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State Options to Protect Consumers and Stabilize the Market: Responding to President Trump's Executive Order on Short-Term Health Plans

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In Brief:

- States have a critical role regulating short-term health plans
- This brief highlights 3 areas for state action
 - » Ban or limit short-term plans
 - » Reduce market segmentation risk
 - » Increase consumer disclosures & regulatory oversight

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OVERVIEW

In October 2017, President Trump issued an [Executive Order](#) to expand access to certain health insurance products—short-term limited-duration plans, association health plans, and health reimbursement arrangements. Although not yet fully implemented, the Executive Order has raised concerns about its impact on the Affordable Care Act's (ACA) consumer protections and on insurance markets.

As the primary regulators of private health insurance, states play a key role. This brief identifies a range of policy options that state policymakers can consider regarding the regulation of short-term coverage.¹ These policy options include 1) banning or limiting the sale of short-term coverage; 2) allowing the sale of short-term coverage but reducing the risk of market segmentation; and 3) increasing consumer disclosures and regulatory oversight.

WHAT IS SHORT-TERM COVERAGE?

Short-term coverage, or "short-term limited-duration insurance," is health insurance that, by definition, covers someone for less than 12 months and is not renewable. Short-term coverage was designed to fill temporary gaps in coverage. A consumer might, for instance, enroll in a short-term policy when between jobs or while in a waiting period for employer-sponsored coverage. Although designed to be temporary, in the first year of the ACA's market reforms, some insurers sold short-term policies that lasted for [364 days](#), just one day shy of 12 months, which allowed them to escape regulation under federal law as health insurance.

When categorized as short-term coverage, these plans do not have to comply with the ACA's consumer protections, such as the ban on preexisting condition exclusions and rescissions, the coverage of

1. We will address state policy options on the regulation of association health plans and health reimbursement arrangements in separate briefs.

essential health benefits, and maximum limits on consumer out-of-pocket spending (Exhibit 1). Because short-term coverage is not considered health insurance under the ACA, consumers who

enroll in only short-term coverage may have to pay the ACA's individual mandate penalty in addition to premiums and any medical costs that are not covered by their policy.

Exhibit 1. Consumer Protections in ACA Plans Compared to Short-Term Coverage

Consumer Protection	ACA Plans	Short-Term Coverage
Includes coverage for preexisting conditions?	Yes	No – short-term plans can decline to offer coverage at all or exclude coverage for preexisting conditions
Prohibits higher rates based on health status?	Yes	No – short-term plans can charge a higher rate based on an individual's health status
Covers essential health benefits?	Yes	No – coverage varies by plan and there are generally no minimum or standard benefit requirements for short-term plans
Prohibits dollar caps on health care services?	Yes	No – short-term plans can include a dollar cap on services and stop paying medical bills after that cap is reached
Caps out-of-pocket expenses for consumers?	Yes	No – short-term plans may not have a maximum limit on consumer out-of-pocket costs
Allows consumers to use federal premium assistance based on their income?	Yes	No – premium tax credits cannot be used to purchase short-term plans
Satisfies the individual mandate?	Yes	No – consumers enrolled in a short-term plan may have to pay a penalty for failing to have minimum essential coverage

Short-term coverage generally is only available to consumers who can pass medical underwriting and provides minimal financial protection for those who become sick or injured. In a recent [analysis](#), short-term policies regularly excluded coverage for preexisting conditions, did not cover entire categories of key benefits (such as mental health and substance use services, maternity care, or prescription drugs), and included out-of-pocket maximums ranging from \$7,000 to \$20,000 for only three months of coverage.

Because of these limitations, premiums for short-term coverage are much lower than premiums for ACA-compliant coverage and [enrollment](#) tends to skew younger and healthier. As a result, the availability of short-term coverage likely [reduces](#) the enrollment of younger, healthier people in ACA-compliant plans and contributes to adverse selection against the marketplaces.

“The more available short-term plans are and the more attractive they become to healthy individuals, the greater the risk for market segmentation and adverse selection, and therefore higher premiums, in the ACA-compliant individual market.”
 – [American Academy of Actuaries \(Nov. 2017\)](#)

HOW PRESIDENT TRUMP'S EXECUTIVE ORDER MIGHT BE IMPLEMENTED

In 2016, federal regulators cited concerns that short-term coverage was “being sold as a type of primary coverage” and “adversely impacting the risk pool” in the individual market. They adopted

a [regulation](#) that made it less attractive to sell short-term plans to potential marketplace enrollees. In particular, the rule prohibited insurers from offering short-term policies that lasted longer than three months and required each policy to include a prominent notice that it is not minimum essential coverage and thus does not satisfy the individual mandate. The rule also prohibited insurers from renewing short-term policies after the end of the three-month coverage period.

Under President Trump's Executive Order, federal regulators are widely expected to reverse the Obama-era regulation. The Executive Order [directed](#) the Secretaries of the Treasury, Labor, and Health and Human Services to expand the availability of short-term coverage and "consider allowing such insurance to cover longer periods and be renewed by the consumer." If the Trump administration reverses the rule, insurers could resume offering and renewing medically underwritten short-term coverage exempt from ACA rules that lasts up to 364 days (or a different maximum duration selected by federal regulators).

