



Short-term, limited duration insurance final rule:

What the rule changes, and what it means for consumers and insurance markets



On August 3rd, the HHS, Labor Department, and Treasury Department, published a final rule amending the definition and requirements of “short-term, limited duration” health insurance (STLDI) plans, which expanded upon the policies in the proposed rule issued in February.

The final rule follows an October 2017 executive order from President Donald Trump to “expand the availability of STLDI” and “consider allowing such insurance to cover longer periods and be renewed by the consumer.”

What are STLDI plans?



STLDI plans were designed to cover temporary gaps in insurance coverage that may occur when individuals are transitioning between plans or coverage. Most importantly, these plans are exempt from regulations for health insurance plans sold in the individual

market, such as coverage of essential health benefits, prohibition on pre-existing condition exclusions, annual and lifetime coverage dollar limits, guaranteed availability, and guaranteed renewability. In other words, issuers can adjust charges for premiums based on health status, opt not to cover certain categories of benefits, cancel coverage, and require higher out-of-pocket cost-sharing. These relaxed requirements make coverage considerably less expensive than ACA-compliant plans and tend to make these plans more attractive to younger and healthier individuals, although also less likely to cover all healthcare needs.

A Kaiser Family Foundation analysis found that STLDI plans have monthly premiums as low as \$25 (compared to ACA bronze monthly plan premiums that averaged \$272 in 2017), but also out-of-pocket maximums as high as \$30,000 and coverage caps as high as \$2 million. National Association of Insurance Commissioners (NAIC) data show that STLDI plans had an average medical loss ratio (MLR) of about 65% in 2017, compared to 80% required for ACA-compliant plans), with some insurers offering plans with spending on actual medical expenses as low as 34%.

Regulatory Action on STLDI

In 2016, federal regulators limited STLDI plan coverage to a period of less than three months and required each policy to prominently state that it did not satisfy the ACA minimum essential coverage requirement, thus potentially making individuals subject to individual mandate penalties. Not satisfied with these restrictions and interested in increasing the use of STLDI plans as an alternative to more costly ACA-compliant plans, the Trump Administration ordered HHS, Labor, and Treasury in October to craft new regulations.



When releasing the proposed rule in February, which proposed to allow plans to offer coverage of up to a year, the rule acknowledged that purchasers of the plans would more likely be “relatively young or healthy” individuals and that the plans would “weaken” existing insurance markets and potentially lead to fewer plan choices in the individual market. The CMS actuary meanwhile estimated that enrollment in STLDI plans would reach 1.9 million by 2022, and associated federal spending would increase about \$1.2 billion in 2019 and about \$38.7 over the next 10 years.

More than 9,000 public comments were received on the proposed rule. The Los Angeles Times estimated that 98% of comments received by healthcare groups were critical. Meanwhile, leading insurer groups including AHIP, BCBSA, and NAIC expressed serious concerns, or recommended delaying the effective date until 2020.

Summary of the Final Rule



Like the proposed rule, the STLDI final rule released in early August permitted STLDI plans to be sold for up to 12 months (a maximum of 364 days after the original effective date), the same definition in place prior to the revision in 2016. The agencies argued in the final rule that extending the maximum duration would

better protect individuals by not requiring them to repurchase a policy every three months, preventing the possibility of new underwriting, higher premiums or deductibles, denial or coverage, or a waiting period for coverage of a pre-existing condition.

The final rule expanded on the proposed rule by permitting insurers to offer STLDI policies that can be renewed for up to 36 months without additional underwriting. The agencies cited the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) as a justification for allowing coverage of up to 36 months—COBRA permits individuals losing certain group coverage to continue that coverage for up to 36 months under certain circumstances. Unlike under COBRA, individuals would be permitted to “string together” different policies for a period greater than 36 months, so long as they do not exceed the 36-month duration in a single plan.

