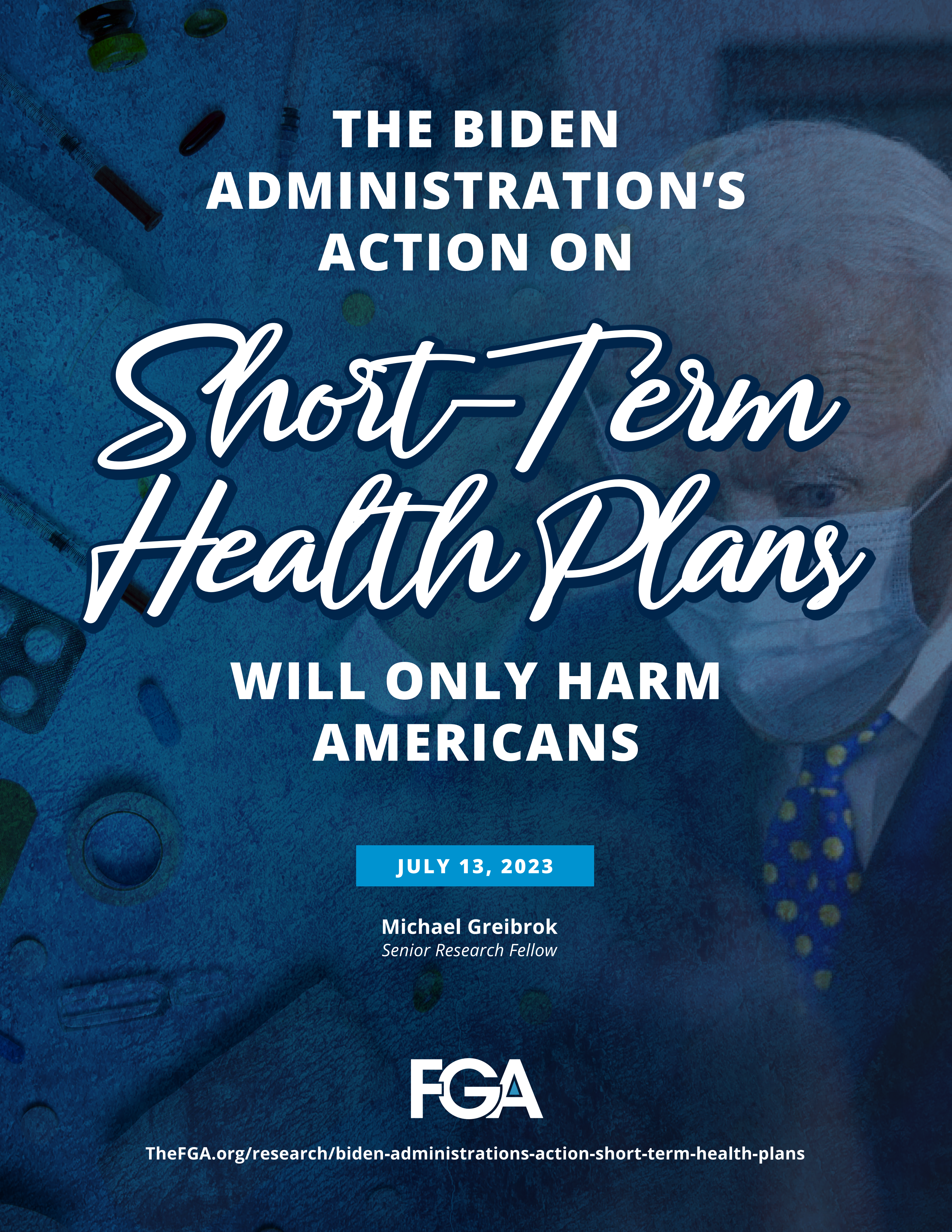


THE BIDEN ADMINISTRATION'S ACTION ON *Short-Term Health Plans* WILL ONLY HARM AMERICANS

JULY 13, 2023

Michael Greibrok
Senior Research Fellow

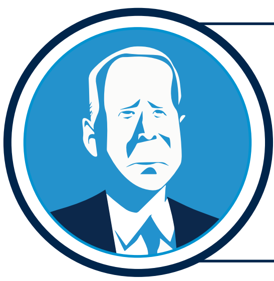
FGA

TheFGA.org/research/biden-administrations-action-short-term-health-plans

KEY FINDINGS

SHORT-TERM PLANS HAVE BENEFITED AMERICANS FOR DECADES.

THESE PLANS PROVIDE INDIVIDUALS WITH FLEXIBLE OPTIONS AT AFFORDABLE PRICES.



THE BIDEN ADMINISTRATION'S PROPOSED RULE WOULD LIMIT CONSUMER CHOICES BY PREVENTING THEM FROM BUYING SHORT-TERM COVERAGE FOR MORE THAN THREE MONTHS AT A TIME.

