



Aug 03, 2018

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Federal Government Expands Access to Affordable Health Insurance Coverage with New Rules on Short-Term, Limited-Duration Insurance

On August 3, 2018, the U.S. Department of Health and Human Services (HHS), Labor and Treasury (collectively referred to as the “Tri-Agencies”) published [final rules](#) in the Federal Register, which amend the definition of short-term, limited duration (STLD) insurance¹. The final regulations lengthen the maximum duration of coverage allowed under STLD insurance in order to provide Americans with more affordable health insurance coverage options. These rules take effect on October 2, 2018 and will apply to STLD policies sold on or after that date.

Regulatory Background

On October 31, 2016, the prior administration finalized regulations, which reduced the term of coverage under STLD insurance from durations of up to 12 months to durations of less than three months². Those changes were intended to shore up the Affordable Care Act³ (ACA) to get more young and healthy individuals to purchase health insurance coverage through the ACA’s individual marketplaces, which in turn should have reduced premiums for everyone. Unfortunately, those changes made STLD insurance a less attractive option for many without improving the affordability of other options available to them through the ACA’s individual marketplaces.

In response to growing concerns over the lack of affordable health insurance options, the current administration published a request for information (RFI) in the Federal Register on June 12, 2017. Entitled “Reducing Regulatory Burdens Imposed by the Patient Protection and Affordable Care Act & Improving Healthcare Choices to Empower Patients,”⁴ the RFI solicited public comments about potential changes to existing regulations and guidance that could

increase choice and affordability of health insurance for Americans. Several commenters reiterated that reducing the allowed duration of STLD insurance to less than three months had deprived many struggling to afford health insurance from a valuable option and that the federal government should reverse that action to restore those more affordable options.

In addition, the President issued [Executive Order 13813](#)⁵ on October 17, 2017, which directed the Tri-Agencies to consider proposing rules or revising guidance to expand the availability of STLD insurance. Then, on February 18, 2018, the Tri-Agencies proposed rules to restore and expand the availability of STLD insurance as a more affordable health insurance option for Americans⁶. The Tri-Agencies are now adopting those rules as final, with some additional modifications explained in more detail below.

New Rules

The final rules amend the definition of STLD insurance to revise what is excluded from the definition of “individual health insurance coverage” under the ACA⁷. The expanded definition of STLD insurance now increases the term of coverage to a duration of less than 12 months. It also allows for renewals or extensions of STLD coverage to an aggregated total coverage duration of no longer than 36 months from the original effective date of coverage. Lastly, it requires prescribed disclosure language be included in STLD applications and policies notifying purchasers that these plans do not generally meet the minimum benefit requirements of the ACA. Nor do they qualify as “minimum essential coverage” for purposes of avoiding an annual tax penalty for not having health insurance under the ACA for tax year 2018.⁸

¹ 26 CFR 54.9801-2; 29 CFR 2590.701-2; 45 CFR 144.103.

² See 81 FR 75316.

³ 42 U.S.C. § 18001 et seq.

⁴ See 82 FR 26885.

⁵ See 82 FR 48385 (October 17, 2017).

⁶ See 83 FR 7437 (February 21, 2018).

⁷ See 42 U.S.C. §300gg-91 (b)(5); 26 CFR §54.9801-2; 29 CFR §2590.701-2; 45 CFR §144.103.

⁸ Since Congress repealed the individual mandate starting in 2019, the tax penalty for not having minimum essential coverage will no longer apply after tax year 2018.

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