COMMITTEE ON
EDUCATION AND THE WORKFORCE
U.S. HOUSE OF REPRESENTATIVES
2176 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6100

March 28, 2024

The Honorable Julie A. Su
Acting Secretary
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

The Honorable Janet L. Yellen
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

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

Dear Acting Secretary Su, Secretary Yellen, and Secretary Becerra:

I write in opposition to the final rules titled "Short-Term, Limited-Duration Insurance and Independent, Noncoordinated Excepted Benefits Coverage," posted for public inspection on March 28, 2024.[1] Once again, these rules demonstrate the Biden administration's intent to take away freedoms from the American people, this time by undercutting the health care coverage options available to them. I am concerned that these dangerous rules will limit health insurance choices for American consumers, leave more Americans uninsured and in medical debt, and decrease the strength of the short-term and individual coverage markets. The rules arbitrarily limit access to coverage options the Biden administration finds "problematic" and rolls back the important work achieved by the Trump administration's STLDI final rule, which increased affordable health options for Americans.[2] I strongly urge you to rescind these harmful rules.

Coverage Choices Support a Healthy Market

STLDI provides consumers with affordable, temporary health coverage options. Typically, STLDI is used by consumers to fill gaps in coverage and may be a consumer's only option for coverage. These plans are beneficial for students taking a semester off from school, workers

[1] https://www.federalregister.gov/public-inspection/2024-06551/short-term-limited-duration-insurance-and-independent-noncoordinated-excepted-benefits-coverage.
[2] Short-Term, Limited-Duration Insurance, 83 Fed. Reg. 38,212 (Aug. 3, 2018); *see also* https://www.brookings.edu/articles/fixed-indemnity-health-coverage-is-a-problematic-form-of-junk-insurance/.

transitioning between jobs, workers during an employer's probationary period before becoming eligible for benefits, and those not satisfied with their choices on the *Patient Protection and Affordable Care Act* (ACA) exchange. According to the National Association of Insurance Commissioners, 235,775 Americans were enrolled in short-term policies in 2022.[3]

STLDI is not considered individual health coverage and is exempt from ACA individual market requirements; however, STLDI plans are subject to state regulations. Historically, regulation of STLDI plans has focused on the duration and renewability of the plan. After the passage of the *Health Insurance Portability and Accountability Act of 1996* (HIPAA), which explicitly exempts STLDI from the definition of individual coverage and HIPAA's guaranteed renewability requirement, the Departments of the Treasury, Labor, and Health and Human Services (Tri-Agencies or Departments) issued regulations limiting STLDI plans to 12 months of coverage.[4]

After the passage of the ACA, the Obama administration claimed that STLDI plans were drawing healthy individuals out of the ACA risk pools, causing premiums to rise. In 2016, the Obama administration issued final rules titled "Expatriate Health Plans, Expatriate Health Plan Issuers, and Qualified Expatriates; Excepted Benefits; Lifetime and Annual Limits; and Short-Term, Limited-Duration Insurance."[5] The rules shortened the longstanding maximum coverage period for STLDI from 12 months to three months. However, despite limiting STLDI, average premiums on the ACA market increased by 21 percent between 2016 and 2017 and enrollment of unsubsidized individuals fell by 1.3 million.[6] The ACA is the problem; providing Americans with health care coverage choices is not.

In October 2017, following a request for information[7] soliciting feedback on how the federal government could increase affordable health coverage options, President Trump issued Executive Order 13813, "Promoting Healthcare Choice and Competition Across the United States," which instructed the Departments to expand access to STLDI and other affordable health care coverage options.[8] In August 2018, the Departments published final rules titled "Short-Term, Limited Duration Insurance," amending the definition of STLDI to revert back to the 12-month maximum coverage period, with the ability to renew for up to three years.[9] The rules additionally made changes to allow fixed indemnity insurance to be considered an excepted benefit in the group and individual markets.