CONGRESS CAN STOP BAD RULES BY REASSERTING ITS AUTHORITY OVER MAJOR RULES.

THE BOTTOM LINE:

THE BIDEN ADMINISTRATION'S DECISION TO LIMIT SHORT-TERM PLANS TO THREE MONTHS, WITH A ONE-MONTH RENEWAL, HARMS INDIVIDUALS BY LIMITING THEIR CHOICES. CONGRESS SHOULD TAKE ACTION TO STOP HARMFUL RULES LIKE THIS BEFORE THEY GO INTO EFFECT.

Overview

Short-term health plans have proven to be valuable options for countless individuals over the multiple decades they have been available. Despite this, the Biden administration is repeating the Obama administration's mistake of reducing the length of time individuals can stay on these plans.

This is not just a bad policy; it also harms real people. Limiting coverage under short-term plans from 12 months to three months reduces options and increases prices.

THE BIDEN ADMINISTRATION IS REPEATING THE OBAMA ADMINISTRATION'S MISTAKE OF REDUCING THE LENGTH OF TIME INDIVIDUALS CAN STAY ON THESE PLANS.

The Trump administration corrected President Obama's error by restoring short-term plans to their traditional length, but it is now on Congress to right this wrong. It should pass the Regulations from the Executive in Need of Scrutiny (REINS) Act to stop bad rules like this before they harm the country.

Short-term plans have a long history of providing value

Short-term plans have been purchased by millions of Americans since the Clinton administration first published an interim final rule in 1997.[1] Under this rule, short-term plans had an expiration date within 12 months of the effective date of the contract.[2] In other words, these plans could be effective for 364 days. In 2004, the Bush administration issued a final rule adopting this definition that short-term plans can last 364 days.[3]

These plans enabled patients to buy the coverage they needed without additional, unnecessary services baked into the price. This, along with fewer costly federal regulations covering the plans, allows customers to save money while still being covered by insurance for nearly a year.

THESE PLANS ENABLED PATIENTS TO BUY THE COVERAGE THEY NEEDED WITHOUT ADDITIONAL, UNNECESSARY SERVICES BAKED INTO THE PRICE.

However, just days before the 2016 election, President Obama changed this long-standing policy of the previous two administrations. Instead of allowing individuals to purchase these plans for one year, they would be limited to three months.[4] This was done to move people away from short-term plans and toward the individual marketplace. Since purchasers of short-term plans tend to be healthier, they would subsidize those purchasing traditional health insurance by putting downward pressure on prices.

Upon taking office, President Trump reversed this policy, restoring short-term plans to their traditional role and providing individuals with more options.[5] This final rule also allowed plans to be renewed for up to three years and clarified that people could purchase a different short-term plan after they reached their renewal limit.[6] Finally, the rule required certain disclosures to ensure that customers knew the plans were not compliant with ObamaCare and may not cover all medical services.[7]

The Trump administration's rule was challenged by a collection of associations and organizations that offer insurance through the ObamaCare exchange as well as a dozen state attorneys general.[8-9] The administration's rule was vindicated through summary judgment and that decision was affirmed by the circuit court.[10-11]

President Biden's new rule would undo the good work of the previous administration and doubles down on the error committed by his previous boss.[12] The harm ultimately falls on Americans who are left with few options and higher prices.

> **President Biden's new rule would undo the good work of the previous administration and doubles down on the error committed by his previous boss.**

Short-term plans provide people with affordable options

Short-term plans provide more options for Americans than traditional insurance, allowing individuals to find a plan that works for them. In fact, short-term plans give eight times more options than the individual marketplace on average.[13] In some cities where the marketplace limits individuals to choose from fewer than 10 plans, short-term plans offer them more than 250 plans to meet their individual needs.[14]

Short-term plans also allow individuals to choose plans from twice the number of insurers than the individual marketplace.[15] Both the larger number of plans and the larger number of insurers competing for customers allow people to get the best price for their plan. This is especially important as marketplace premiums are expected to continue to rise.[16]

Because of more tailored coverage and greater competition for customers, short-term plans are much cheaper than traditional health insurance.[17] The average cost of short-term plans are less than half the cost of the average plan on the insurance marketplace and in some cities the savings can be as high as 74 percent.[18] The Congressional Budget Office (CBO) estimated purchasing a traditional short-term plan could save as much as 90 percent on premiums compared to the lowest-cost bronze plan on the marketplace and as much as 60 percent with an insured short-term plan.[19] Americans enjoy both the flexibility of the different options short-term plans afford and the cost savings.

