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Departments Expand Definition of Short-Term, Limited-Duration Health Insurance

This summer, the departments expanded the scope of coverage that can be considered short-term, limited-duration health insurance that need not comply with the ACA's market reforms. The new rule, set to take effect this month, allows insurers to offer these policies with medical underwriting and the exclusion of pre-existing medical conditions. While the rule may weaken the ACA-compliant individual health insurance market risk pool, it is not expected to affect employer-sponsored coverage.

Background

Short-term, limited-duration (STLD) insurance is a type of health coverage designed to fill in temporary gaps in coverage — for example, when an individual is between jobs. The Affordable Care Act (ACA) market reforms applicable to health insurance sold in the individual insurance market do not apply to STLD coverage because it does not meet the definition of "health insurance coverage" for those purposes. This means that STLD insurance plans are not required to cover essential health benefits; can impose pre-existing condition exclusions and lifetime and annual dollar limits; are subject to underwriting since guaranteed availability or renewability requirements do not apply. Because these market reforms do not apply, STLD plans are often a cheaper option that is attractive to younger, healthier individuals.

In 2004, the Departments of Treasury, Labor, and Health & Human Services (together, the departments) defined STLD insurance as coverage that expires less than 12 months after its original effective date. In 2016, the Obama administration determined that STLD coverage was adversely impacting the risk pool for ACA-compliant coverage, and shortened the permitted duration — defining STLD insurance as coverage that expires less than three months after the original effective date, including any period for which the policy may be renewed.

In October 2017, the Trump White House issued an executive order (EO) directing the departments to consider rules relating to STLD coverage, specifically suggesting an expansion of their coverage and renewal periods. (See our October 20, 2017 *Legislate*.)

Final Rule

Following the February 2018 proposed regulations, the departments issued final regulations on August 3, 2018, establishing that STLD means "health insurance coverage provided pursuant to a contract with an issuer that has an expiration date specified in the contract that is less than 12 months after the original effective date of the contract and, taking into account renewals or extensions, has a duration of no longer than 36 months in total."

> **Comment.** The limit mirrors that of COBRA, where individuals who lose certain group coverage are generally eligible for up to 36 months of continuation coverage.

Among other requirements, the rule mandates that issuers of STLD coverage display prominently in the contract and any application materials a consumer notice explaining that the coverage is not required to comply with ACA market mandates. It also allows states to adopt a definition of STLD with a shorter maximum initial contract term or a shorter maximum policy duration (i.e., standards that are more stringent than the federal rule), to meet their specific market needs, including the adoption of strategies to mitigate adverse selection in the individual market.

The rule became effective on October 2, 2018. However, it is not clear when new policies designed to comply with its provisions will be available to consumers, given the time it could take for carriers to design and market the new coverage offerings — and obtain state approval where necessary.

Potential Impact

STLD coverage is typically less comprehensive — and, therefore, cheaper — than ACA-compliant coverage. Because of these characteristics, some stakeholders believe that it may attract younger, healthier people, drawing those individuals away from ACA-compliant policies. This adverse selection would weaken the ACA-compliant market risk pool, leaving it with an older, less healthy population.

Challenges

Several states, including California and Washington, have taken steps to limit the sales of STLD plans since the final rule was issued. Other states, including New York, already prohibit the sale of STLD plans.

Additionally, on September 14, 2018, a group of organizations that includes nonprofit health insurers and patient advocate groups filed a lawsuit alleging that the final rule violates the "text, structure, and purpose of the ACA" and asking the court to block it before it takes effect. Specifically, the organizations claim that, by not complying with the ACA's essential health benefit requirements, the rule "leav[es] individuals without access to critical health care when they need it most" and "open[s] the door to consumer confusion about the scope of protection provided by any particular health plan."

In Closing

While this new rule may weaken the ACA-compliant individual market risk pool, it is not expected to affect employer-sponsored coverage.

Authors
Julia Zuckerman, JD
Richard Stover, FSA, MAAA

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