Despite claims that extending the STLDI coverage period would increase ACA individual market premiums, between 2018 and 2021 individual market premiums declined more

[3] https://content.naic.org/sites/default/files/publication-ahp-lr-accident-health-report.pdf.
[4] Interim Rules for Health Insurance Portability for Group Health Plans, 62 Fed. Reg. 16,894 (Apr. 8, 1997).
[5] 81 Fed. Reg. 75,316 (Oct. 31, 2016).
[6] https://www.cms.gov/newsroom/press-releases/speech-remarks-administrator-seema-verma-cms-national-forum-state-relief-and-empowerment-waivers.
[7] https://www.regulations.gov/document/CMS-2017-0078-0001.
[8] https://trumpwhitehouse.archives.gov/presidential-actions/presidential-executive-order-promoting-healthcare-choice-competition-across-united-states/.
[9] 83 Fed. Reg. 38,212 (Aug. 3, 2018).

significantly in states that fully permitted short-term plans.[10] An analysis from the Paragon Health Institute found that:

> Between 2018 and 2023: 1) Exchange enrollment was up 62.7 percent in STLDI favorable states, more than 13 times greater than the 4.7 percent increase in STLDI unfavorable states; 2) The number of insurers selling exchange plans in STLDI favorable states increased 105 percent, more than three times the 32 percent increase in STLDI unfavorable states; and 3) Exchange plan premiums, particularly for benchmark plans and gold plans, decreased much more significantly in STLDI favorable states.[11]

Additionally, Peter Nelson, a senior advisor to the administrator at the Centers for Medicare and Medicaid Services (CMS) from 2017 to 2021, found that "off-Exchange enrollment declined by 9.7 percent in more restrictive states and declined by 5.9 percent in less restrictive states." He concluded, "the STLDI-friendly states appear to have better maintained unsubsidized enrollment in comprehensive coverage despite the availability of STLDI."[12]

On March 28, 2024, the Biden administration released its final STLDI rules.[13] Unfortunately, these rules double down on an outdated and incorrect assumption that expanded choices for consumers lead to a segmented health market. The rules return STLDI contracts to a maximum of three months, with only one month of renewability. These rules will gut the STLDI market and prevent Americans from accessing a valuable coverage option. I am pleased to see that the final rules do not alter regulations relating to section 105 of the Internal Revenue Code (Code) regarding indemnity and specified disease benefit payments, and I encourage the Department of the Treasury (Treasury) and Internal Revenue Service (IRS) to consider the many practical concerns raised by stakeholders, including employers, before making additional amendments to regulations. I strongly encourage the Treasury and IRS to issue any future changes through notice-and-comment rulemaking, and not through subregulatory guidance as implied by the preamble to the final rules.[14]

Limiting Coverage Choices will Increase the Uninsured and Medical Debt, and May Worsen Health Outcomes

Contrary to President Biden's claim that "if you like your health care plan ... you can keep it. If in fact you have private insurance, you can keep it,"[15] the administration's final rules make it harder for individuals to maintain their health coverage. According to data from CMS, the

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[10] https://galen.org/assets/Individual-Health-Insurance-Markets-Improving-in-States-that-Fully-Permit-Short-Term-Plans.pdf.
[11] https://paragoninstitute.org/wp-content/uploads/2023/09/short-term-insurance-long-term-benefits.pdf.
[12] https://files.americanexperiment.org/wp-content/uploads/2023/09/CAE-Comments-on-STLDI.pdf?v=1694553766&_gl=1*6y8afn*_ga*MTgyMjU2Mzk1NS4xNzA5MzMwOTY0*_ga_03BRYTYNY0*MTcwOTMzMDk2My4xLjAuMTcwOTMzMDk2My42MC4wLjA.
[13] https://www.federalregister.gov/public-inspection/2024-06551/short-term-limited-duration-insurance-and-independent-noncoordinated-excepted-benefits-coverage.
[14] *Id*.
[15] https://thehill.com/policy/healthcare/453173-biden-if-you-like-your-private-health-insurance-you-can-keep-it/.

Congressional Budget Office, and nonpartisan think tanks, the Trump administration's STLDI rules reduced the number of uninsured individuals and lowered premiums.[16] Yet, during a time when there is unprecedented churn in the Medicaid market due to redeterminations, this administration has decided to limit health coverage options for the uninsured. The Departments acknowledged this directly in the preamble to the final rules, stating:

> These final rules might also lead to an increase in the number of individuals without some form of health insurance coverage…. Those individuals who become uninsured or obtain coverage in unregulated markets could face an increased risk of higher out-of-pocket expenses and medical debt, reduced access to health care, and potentially worse health outcomes.[17]

