



In a win for consumers, a court ruling affirms the legality of short-term health insurance plans

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This month, when a federal court dealt a victory to sick patients, it pointed the way toward a potential armistice in the war over the Affordable Care Act.

That war is ongoing. The Trump administration is asking the Supreme Court to strike down the entire law. ACA supporters are howling. Yet the challenge lacks merit and is unlikely to succeed.

At the same time, however, ACA supporters, who usually howl about private insurance companies eliminating coverage for the sick, are asking the federal government to mandate that certain insurers do so.

First, a little background.

The ACA dramatically increased health insurance premiums in the “individual” market, where consumers purchase coverage directly from insurers. Yet Congress deliberately chose not to apply the ACA’s regulations to “short-term, limited duration insurance,” which can therefore offer lower premiums. As ACA premiums rose, many consumers flocked to STLDI plans.

One such consumer was 61-year-old Arizona resident Jeanne Balvin. In 2017, Balvin purchased an STLDI plan from UnitedHealthcare for \$274 per month. It covered the entire cost of her emergency surgery for diverticulitis, minus a \$2,500 deductible. Had she purchased an ACA plan, her premium would have been three times as high and her deductible in the range of \$6,000.

Prior to 2016, Balvin could have purchased an STLDI plan that lasted an entire year. In the hope of forcing people into ACA plans, however, the Obama administration imposed a rule in 2016 that required insurers to throw STLDI enrollees out of their plans after just three months. The National Association for Insurance Commissioners warned that rule would strip coverage from people with expensive medical conditions, like Balvin, and leave them with no coverage at all.

The NAIC was right. By the time Balvin underwent two further hospitalizations related to her diverticulitis, the Obama rule had stripped her of her coverage, leaving her on her own to cope with \$97,000 in hospital charges.

The Trump administration reversed this rule and expressly stated that nothing in federal law prevents insurers from making STLDI plans from offering renewable, and therefore continuous, coverage.

Enter the Association for Community Affiliated Plans, a lobbying group representing private insurance companies that sell ACA plans. Complaining that STLDI plans were cutting into their business, ACAP asked federal courts to remedy that “injury” by reinstating this heartless rule.

To be clear: ACAP is asking federal courts to improve its members’ bottom lines by stripping coverage from their competitors’ enrollees after three months, because doing so will frighten consumers into enrolling in ACAP members’ plans. ACA plans must not be very attractive if the insurers who sell them feel they cannot compete unless the government actively punishes people who choose their competitors’ plans.

One would think ACA supporters would go to war against an attempt by private insurance companies to *mandate* the very practice of stripping coverage from the sick that they said the ACA would end. Instead, ACA supporters are rallying around these companies. House and Senate Democrats have introduced legislation to reinstate the Obama rule.

On July 17, a divided panel of the U.S. Court of Appeals for the D.C. Circuit ruled in favor of STLDI enrollees. The court found the administration’s reversal of the Obama rule was reasonable, not least because stripping coverage from these patients means they “could be denied a new policy ‘based on preexisting medical conditions.’”

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The court also affirmed the administration’s finding that UnitedHealthcare and other insurers can use renewals to make STLDI plans more secure. “Nothing in [the statute] prevents insurers from renewing expired STLDI policies,” the court wrote.

After the Supreme Court rejects the latest ACA challenge, perhaps ACA supporters can agree to allow the STLDI market to operate alongside the ACA as a parallel but free market in health insurance. The two markets could compete to see which can make coverage more affordable and secure. It’s a better idea than stripping coverage from the sick.

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