IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ASSOCIATION FOR COMMUNITY AFFILIATED PLANS, *et al.*

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF TREASURY, *et al.*,

Defendants.

Civil Action No. 18-2133

PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

Pursuant to Fed. R. Civ. P. 65(a) and Local Rule 65.1, Plaintiffs Association for Community Affiliated Plans, National Alliance on Mental Illness, Mental Health America, American Psychiatric Association, AIDS United, The National Partnership for Women & Families, and Little Lobbyists, LLC respectfully request that this Court issue a preliminary injunction suspending the effectiveness of the regulation on Short-Term, Limited-Duration Insurance promulgated by the defendant agencies (the "Departments") on August 3, 2018 (*see* 83 Fed. Reg. 38,212 (Aug. 3, 2018) (the "STLDI Rule")), pending resolution of this lawsuit. Plaintiffs further request, pursuant to Local Rule 65.1, a hearing on their motion at the Court's earliest possible convenience and as soon as possible after the filing of plaintiffs' reply brief on October 22.

As set forth in greater detail in the accompanying memorandum in support of this motion, plaintiffs have a substantial likelihood of succeeding on the merits of their claim, and a preliminary injunction is necessary to prevent irreparable harm to them, is in the public interest, and will not prejudice the Departments. The STLDI Rule—in which the Departments determined that a "short-term, limited-duration" health insurance plan (which does not comply with the requirements imposed by Congress in the Affordable Care Act (ACA) on health insurance plans sold in the individual market) may last for 364 days and may be extended up to three years—is "arbitrary, capricious, an abuse discretion, or otherwise not in accordance with law" in violation of the Administrative Procedure Act. *See* 5 U.S.C. § 706(2)(A). The STLDI Rule directly undermines the policies and judgments codified by Congress in the text and structure of the ACA. To achieve this unlawful result, the Departments ignored the plain meaning of the statutory language they purport to interpret. They likewise disregarded without sufficient justification expressly stated congressional goals, the contrary position they took just two years ago on the identical questions, and the myriad informed comments that objected to the change in agency policy.

Absent immediate relief, the disruption to the nationwide health insurance market brought about by the STLDI Rule will cause plaintiffs—who are health care insurers who sell ACA-compliant insurance, health care providers who provide health care services and rely on patients' insurance benefits, and consumers who purchase insurance and use health care services—to suffer irreparable harm. It will also injure the health care system as a whole and leave many individuals with inadequate or no health insurance. In contrast, a delay in the STLDI Rule coming into effect will not injure the government or other interested parties.

To prevent the serious and irreparable harms that would be caused by the unlawful STLDI, plaintiffs respectfully request that the Court grant their motion and suspend the effectiveness of the STLDI Rule. Plaintiffs' counsel conferred with opposing counsel about this Motion. Defendants' counsel opposes the Motion.

Dated: September 28, 2018

Respectfully submitted,

/s/ *Andrew J. Pincus*

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