The Trump administration's rules ensured continuous coverage by aligning the STLDI contract and renewability lengths with the length of other health coverage options like those available under COBRA, which gives Americans coverage options between jobs or coverage loss for other reasons.[18] COBRA requires plan sponsors to provide a temporary continuation coverage option for three years, and the Federal Employees Health Benefits Program permits temporary continuation of coverage for up to three years.[19]

The Biden administration's final rules throw the average unemployed American to the curb by limiting coverage to three months, claiming "the new proposed definition for STLDI is consistent with the group market rules regarding the 90-day waiting period provision" for new employees.[20] The administration then allows for only one month of renewability, creating a maximum coverage period of four months to allow for a one-month employment-based orientation period.[21] This limited definition of "short-term" demonstrates the inadequate understanding the Biden administration has of the health care needs of Americans. In order to avoid a gap in coverage, the final rules require an individual to have no gap in employment.[22] However, according to the Bureau of Labor Statistics, the average length of unemployment was almost 21 weeks in January 2024.[23]

I am pleased to see that the final rules do not prohibit employers from offering "excepted benefit" indemnity plans to employees who are eligible for major medical coverage.[24] The courts have previously ruled that similar limitations go beyond the scope of authority given to the Tri-

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[16] https://media4.manhattan-institute.org/sites/default/files/R-0519-CP.pdf.
[17] https://www.federalregister.gov/public-inspection/2024-06551/short-term-limited-duration-insurance-and-independent-noncoordinated-excepted-benefits-coverage.
[18] Consolidated Omnibus Budget Reconciliation Act of 1995, 29 U.S.C. pt. 6 (continuation coverage and additional standards for group health plans).
[19] Short-Term, Limited-Duration Insurance, 83 Fed. Reg. 38,212, 38,221 (Aug. 3, 2018).
[20] https://www.federalregister.gov/public-inspection/2024-06551/short-term-limited-duration-insurance-and-independent-noncoordinated-excepted-benefits-coverage.
[21] *Id.*
[22] *Id.*
[23] https://www.bls.gov/news.release/empsit.t12.htm.
[24] https://www.federalregister.gov/public-inspection/2024-06551/short-term-limited-duration-insurance-and-independent-noncoordinated-excepted-benefits-coverage.

Agencies by Congress and arbitrarily limit coverage options.[25] I encourage the Departments to exercise caution before making changes which would restrict Americans' ability to layer fixed indemnity plans on top of their full medical coverage and would increase the financial burdens borne by these consumers, who are likely lower-income.

I am additionally pleased the final rules do not include provisions which would have hit the most vulnerable Americans the hardest, shouldering them with unexpected tax bills after they realize the tax treatment of their health benefits has changed. Many people use fixed indemnity plans to help pay for health care costs, lodging, transportation, and other ancillary costs for health services. The proposed rules took away this valuable benefit by assuming that the payment of the benefit is a wage replacement, taxing the benefits as wages. This flawed assumption ignored the fact that the main purpose of fixed indemnity plans is to pay for medical expenses uncovered by primary health insurance.[26] It would have been cruel for the administration to add to the financial burdens of sick individuals, and I appreciate the Departments not finalizing this portion of the proposed rules.

Coverage Choices Are Not "Problematic"

These final rules are driven by political White House staff who aim to eliminate what they see as "problematic" forms of "junk insurance."[27] As explained earlier in this letter, the Biden administration justifies the elimination of valuable coverage options by relying on outdated and sometimes false assumptions on adverse selection impact on risk pools in the individual market, which have since been disproven by current enrollment and premium data.

STLDI plans' flexibility, cost-effectiveness, and predictability are crucial for individuals who are locked out of coverage options due to waiting periods, special enrollment requirements, Medicaid redeterminations, or because they simply cannot afford a plan on the ACA individual market and are looking to bridge short-term coverage gaps between jobs. Removing more affordable coverage options is counterintuitive as Americans face higher health insurance costs. Especially troublesome, ACA marketplace plan premiums rose an average of 4.5 percent this year.[28] The Biden administration's rules take a "government knows best" approach and assumes that the American people are not able to make the financial decisions that are best for themselves and their families.