The final rule requires all STLDI policies to include prominent notice in the contract and application materials about the limitations of short-term coverage

- Plans are required to provide notice that they are not required to comply with ACA and other federal market requirements and advise consumers to make sure they are “aware of exclusions or limitations regarding coverage of preexisting conditions of health benefits (such as hospitalization, emergency services, maternity care, preventive care, prescription drugs, and mental health and substance use disorder services).”
- STLDI plans must advise consumers that they may have to wait until an open enrollment period to get other coverage.
- Finally, plans effective prior to January 1, 2019 must notify consumers that the plan does not qualify as minimum essential coverage and may result in enrollees facing an individual mandate penalty.

The final rule also confirmed that states have the authority to regulate short-term coverage and adopt more stringent standards than the federal rule, such as the maximum length of the initial contract term, maximum duration of the policy, and notice requirements. Additionally, STLDI plans cannot be sold as student health insurance coverage. Finally, the rule included a severability provision that ensures the rest of the rule would remain in effect even if the 36-month maximum duration standard was found to be invalid or unenforceable.

The regulations in the rule will become effective on October 2nd of this year.

Potential Impacts

The rule estimates that 600,000 individuals will sign up for STLDI plans in 2019; by 2028, 1.3 million individuals will leave the existing individual market and STLDI coverage will increase by 1.4 million. Individuals in STLDI plans are expected to pay premiums roughly half of the average unsubsidized ACA premium.

The final rule states that it “could lead to further worsening of the risk pool by keeping healthy individuals out of the individual market for longer periods of time, increasing premiums for individual market plans and may cause an increase in the number of individuals who are uninsured.” In effect, fewer healthier people will likely remain in the individual market and premiums will increase for ACA marketplace enrollees. Ultimately, this will result in an additional 0.2 billion in federal payments for premium tax credits in 2019, and \$28.2 billion more in federal spending from 2019 to 2028.



Regulators indicated in the final rule that they do not expect STLDI plans to offer community rating, preventive care, maternity care, prescription drug coverage, rating restrictions, and guaranteed renewability. Many stakeholders have expressed concerns that losing these essential ACA protections over the course of a longer policy period could have serious negative impacts on consumers. For example, consumers who develop a serious illness while under a STLDI plan could face significant financial hardship while they wait to enroll in an ACA-compliant plan that offers needed coverage. Consumers could also wrongly believe that they are enrolling in traditional medical health insurance given that the policies may now last up to a year. Other stakeholders worry that the rule could disproportionately impact rural hospitals that may face higher levels of uncompensated care and young people, small businesses, and self-employed individuals who are more likely to be attracted by the lower premiums without considering the coverage implications.

Industry Reactions



Leading industry stakeholders remain [highly skeptical of STLDI plans](#). BCBSA said the plans have “the potential to harm consumers,” while AHIP remains concerned that “consumers who rely on short-term plans for an extended time period will face high medical bills when they need care that isn’t covered or exceed their coverage limits.”

Meanwhile, state regulators are concerned that plans may be aggressively marketed in ways that mislead consumers, with a senior official at the New York Department of Financial Services calling them “[substandard products](#)” based on the idea that “junk insurance is better than nothing.” In fact, STLDI plans are already [effectively banned](#) in New York, New Jersey, and Massachusetts, while several other states have taken recent action to limit them to 3 months or 6 months, or prevent them from being extended or renewed.

And, Congressional Democrats are [considering forcing a vote](#) to block the final rule from taking effect; however, even with a possibility of passage in the Senate, such a bill is highly unlikely to pass the House.

What's Next?

Despite fairly strong industry opposition to the changes in the STLDI final rule, [CMS believes](#) that it will “open the door to new, more affordable coverage options for millions of middle-class Americans who have been priced out of ACA plans.” These plans may well provide an opportunity for individuals currently priced out of ACA-compliant coverage, or facing unsustainable out-of-pocket costs, to obtain at least some level of insurance coverage at a cheaper price point, but time will tell how popular they truly become and whether they are able to effectively meet the needs of such consumers. Regardless of how widely STLDI plans are used, early evidence suggests that many states are likely to proactively undertake their own efforts to limit access to, and application of, STLDI plans in ways that they think best protect their state’s individual consumers.

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