By 2019, an estimated three million people were enrolled in short-term health plans.[20] This was a 27 percent increase from 2018, the year that the Trump administration reverted these plans back to their traditional role.[21] This increase shows just how popular these plans are. The CBO estimated that by restoring short-term plans to their traditional 364-day availability, an average of 1.4 million additional people would purchase this insurance over the next decade.[22] This includes 600,000 individuals who would otherwise be uninsured.[23]

These plans may not be right for everybody, but they are not meant to be. They provide great value for millions of Americans and these people are the ones who will suffer from this rule change. Short-term plans are required to make proper disclosures of what they are and what they are not, giving individuals the tools to decide if a plan fits their needs. Limiting these plans to just an original three months of coverage will take this decision out of the hands of many consumers.

LIMITING THESE PLANS TO JUST AN ORIGINAL THREE MONTHS OF COVERAGE WILL TAKE THIS DECISION OUT OF THE HANDS OF MANY CONSUMERS.

The Biden administration's rule would hurt Americans

The Biden administration's new rule would harm Americans by removing an option for health care coverage. If implemented, it would drive some providers of short-term plans out of the marketplace, reducing competition and raising prices. Rather than having health insurance for one year, which was renewable for an additional two years, people would be limited to just three months, with an additional month renewal, before they would be forced off their plan and into alternative coverage.[24] This could be especially burdensome for the estimated 600,000 people who would likely go uninsured without the 364-day coverage that short-term plans now provide.

President Biden is repeating a bad policy decision first made during his time with the Obama administration. Limiting short-term plans to a quarter of the usual timeframe undoes decades of steady interpretation from both Republican and Democratic administrations. Today's Democratic Party is willing to take away insurance from countless Americans in order to prop up ObamaCare exchanges. This attempt to push people toward individual marketplace plans to slow the increase in premiums harms real people.

> **Limiting short-term plans to a quarter of the usual timeframe undoes decades of steady interpretation from both Republican and Democratic administrations.**

Back when the Obama administration issued this nearly identical rule, the National Association of Insurance Commissioners issued a stern warning about its unintended consequences. The letter highlighted the possibility that individuals could develop a new condition while on a three-month short-term plan and would have to wait until the new year to enroll in insurance to cover it.[25] For healthy individuals, the three-month limit may be burdensome, but for people who develop an illness the switch could be devastating.

Unfortunately, the 2016 rule change resulted in actual harm to real people. One woman purchased a short-term plan that covered the entire cost of emergency surgery for diverticulitis, minus her $2,500 deductible.[26] However, because she was forced out of her plan after three months, she was on her own for medical expenses for the remainder of the year. After two more hospitalizations related to her condition, she was left with a $97,000 bill because bureaucrats had unnecessarily limited her short-term plan to three months instead of a full 364 days.[27]

UNFORTUNATELY, THE 2016 RULE CHANGE RESULTED IN ACTUAL HARM TO REAL PEOPLE.

The REINS Act would have stopped the Biden administration's rule in its tracks

Congress should act to ensure that harmful rules like this one do not go into effect through unilateral action from the administration. Congress should reassert its authority and make its voice, and thus the voters' voices, heard on major policy decisions.

Congress can do this by passing the REINS Act, which would require both chambers to vote and approve major rules before they take effect. Major rules, those with an annual price tag of $100 million or more, that are not approved would not be implemented. This would help restore Congress's constitutional authority over major policy decisions, protect taxpayers from costly programs, and protect all Americans from overburdensome regulation.

> **Congress should act to ensure that harmful rules like this one do not go into effect through unilateral action from the administration.**

THE BOTTOM LINE: The Biden administration's decision to limit short-term plans to three months, with a one-month renewal, harms individuals by limiting their choices. Congress should take action to stop harmful rules like this before they go into effect.

By limiting the timeframe of short-term plans, the Biden administration will take options away from people who are seeking health insurance. Americans have benefited from the flexibility and affordability these plans offer. These individuals will ultimately pay the price for the administration's actions, either through higher premiums or by forgoing health coverage all together.

> **By limiting the timeframe of short-term plans, the Biden administration will take options away from people who are seeking health insurance.**

While the Trump administration was able to correct this misstep by the Obama administration, it is now on Congress to rectify the mistake. It should do so by passing the REINS Act to prevent bad rules like this from taking effect and harming citizens in the future.

