Short-term health plans will bring long-term pain for patients

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Editor's note: *The U.S. Court of Appeals for the District of Columbia in July affirmed a lower court's summary judgment that dismisses this lawsuit challenging a Trump administration rule that allows the short-term insurance policy market to expand. The AMA and others told the court the 2018 rule puts buyers and the individual health care coverage market at risk.*

In its 2–1 ruling, the federal appeals court says short-term, limited-duration insurance (STLDI) plans are "neither contrary to law nor arbitrary and capricious." The majority opinion says that "when Congress delegates decision-making authority to agency, it sacrifices control for flexibility," allowing a "comparatively nimbler actor to respond to changed circumstances and unanticipated consequences." The agency will need to make policy tradeoff in real-world settings that Congress did not imagine, and the judges say that is "exactly what happened here."

A group of national medical associations is calling on a federal court to block the expansion of short-term insurance policies that put buyers and the individual health care coverage market at risk.

The AMA and other organizations representing nearly a million physicians and other health professionals submitted an *amicus* brief supporting a preliminary injunction against the Trump administration's 2018 final rule on short-term, limited-duration insurance (STLDI). Critics charge the rule creates an unlawful permanent alternative to individual coverage compliant with the original provisions of the Patient Protection and Affordable Care Act (ACA).

The strongly worded brief argues that the rule "sabotages" the ACA and endangers the broad-based risk pools that make coverage affordable.

"The rule will be devastating to the health, well-being and pocketbooks of millions of Americans—and disproportionally so for women, children and the chronically ill," the brief says. The rule would, further, threaten "to undo the ACA's vital patient reforms, moving the health insurance market back to the days where Americans had no or inadequate insurance."

The brief was filed on behalf of the plaintiffs in *Association for Community Health Plans v. U.S. Department of the Treasury.* They are seeking a preliminary injunction and a permanent end to the rule in the U.S. District Court for the District of Columbia. Among the national physician organizations joining the AMA are the American College of Physicians, the American Osteopathic Association, and the American Academy of Family Physicians. The AMA also wrote a letter to federal officials in April that was critical of loosening restrictions on STLDI sales.

The STLDI final rule took effect Oct. 2. It opens the door to large-scale purchasing of coverage that is less expensive than ACA-approved plans, but lacks fundamental protections built into the law. The government has said it expects only 200,000 people to leave the individual coverage market for STLDI policies following the new rule. The brief counters that "independent studies have found that the numbers could be significantly higher." The Urban Institute projects a net increase of 2.6 million more people without minimum essential coverage under the rule, as compared with the current law.

Temporary policies turned permanent

STLDI policies traditionally have been sold as limited-benefit, gap-filling coverage for situations such as a job change. They were grandfathered into the ACA, but could only be used to meet individual mandate requirements of the law for a maximum of three months.

The rule extends that period to 364 days (one day less than ACA-compliant plans), permits extensions to effectively allow STLDI coverage for three years, and permits purchase of a new plan to carry on that cycle indefinitely. Insurers can decide what benefits to offer, free of ACA requirements. States can place limits—and some have taken action—on the initial term and effective duration of STLDI plans, or have banned them outright.

The rule's results are predictable, says the brief. There will be a migration by many to plans that "do not provide the full suite of coverage that Congress intended and they are fundamentally inconsistent with the ACA's many core reforms, including guaranteed issue, modified community rating, essential health benefit requirements, prohibitions on preexisting condition exclusions, annual and lifetime limit provisions, and other protections."

Plans deficient and destabilizing

The principal selling point for the STLDI policies is price. A stripped-down benefits package, loaded with insurer-friendly provisions, can be offered at a lower premium. Although STLDI plans under the new rule are required to come with a buyer-beware warning, they are not required to show

comparative coverage levels for ACA-compliant plans.

Many STLDI purchasers are expected to be healthy—at least at the time they buy their plans. They will not be part of the risk pool for ACA-compliant coverage. Broad participation in risk pools is critical to the viability of ACA-compliant coverage market, already threatened by other policy changes such as cutting the individual mandate penalty for not purchasing health insurance to $0.

The more STLDI plans sold, the greater the potential for premium increases as the proportion of less-healthy holders of ACA-complaint plans rises. The brief underscores the potential for significant premium increases for ACA-compliant coverage in states that do not limit or ban STLDI plans.