The Biden administration and Democrats have attempted to brand STLDI plans as "junk" plans and claim that people are tricked into buying these plans. They claim that brokers misguide or deceive people when selling STLDI policies while ignoring the fact that short-term coverage options fill a legitimate gap in the market and provide otherwise uninsured people with predictable coverage. In 2020 and 2021, the Government Accountability Office conducted a

[25] https://www.cadc.uscourts.gov/internet/opinions.nsf/3766CC3E5DD5914085257FE30050BBA1/$file/15-5310-1622677.pdf.
[26] https://www.forbes.com/advisor/health-insurance/hospital-indemnity-insurance/.
[27] https://www.brookings.edu/articles/fixed-indemnity-health-coverage-is-a-problematic-form-of-junk-insurance/.
[28] https://www.healthinsurance.org/obamacare/subsidy-calculator/#:~:text=Across%20all%20states%2C%20including%20states,than%20it%20was%20for%202023.

covert testing study of 31 sales representatives listed on the healthcare.gov website and evaluated whether they engaged in deceptive practices such as misleading people or providing false information on coverage options. No instances were found where individuals were misled or otherwise deceived by sales representatives.[29] The final rules conveniently cite an older GAO study and do not acknowledge the more recent data.[30] The purpose of STLDI plans is not to deceive consumers but rather to provide them with options in a marketplace governed by regulations that seem intent on restricting their choices and, at times, leaving them uninsured.

The Final Rules Will Decimate the Short-Term Market

The administration's rules will force short-term plans to leave the market. The 2016 rules resulted in the departure of one of the top three STLDI underwriters.[31] At the time, one of these underwriters stated that the decision to exit the market was "based on the 90 day policy duration limitation to the STM [short-term medical] insurance marketplace that was effective April 1, 2017."[32] Currently, only three of the eight states that restrict the maximum duration of STLDI to four months or less still have insurers that offer short-term plans. [33] STLDI plans are also not available in many other states because of state-imposed additional requirements.

I am concerned that consumers who reside in a state that does not have a short-term plan and who do not have a qualifying event for an open enrollment period will not have coverage options for STLDI. An independent health insurance consumer guide, healthinsurance.org, echoes our concerns: "This is a tough situation. In terms of getting real major medical health insurance, you'll generally have to wait until open enrollment to sign up, with coverage effective next January."[34] The consumer guide proceeds to list out other limited options, such as health care sharing ministry plans, fixed-indemnity plans, direct primary care, and either receiving free health care or paying out of pocket at a community health center. Democrats are on a mission to limit or eliminate health care sharing ministry plans,[35] the Departments expressed disdain for fixed indemnity plans in the proposed rules and the final rules,[36] and Democrats oppose expanding access to direct primary care.[37] In their quest for full government takeover of health care, Democrats and the Biden administration prefer to leave Americans uninsured rather than allow employers and brokers to provide people with non-ACA options in the health care market.

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[29] https://www.gao.gov/assets/720/716087.pdf.
[30] https://public-inspection.federalregister.gov/2024-06551.pdf.
[31] https://calhealthnews.com/hcc-exits-short-term-medical-market-government-rules/.
[32] https://calhealthnews.com/hcc-exits-short-term-medical-market-government-rules/.
[33] https://www.healthinsurance.org/blog/short-term-health-insurance-limits/.
[34] https://www.healthinsurance.org/faqs/if-i-cant-buy-a-short-term-plan-and-i-dont-have-a-qualifying-event-what-are-my-coverage-options/.
[35] https://huffman.house.gov/media-center/press-releases/rep-huffman-re-introduces-bill-to-protect-consumers-from-dangerous-health-share-practices.
[36] Short-Term, Limited-Duration Insurance; Independent, Noncoordinated Excepted Benefits Coverage; Level Funded Plan Arrangements; and Tax Treatment of Certain Accident and Health Insurance, 88 Fed. Reg. 44,596 (proposed July 12, 2023).
[37] https://democrats-rules.house.gov/sites/democrats.rules.house.gov/files/115-2/HR%206199/CRPT-115hrpt852.pdf.

Conclusion

Short-term health insurance and other nontraditional coverage arrangements provide patients with more portability, options, and flexibility than other insurance options available through the ACA individual market. These plans fill a specific need in the market and provide affordable coverage for otherwise uninsured individuals. I remain opposed to any efforts by this administration to limit affordable coverage options or otherwise force Americans to be without insurance. Health care should not be one-size-fits-all. I urge the Biden administration to rescind these significantly harmful rules which will deprive Americans of flexible and affordable coverage options.

Sincerely,

Virginia Foxx

Virginia Foxx
Chairwoman