

United States Senate

WASHINGTON, DC 20510

September 15, 2023

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

The Honorable Julie A. Su
Acting Secretary
Department of Labor
200 Constitution Ave. NW
Washington, D.C. 20210

The Honorable Janet Yellen
Secretary
Department of Treasury
1500 Pennsylvania Ave. NW
Washington, D.C. 20220

Dear Secretaries Becerra, Su, and Yellen:

We write in support of the Department of Health and Human Services (HHS), the Department of Labor, and the Department of the Treasury's (collectively, the Departments') long-awaited proposal to address short-term limited duration insurance (STLDI) plans.¹ In 2018, the previous administration sought to sabotage the Affordable Care Act (ACA) by expanding access to STLDI plans that can deny coverage to people with preexisting conditions and fail to provide adequate health care coverage when Americans need it most. While STLDI plans have their purpose, such plans provide junk coverage when compared to high-quality, comprehensive coverage. We applaud your efforts to protect Americans who may have been duped into these junk plans, and urge the Biden Administration to swiftly finalize the rule and bolster our collective efforts to expand access to affordable, comprehensive health coverage.

In 2018, regulations issued by the previous administration rewrote the definition of STLDI coverage, allowing these plans to expand their term of coverage from three months to 364 days with the option to renew for up to three years.² Unlike marketplace plans, STLDI plans are not required to comply with consumer protections that limit out-of-pocket costs or coverage of essential health benefits, including mental health services, treatment for substance-use disorder,

¹ Short-Term, Limited-Duration Insurance; Independent, Noncoordinated Excepted Benefits Coverage; Level-Funded Plan Arrangements; and Tax Treatment of Certain Accident and Health Insurance, 88 FR 44596 <https://www.federalregister.gov/documents/2023/07/12/2023-14238/short-term-limited-duration-insurance-independent-noncoordinated-excepted-benefits-coverage>

² Short-Term, Limited-Duration Insurance, 83 FR 38212 (2018): <https://www.federalregister.gov/documents/2018/08/03/2018-16568/short-term-limited-duration-insurance>

prescription drugs, and maternity care. Furthermore, these plans engage in discriminatory practices, such as retroactive coverage rescissions, medical underwriting, and lifetime and annual caps, which were commonplace before the ACA. Since 2018, many consumers shopping for coverage may not have understood that they were buying a plan that puts them at risk for pre-existing conditions and coverage gaps.³

With this new proposal, the Biden Administration is taking action to better protect consumers and promote access to affordable, comprehensive health insurance. We appreciate the Department's efforts to hold true to a definition of "short-term" that is just that – short term. STLDI policies were originally intended to temporarily fill gaps in coverage while people transition between jobs or when students were required to disenroll from student health coverage over the summer months. As such, we believe these plans should be strictly limited to three months without the option for extensions.

We also strongly support the proposal to prevent insurance companies or brokers from repeatedly enrolling the same consumer in STLDI coverage, a practice known as "stacking," and request that the Administration do more to prohibit stacking of STLDI plans across different issuers. In addition, as we continue to ensure that Americans have access to affordable coverage, it is critically important for Congress, state regulators, researchers, stakeholders, and federal departments to understand the true impact of the junk insurance market on the ACA marketplaces and other forms of high-quality coverage. As a part of this rulemaking, we strongly urge the agencies to implement policies that would bring greater transparency to these products including disclosure and reporting requirements for intermediary entities such as brokers, associations, and lead generators.

Finally, we urge the Administration to consider additional protections for individuals who may be shopping for coverage during the ACA's annual Open Enrollment (OE) period.

Fraudsters, always looking for opportunities to take advantage of consumers, are enrolling individuals into plans without their consent, and numerous studies have documented the use of deceptive and misleading marketing to lure consumers into junk plans.⁴ We urge the Departments to proactively work with state insurance commissioners to address misleading marketing practices. High-quality insurance coverage is now more affordable than ever before thanks to the enhanced premium tax credits passed as part of the American Rescue Plan Act and the Inflation Reduction Act, as well as the Administration's efforts to fix the "family glitch" which eliminated the subsidy cliff that impacted over five million Americans.⁵ It is our responsibility to ensure that the OE period, which is set to begin on November 1, is as successful as possible in promoting access to high-quality, affordable coverage.

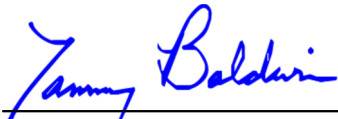
³ Schwab, R. and Volk, J. *The Perfect Storm: Misleading Marketing of Limited Benefit Products Continues as Millions Losing Medicaid Search for New Coverage*. Georgetown University Center on Health Insurance Reforms. July 2023. <https://georgetown.app.box.com/v/the-perfect-storm-august-2023>

⁴ Government Accountability Office. *Private Health Coverage: Results of Covert Testing for Selected Offerings*. August 2020. <https://www.gao.gov/products/gao-20-634r>

⁵ Cox, C., Amin, A., Claxton, G., and McDermott, D. *The ACA Family Glitch and Affordability of Employer Coverage*. KFF. April 7, 2021. <https://www.kff.org/health-reform/issue-brief/the-aca-family-glitch-and-affordability-of-employer-coverage/>

For too long, junk plans were able to proliferate unchecked, resulting in increased exposure to financial harm for consumers. By finally limiting the duration of these plans and providing better protections for consumers, we are helping ensure that when families spend their hard-earned dollars on health insurance, they get the high-quality coverage they deserve.

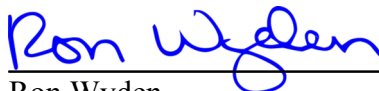
Sincerely,



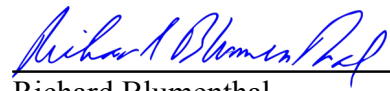
Tammy Baldwin
United States Senator



Bernard Sanders
United States Senator



Ron Wyden
United States Senator



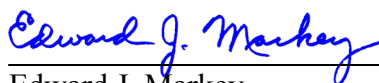
Richard Blumenthal
United States Senator



Catherine Cortez Masto
United States Senator



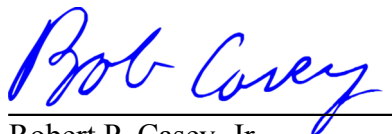
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Peter Welch
United States Senator



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United States Senator



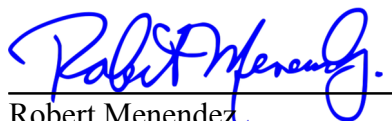
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United States Senator



Alex Padilla
United States Senator



Tim Kaine
United States Senator



Robert Menendez
United States Senator



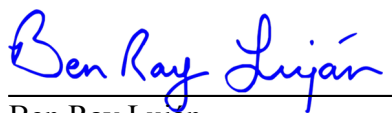
Tina Smith
United States Senator



Chris Van Hollen
United States Senator



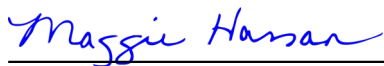
Mark R. Warner
United States Senator



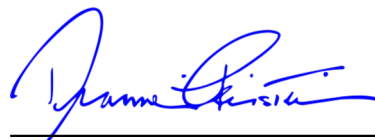
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Elizabeth Warren
United States Senator



Margaret Wood Hassan
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United States Senator



Cory A. Booker
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