This would likely increase enrollment in short-term coverage. [Proponents](#) of short-term coverage argue that these plans promote consumer choice and lower-cost options compared to ACA-compliant plans. This may be especially true for consumers who do not qualify for marketplace subsidies in the face of rising premiums in ACA plans. [Critics](#), however,

note that short-term plans are not available to people with preexisting conditions, are low-cost because they cover few benefits, and expose consumers to serious financial risk in the face of unexpected health issues. They further argue that the proliferation of short-term plans siphons healthy risk away from ACA-compliant plans. At the same time, short-term plan enrollees who develop a health problem can shift to an ACA-compliant plan during the annual open enrollment period. This leaves a smaller and sicker risk pool for the traditional insurance market, resulting in fewer plan options and higher prices for major medical coverage.

STATE POLICY OPTIONS TO ADDRESS CONCERNS ABOUT SHORT-TERM COVERAGE

States have [broad authority](#) to regulate short-term coverage. Given changes anticipated under President Trump's Executive Order, we have identified a number of state policy options regarding the regulation of short-term coverage. State approaches will vary based on the state's legal authority and regulatory capacity; some states may need new legislation to fully regulate short-term coverage while others can leverage existing law to do so. The policy options below are not mutually exclusive and could be adopted as part of a comprehensive market stabilization strategy.

I. BAN OR LIMIT SHORT-TERM COVERAGE

State legislatures and insurance regulators could:

- **Require short-term coverage to comply with rules for the individual market.** States could apply individual market insurance rules, including those prescribed under the ACA, to short-term coverage. New Jersey and New York currently do not allow the sale of short-term coverage that does not comply with existing law in the individual market. This policy change would limit choices for consumers seeking short-term coverage, but would incentivize enrollment in ACA-compliant plans and improve the stability of the individual market.
- **Require short-term coverage to comply with some ACA market reforms.** States could apply some of the ACA's consumer protections to short-term coverage, such as coverage of essential

benefits; guaranteed issue, rescission, and pre-existing condition protections; and a cap on annual out-of-pocket costs. State regulators could also consider whether state or federal nondiscrimination protections apply to an insurer's line of business for short-term policies. These changes could help protect consumers, create a more level playing field between short-term coverage and ACA-compliant coverage, and reduce the risk of market segmentation.

- **Limit the duration of short-term coverage.** States could mimic the 2016 federal rule by limiting the length of short-term policies to three months and prohibiting renewals. States could also select a different maximum duration. For example, California and Minnesota limit the length of the policy to up to 185 days and restrict renewals. These changes could help ensure that short-term policies are being used to fill temporary coverage gaps that they were designed for instead of as a year-long substitute for major medical coverage.
- **Require nonrenewable short-term coverage to discontinue at the end of the calendar year.** States could require all short-term policies to discontinue on December 31st of each year without the option to renew and provide notice to consumers about the open enrollment period. Under this policy, consumers who miss the annual open enrollment period and do not qualify for a special enrollment period could enroll in a short-term policy only until they can enroll in ACA coverage. By ending short-term plans on December 31st, state policymakers could better incentivize enrollment in ACA-compliant plans.

II. REDUCE THE RISK OF MARKET SEGMENTATION

State legislatures and insurance regulators could:

- **Assess insurers that offer short-term coverage and reinvest these funds in a reinsurance program for the individual market.** States could require insurers to price short-term plans in a way that more closely resembles their true costs through a [“free rider” assessment](#). This assessment could apply to insurers that offer short-term coverage and be reinvested in the individual market for reinsurance. The assessment would likely result in higher premiums, which could cause lower enrollment in short-term plans, higher enrollment in ACA plans, and a healthier overall risk pool. This change would help prevent free-riding on the ACA-compliant market by requiring short-term plans to contribute towards the health of the individual market.
- **Require short-term policies to meet a minimum medical loss ratio.** States could require short-term coverage to meet the same medical loss ratio that applies in the individual market. Current federal rules require individual market insurers to spend at least 80 percent of premiums on health care services. The average [loss ratio](#) for short-term coverage in 2016 was 67 percent, suggesting this line of business is more profitable than the individual market where loss ratios have been much higher since 2014. Imposing a higher medical loss ratio for short-term coverage would help level the playing field and increase the value of these policies for consumers.
- **Require completion of an ACA marketplace eligibility determination before allowing enrollment in short-term coverage.** States could prohibit insurers from selling a short-term policy to a consumer unless that consumer shows that they've already received a marketplace eligibility determination. This might mean that a consumer attests that they received a marketplace eligibility determination and do not qualify for subsidies or a special enrollment period through the marketplace. This requirement could help ensure that consumers better understand their coverage options and the availability of subsidies for ACA-compliant coverage.

III. INCREASE CONSUMER DISCLOSURES AND REGULATORY OVERSIGHT

State legislatures and insurance regulators could:

- **Require additional disclosures and educate consumers about short-term coverage.** States could require insurers to disclose that short-term policies are not minimum essential coverage and the other limitations of these policies through notice requirements on applications, policies, websites, and in marketing materials. States could also educate consumers about the risks associated with short-term plans. Several state insurance departments—such as [Alaska](#), [Indiana](#), [Maryland](#), and [Wyoming](#)—have used their websites and alerts to inform consumers about the limitations and often deceptive marketing associated with some short-term plans.
- **Increase pre- and post-marketing oversight of short-term coverage and collect additional data.** States could subject short-term coverage to regulatory review—such as form and rate review—to improve pre-marketing oversight. States could also track enrollment in short-term policies and investigate whether higher broker commissions for short-term coverage are disadvantaging the ACA-compliant market. Doing so could help ensure that these policies meet applicable state requirements and provide information to regulators on what is being marketed in their state.

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