United States Senate

WASHINGTON, DC 20510

June 8, 2018

The Honorable Steven Mnuchin
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue N.W.
Washington, D.C. 20220

The Honorable R. Alexander Acosta
Secretary
U.S. Department of Labor
200 Constitution Avenue N.W.
Washington, D.C. 20210

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

Dear Secretary Mnuchin, Secretary Acosta, and Secretary Azar:

We write to urge the Department of the Treasury, the Department of Labor and the Department of Health and Human Services to extend contract terms for up to 12 months and expand consumer options for enrollees in short-term limited duration (STLD) insurance plans.

In a previous letter with Senate colleagues, we encouraged the administration to restore flexibility for STLD plans in order to return personal freedom and individual choice to health care.[1] Allowing STLD plans to offer terms of up to 12 months along with renewal guarantees, consistent with the October 12, 2017 executive order issued by President Trump,[2] would allow options for enrollees who face skyrocketing premiums or who have an unexpected gap in coverage.[3]

The agencies have the authority to allow these consumer options in STLD plans, and these changes are consistent with congressional intent. Indeed, the departments have no statutory authority to regulate, much less ban, renewal guarantees.[4]

For nearly 20 years prior to 2016, including over 80 months since the ACA became law, administrations and Congresses controlled by both political parties accepted that STLD plans could offer contract terms of up to 12 months.[5] Despite this long-accepted interpretation of

---

[1] Letter from Sen. Ron Johnson et al. to Tom Price, M.D., Secretary, U.S. Dep't of Health & Hum. Servs., June 8, 2017.

[2] Exec. Order No. 13,813, 82 Fed. Reg. 48,385 (Oct. 12, 2017).

[3] Michael F. Cannon, *A Chance to Overcome ObamaCare*, WALL ST. J. (May 28, 2018), https://www.wsj.com/articles/a-chance-to-overcome-obamacare-1527517284.

[4] Michael F. Cannon, CATO Institute, Comments on Short-Term, Limited Duration Insurance - CMS-9924-P (Apr. 23, 2018), https://object.cato.org/sites/cato.org/files/pubs/pdf/cannon-short-term-insurance-comment.pdf.

[5] Interim Rules for Health Insurance Portability for Group Health Plans, 62 Fed. Reg. 16,894, 16,928, 16,942, 16,958 (Apr. 8, 1997); Final Regulations for Health Coverage Portability for Group Health Plans and Group Health Insurance Issuers Under HIPAA Titles I & IV, 69 Fed. Reg. 78,720, 78,748, 78,764, 78,783 (Dec. 30, 2004) ("health insurance coverage provided pursuant to a contract with an issuer that has an expiration date specified in the contract (taking into account any extensions that may be elected by the policyholder without the issuer's consent) that is less than 12 months after the original effective date of the contract.").

federal law, a 2016 rule from the outgoing Obama administration arbitrarily prohibited STLD plans from offering contract terms longer than three months and foreclosed the ability of issuers to offer renewal guarantees.[6] The National Association of Insurance Commissioners (NAIC) complained that the rule provided "no data to support the premise that a three-month limit would protect consumers or markets."[7] On the contrary, the NAIC concluded that prohibiting contract terms longer than three months would *harm* many consumers, leaving them with *no* coverage for up to nine months.[8]

Moreover, the NAIC noted that limiting the availability of STLD plans in such a way could harm the ACA's risk pools and would do nothing to protect individuals who develop an expensive illness: "If consumers are healthy they can continue buying a new policy every three months. Only those who become unhealthy will be unable to afford care, and that is not good for the risk pools in the long run."[9] Nonetheless, the departments finalized the rule without changes.

Though the Obama administration significantly restricted the use of STLD plans, including prohibiting the ability of individuals who become sick from renewing their plans, there is now an opportunity to provide real relief to the forgotten men and women President Trump has championed. Restoring consumer choice in the STLD market would provide more affordable alternatives and allow for consumer options in the event individuals in that market develop illnesses. We urge the departments to provide maximum flexibility for patients and consumers in the final rule by allowing STLD insurance plans to offer terms of up to 12 months in addition to renewal guarantees.

Thank you for your attention to this important issue.

Sincerely,

---

[6] Excepted Benefits; Lifetime and Annual Limits; and Short-Term, Limited-Duration Insurance, 81 Fed. Reg. at 75,316, 75,324, 75,325 75,326 (Dec. 30, 2016) ("health insurance coverage provided pursuant to a contract with an issuer that has an expiration date specified in the contract (taking into account any extensions that may be elected by the policyholder *with or* without the issuer's consent) that is less than *3* months after the original effective date of the contract." (emphasis added)).

[7] Memorandum from Nat'l Assoc. of Ins. Comm'rs to Internal Revenue Serv. (Aug. 9, 2016), https://www.regulations.gov/contentStreamer?documentId=IRS-2016-0021-0146&attachmentNumber=1&contentType=pdf.

[8] *Id.*

[9] *Id.*

Ron Johnson

John Kennedy

Pat Toomey

[illegible]

[illegible]

Deb Fischer

[illegible]

Lisa Murkowski

Dan Sullivan

John Thune

John Barrasso

[illegible]

Todd Young

Michael B. Enzi

[illegible]

Tom Cotton

[illegible]

Bill Cassidy

[illegible]

John Boozman

Cindy Hyde-Smith

[illegible]

Thom Tillis

Mitch McConnell

Ben Sasse

Roger Wicker

[illegible]

[illegible]

Shelley Moore Capito

Richard Shelby

[illegible]

Rand Paul

John Hoeven

[illegible]

Jerry Moran