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Short-Term Insurance Rule Thwarts ACA, House Tells DC Circ.

By **Adam Lidgett**

Law360 (November 13, 2019, 2:38 PM EST) -- The U.S. House of Representatives has blasted a Trump administration rule extending how long Americans can use Affordable Care Act-skirting short-term health insurance plans, telling the D.C. Circuit that the rule thwarts the statute's intent of trying to increase access to good, affordable insurance.

In a Tuesday amicus brief, the Democrat-controlled House threw its support behind a coalition of health care organizations trying to revive their suit challenging a regulation allowing consumers to buy and renew "short-term, limited duration" health insurance for up to 36 months, up from three months at the end of the Obama administration.

The House called the rule a "prime example" of President Donald Trump's attempts to undermine the ACA. The increase in those short-term plans that last the same amount of time as comprehensive insurance policies push Americans away from plans that can't discriminate against people with preexisting conditions, the House said.

"Insurers can use deceptive marketing practices and other tactics to encourage consumers to purchase [short-term limited duration insurance] plans despite those plans not meeting the act's otherwise stringent consumer protections," the House's brief said.

On top of the House, the AARP and a coalition of patient groups filed their own amicus briefs Tuesday in support of the organizations that sued over the rule.

For its part, the AARP said that "if the rule is left undisturbed, the harm it is causing our healthcare system will continue to be felt acutely by pre-Medicare older adults."

The patient groups, including the American Cancer Society and the American Heart Association, argued that the rule will push more people to purchase plans that won't give them access to important treatments and that it will ensure that people with existing conditions will shoulder higher costs to get the treatments they require.

The Tuesday amicus briefs came about a week after the petitioners in the case, including the Association for Community Affiliated Plans, asked the appellate court to undo U.S. District Judge Richard J. Leon's decision that nuked their suit fighting the regulation.

“One thing that virtually all organizations with a stake in the health care system understand is the grave threat that junk insurance poses to consumers," Margaret A. Murray, the chief executive of the Association for Community Affiliated Plans, said in a statement to Law360 on Wednesday. "They know from experience that people who purchase junk plans — including many who may have done so unintentionally —could face denied care and coverage and surprise bills running up to six figures."

Short-term insurance tends to be much cheaper and much skimpier than ACA insurance. The petitioners sued over the challenged rule in September 2018, but the government said they failed to offer any evidence backing their argument that the rule would cause competitive injury to their insurer members selling ACA-compliant plans.

Judge Leon said in his July ruling that the Association for Community Affiliated Plans hadn't supported its claim that expanding short-term policies perpetuated the discrimination the ACA was established to prevent. Even though short-term plans allow insurers to set rates based on health history, gender or age, that’s legal because those plans have been exempt from the ACA from the beginning, the judge ruled.

Additionally, the judge said at the time that the Association for Community Affiliated Plans didn't show how the U.S. departments of Labor, Treasury, and Health and Human Services overstepped their bounds in changing the plans' duration. Ever since short-term plans were created in 1997, it has been the agencies' job to define what they are, Judge Leon said.

“We’re deeply concerned that if this rule is allowed to stand it would split the insurance market,” Mary Rouvelas, American Cancer Society Cancer Action Network senior counsel, said in a statement to Law360. “People with serious illnesses who need comprehensive coverage would have to pay increasingly higher premiums or forego coverage altogether as insurers raise rates to cover costs — a common problem prior to 2014 — and those who purchase these short-term plans would discover their coverage is inadequate should they get seriously ill.”

The AARP declined to comment on its Tuesday brief, but pointed to a statement from October 2018 when it filed an amicus brief at the lower court in which the group said it “opposed the administration’s expansion of short-term plans because it will severely undermine the progress that has been made to provide access to affordable health care.”

“Under this rule insurance companies can once again overcharge older Americans for their health coverage or deny them coverage altogether,” the October 2018 statement said.

Representatives for the other parties were not immediately available for comment Wednesday.

The House of Representatives is represented by Elizabeth B. Wydra, Brianne J. Gorod, Ashwin P. Phatak and Clare E. Riva of the Constitutional Accountability Center and Douglas N. Letter, Todd B. Tatelman, Megan Barbero and Adam A. Grogg of the U.S. House of Representatives Office of General Counsel.

AARP is represented by Kelly Bagby, Dara S. Smith and Meryl D. Grenadier of the AARP Foundation.

The American Cancer Society and related amici are represented by James Sigel and Joseph R. Palmore of Morrison & Foerster LLP.

The Association for Community Affiliated Plans is represented by Andrew J. Pincus, Charles Rothfeld, Ankur Mandhania and Karen Lin of Mayer Brown LLP.

The federal government is represented by Daniel Winik and Alisa B. Klein of the U.S. Department of Justice, Civil Division.

The case is Association for Community Affiliated Plans et al. v. U.S. Department of the Treasury et al., case number 19-5212, in the U.S. Court of Appeals for the District of Columbia Circuit.

--Additional reporting by Emily Brill and Jeff Overley. Editing by Abbie Sarfo.
