-point Times New Roman font.

Dated: August 31, 2020

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