

August 3, 2021

The Honorable Xavier Becerra  
Secretary, Department of Health and Human Services  
200 Independence Ave SW  
Washington, DC 20201

Sent via email

Dear Secretary Becerra,

As parties and *amici curiae* in *ACAP v. Treasury*, a lawsuit brought to challenge the Trump-era regulation expanding the use of short-term, limited-duration health insurance plans (“STLDI”), we write to urge you to expedite issuance of a new regulation addressing such plans. We appreciate your recognition of the need to limit non-ACA-compliant plans, as evidenced by your remarks during the May 12 budget hearing of the House Committee on Energy and Commerce. We also applaud President Biden’s Executive Order instructing HHS to review and reverse agency actions that may undermine protections for people with pre-existing conditions and the Health Insurance Marketplace, and that may create barriers to accessing coverage and reduce the affordability of such coverage.

We echo the request made by 24 Senators that you issue a new rule as soon as possible to replace the 2018 STLDI rule issued by the Trump Administration. Such a new rule should, at minimum, restore the 2016 Obama-era STLDI rule. We believe the 2016 rule better aligns with both the spirit and the letter of the Affordable Care Act.

We urge you to consider the following legal issues associated with the 2018 rule:

- **It violates the plain-English meaning of “short term” by defining that term as lasting up to 364 days**, just one day less than standard individual market health insurance as defined by law. It also departs from the ordinary meaning of “limited duration,” finding it satisfied by plans that are renewable for up to 36 months. In contrast, the Obama-era definition of short term, limited duration—as lasting no more than 90 days and as not generally renewable by the consumer—more appropriately identifies such plans as stopgaps that align with the maximum employer health coverage waiting period, as established by the ACA.
- **It creates an “alternative” to ACA-compliant plans that Congress did not authorize.** By law, regulations are supposed to effectuate statutes, not undermine them. But the Trump STLDI rule was specifically *intended* to create an alternative that would undermine ACA-compliant plans, as the Trump Administration stated explicitly.
- **It effectively undercuts ACA plans**, making them increasingly unaffordable and unsustainable. By appealing to the healthiest consumers with low, medically underwritten premiums, STLDI siphon the best risk out of what is—under the ACA—supposed to be a single risk pool, thereby raising premiums for everyone else, most notably the people whose pre-existing conditions make them ineligible for STLDI coverage. The [Wakely](#)

[Consulting Group](#) estimated that the Trump STLDI rule would increase premiums in the ACA-compliant market by as much as 12.8 percent; the [Urban Institute](#) estimated the rule would increase premiums by 18.3 percent. Both estimates included the loss of the individual mandate in their calculations.

Separate from the legal concerns outlined above, there are significant consumer concerns that are reason enough to take further regulatory action on STLDIs. STLDIs typically do not provide many of the essential insurance benefits guaranteed by the ACA. And STLDIs are permitted to engage in the very practices that the ACA was enacted to curb, such as discrimination on the basis of pre-existing conditions, post-claims underwriting, and coverage rescissions. For example, these plans may find something that can be used as a pretext for denying coverage, such as claiming that nausea was the first sign of a “pre-existing” cancer. Such plans are likely to use those loopholes to avoid paying for treatment of conditions like long COVID.

STLDIs and other non-compliant plans are also known for their misleading marketing practices and ability to pay brokers much higher commissions than ACA-compliant plans that are governed by medical loss ratio rules.

**We urge you to reverse the 2018 rule in time to address the multitude of above issues prior to the 2022 ACA Open Enrollment timeframe** so that consumers can make fully-informed decisions and avoid getting trapped in inadequate STLDI coverage.

We also urge you to consider requiring that all coverage terms end by December 31 of a given plan year; this would go a long way toward preventing consumers from enrolling in subpar coverage that does not meet their needs, or being trapped in subpar coverage because their coverage term ends outside the open enrollment period.

Although we write this in August, as you know time is already running short to make changes to the 2022 open enrollment period; accordingly, we urge you to roll back the 2018 short-term limited-duration plan rule with all due haste.

Sincerely,

/s/

Association for Community Affiliated Plans

AIDS United

American Psychiatric Association

AARP and AARP Foundation

American Cancer Society Cancer Action Network

American Heart Association

American Lung Association

Bazelon Center for Mental Health Law

Epilepsy Foundation

Families USA

Hemophilia Federation of America

Leukemia and Lymphoma Society

Little Lobbyists, LLC

Mental Health America

National Alliance on Mental Illness

National Multiple Sclerosis Society

National Partnership for Women & Families

cc: Chiquita Brooks-LaSure, Administrator, Centers for Medicare & Medicaid Services

Jeff Wu, Acting Director, Center for Consumer Information & Insurance Oversight