U.S. Sen. Baldwin: Calls on Congressional Budget Office to reexamine junk plans offered by private insurers

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WASHINGTON, D.C. – U.S. Senators Tammy Baldwin (D-WI) and Chris Murphy (D-CT), both members of the Senate Committee on Health, Education, Labor and Pensions (HELP), are calling on the Congressional Budget Office (CBO) and the Joint Committee on Taxation (JCT) to reevaluate the baseline assumptions and projections it published regarding the use and purchase of short-term, limited-duration insurance (STLDI) plans.

In 2018, the Trump administration expanded the use of STLDI plans, or “junk plans,” allowing private issuers to expand the duration of these junk plans from three months to 364 days, with the opportunity to renew for up to 36 months. In January 2019, the CBO published an analysis that predicted the administration’s rule would result in two types of STLDI plans: traditional junk plans, similar to those sold before the Trump administration’s rule, and new STLDI plans that would provide coverage for various health services and some protection against high-cost, low-probability events. Individuals with traditional junk plans would be considered uninsured, while those with “new” STLDI plans would be considered insured. In their analysis, CBO was predicting that these “new” plans would provide a certain level of coverage that would meet their definition of private health coverage. However, recent evidence has shown that private insurers have not brought any “new” STLDI plans to market, and most STLDI plans continue to provide junk coverage.

In their letter to CBO Director Phillip Swagel, the Senators request that the CBO reexamine its decision to create two categories of STLDI plans and update its

estimations for plans that meet its definition of private health insurance accordingly. Baldwin and Murphy also urge the CBO to review recent evidence on STLDI plan offerings, including reports from the Commonwealth Fund and the House Committee on Energy and Commerce, which demonstrates how "new" junk plans do not provide the coverage that the CBO envisioned.

The full letter is available here and below. An online version of this release is available here.

Dear Dr. Swagel:

We write to bring your attention to recent reports that raise concerns with current health care coverage baseline and assumptions utilized by the Congressional Budget Office (CBO) and the Joint Committee on Taxation (JCT) with relation to short term, limited duration insurance products. Congress is dependent on assessments and projections from CBO to understand the impact of policy proposals; therefore, given several new studies, we ask you to reevaluate the earlier methodology used for private health insurance coverage projections.

In January, 2019, CBO published an analysis entitled "How CBO and JCT Analyzed Coverage Effects of New Rules for Association Health Plans and Short-Term Plans." This analysis was undertaken to determine whether and which type of these new plans it would count in its projections of private health insurance coverage. CBO concluded, based on stakeholder interviews, that insurers would sell a range of new short-term insurance products as a result of the administration's 2018 Short-Term, Limited-Duration Insurance (STLDI) final rule. Under the final rule, private issuers were allowed to expand the permissible duration of plans from three months to 364 days, with renewability up to 36 months. Given the expansion of these less comprehensive insurance plans, CBO characterized two types of short-term plans – 'insured short-term plans' (ISPs), to consist of expanded STLDI plans now allowed by the final rule, and 'traditional short-term plans' (TSPs), similar to those sold between 2014 and 2018 that were limited to a three month duration. ISPs, it determined, would count toward private health insurance numbers because CBO assumed these plans would provide financial protection against high-cost, low-probability events and various services provided by physicians and hospitals, whereas TSPs would not. Thus, consumers that purchased TSPs would be considered uninsured. In summary, CBO created two categories for short-term plans, one that would meet the definition

of private health insurance and one that would not.

CBO's 2019 budgetary estimates projected that 1.2 million consumers would purchase ISPs and that just 200,000 consumers would purchase TSPs. In making this projection, CBO assumed that most people would prefer more comprehensive insurance coverage offered through ISPs when compared to TSPs. Additionally, CBO stated that many insurers, when interviewed in 2018, had indicated a preference for offering more substantial coverage and as a result there would be a greater number of consumers covered by ISPs. However, this reality has not borne out; issuers offering short-term plans have not brought such products to market. Any incremental improvements in coverage are so minimal that such plans likely still do not meet the minimum standards CBO envisioned for ISPs. There is little profitable reason for STLDI issuers to provide more comprehensive coverage than they have historically provided when the administration has promoted the proliferation of substandard options. One clear indication of these minimal standards is that the average loss ratio for the five biggest STLDI/TSP issuers in 2018 was a paltry 39.2 percent, compared to ACA products for which the law mandates at least 80 percent of premiums be spent on medical care.

Evidence has also shown that new ISPs, which CBO predicted would "resemble a typical nongroup insurance plan offered before 2014," have not materialized. Rather, the STLDIs currently offered on the market resemble what CBO categorized as TSPs, which by CBO's definition do not meet its own criteria for private health insurance. The Commonwealth Fund recently evaluated 414 plans with 12-month contracts in five states that do not impose restrictions on STLDI plans, all filed since the 2018 rule was finalized. The report found that "most of such products have not increased catastrophic coverage or become more comprehensive." The report details that in addition to significant coverage gaps, the cost-sharing, low-dollar value limits, and minimal provider networks fail to protect consumers from high-cost, low-probability events—the minimum standard CBO uses to define private health insurance. Only one issuer filed a new product in the five states studied that was more comprehensive than TSPs, in that they cover some maternity and mental health care. Plans that were included in the analysis excluded coverage of pre-existing conditions, limited prescription drug coverage, and/or did not have an out-of-pocket maximum—thereby not protecting consumers in catastrophic circumstances, regardless of cost-sharing.

These examples are compounded by recent findings in a report published by the House Committee on Energy and Commerce, showing that STLDI plans offer limited

benefits and limited financial protection for consumers. The report found that STLDI plans have "limited protection against significant or catastrophic medical costs." In one example, a consumer was billed $222,000 for a heart attack, of which the STLDI issuer paid only $13,131 and left the consumer responsible for approximately $172,000. Other examples detail consumers who were responsible for exorbitant amounts for hospital stays due to coverage limitations; one such consumer received only $2,000 coverage for a $14,000 hospital stay resulting from pneumonia. These are the exact types of "low probability, high-cost" events CBO is referring to in its determination as to whether a plan meets the definition of health insurance. Finally, the House Committee's report found that 600,000 consumers were newly enrolled in plans offered by just nine STLDI issuers, calling into question CBO's estimate that only 200,000 consumers would enroll into TSPs by 2028.

Given this evidence, we request that CBO reexamine its decision to create two distinct STLDI products and update its estimations for plans that meet its definition of private health insurance accordingly. We urge CBO to closely review the House Committee's report, which demonstrates how plans currently offered in the STLDI market do not provide the coverage envisioned in the ISP category, despite initial indications that issuers would bring such plans to market after the 2018 rule was finalized. It is imperative that CBO provide Congress with thorough and up-to-date assessments of health care coverage to understand the impact of currently policies and prospective changes on the uninsured rate in the U.S.

Thank you for your consideration.

Sincerely,