REFERENCES

1. Interim Rules for Health Insurance Portability for Group Health Plans, 62 Fed. Reg. 16894 (1997), https://www.govinfo.gov/content/pkg/FR-1997-04-08/pdf/97-8275.pdf.
2. Ibid.
3. Final Regulations for Health Coverage Portability for Group Health Plans and Group Health Insurance Issuers Under HIPAA Titles I & IV, 69 Fed. Reg. 78720 (2004), https://www.govinfo.gov/content/pkg/FR-2004-12.30/pdf/04-28112.pdf.
4. Expected Benefits; Lifetime and Annual Limits; and Short-Term, Limited-Duration Insurance, 81 Fed. Reg. 75316 (2016), https://s3.amazonaws.com/public-inspection.federalregister.gov/2016-26162.pdf.
5. Short-Term, Limited-Duration Insurance, 83 Fed. Reg. 38212 (2018), https://s3.amazonaws.com/public.inspection.federalregister.gov/2018-16568.pdf.
6. Ibid.
7. Ibid.
8. Mary Ellen McIntire, "Health groups sue over short-term insurance plans," Roll Call (2018), https://rollcall.com/2018/09/14/health-groups-sue-over-short-term-insurance-plans/.
9. Thomas Beaton, "12 attorneys general file lawsuit over association health plans, HealthPayerIntelligence (2018), https://healthpayerintelligence.com/news/12-attorneys-general-file-lawsuit-over-association-health-plans.
10. Association for Community Affiliated Plans, et al., v. United States Department of Treasury, et al., United States District Court for the District of Columbia (2019), https://affordablecareactlitigation.files.wordpress.com/2019/07/stld-memorandum-opinion.pdf.
11. Tami Luhby, "Appeals court upholds Trump administration's expansion of short-term health plans," CNN (2020), https://www.cnn.com/2020/07/17/politics/short-term-health-plans-trump-administration/index.html.
12. Short-Term, Limited-Duration Insurance; Independent, Noncoordinated Expected Benefits Coverage; Level-Funded Plan Arrangements; and Tax Treatment of Certain Accident and Health Insurance, 88 Fed. Reg. 44596 (2023), https://www.govinfo.gov/content/pkg/FR-2023-07-12/pdf/2023-14238.pdf.
13. Jonathan Ingram, "Short-term plans: Affordable health care options for millions of Americans," Foundation for Government Accountability (2018), https://thefga.org/wp-content/uploads/2018/10/Short-Term-Plans-memo.DIGITAL-file-10-30-18.pdf.
14. Ibid.
15. Ibid.
16. Victoria Bailey, "ACA marketplace premiums projected to increase by 10% in 2023," HealthPayerIntelligence (2022), https://healthpayerintelligence.com/news/aca-marketplace-premiums-projected-to-increase-by-10-in.2023.
17. Greg George and Nicholas Horton, "Short-term plans: Affordable options for America's uninsured," Foundation for Government Accountability (2019), https://thefga.org/research/short-term-health-insurance-plans/.
18. Jonathan Ingram, "Short-term plans: Affordable health care options for millions of Americans," Foundation for Government Accountability (2018), https://thefga.org/wp-content/uploads/2018/10/Short-Term-Plans-memo.DIGITAL-file-10-30-18.pdf.
19. Congressional Budget Office, "How CBO and JCT analyzed coverage effects of new rules for association health plans and short-term plans," Congress of the United States (2019), https://www.cbo.gov/system/files/2019.01/54915-New_Rules_for_AHPs_STPs.pdf.
20. Committee on Ways and Means, "Expanding access to more affordable individual market options," United States House of Representatives (2020), https://waysandmeans.house.gov/affordable-individual-market-options/.
21. Katie Keith, "New congressional investigation of short-term plans," HealthAffairs (2020), https://www.healthaffairs.org/do/10.1377/forefront.20200626.227261/full/.
22. Congressional Budget Office, "How CBO and JCT analyzed coverage effects of new rules for association health plans and short-term plans," Congress of the United States (2019), https://www.cbo.gov/system/files/2019.01/54915-New_Rules_for_AHPs_STPs.pdf.
23. Ibid.
24. Short-Term, Limited-Duration Insurance; Independent Noncoordinated Expected Benefits Coverage; Level-Funded Plan Arrangements; and Tax Treatment of Certain Accident and Health Insurance, 88 Fed. Reg. 44596 (2023), https://www.govinfo.gov/content/pkg/FR-2023-07-12/pdf/2023-14238.pdf.
25. National Association of Insurance Commissioners and The Center for Insurance Policy and Research, "Letter to Internal Revenue Service regarding REG-135702-15," (2016), https://web.archive.org/web/20220120103903/https://www.naic.org/documents/government_relations_160809 _hhs_reg_short_term_dur_plans.pdf.
26. Michael Cannon, "In a win for consumers, a court ruling affirms the legality of short-term health insurance plans," The Hill (2020), https://thehill.com/blogs/congress-blog/healthcare/508964-in-a-win-for-consumers-a.court-ruling-affirms-the-legality-of/.
27. Ibid.

15275 Collier Boulevard | Suite 201-279
Naples, Florida 34119
(239) 244-8808

TheFGA.org | @TheFGA | TheFGA | TheFGA