

COMPLIANCE ADVISOR

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Final Rule on Short-Term Limited-Duration Insurance

On August 1, 2018, the Internal Revenue Service, the Department of Health and Human Services (HHS), and the Department of Labor (collectively, the Departments) released a [final rule](#) that amends the definition of short-term, limited-duration insurance. HHS also released a [fact sheet](#) on the final rule.

According to the Departments, the final rule will provide consumers with more affordable options for health coverage because they may buy short-term, limited-duration insurance policies that are less than 12 months in length and may be renewed for up to 36 months.

The final rule will apply to insurance policies sold on or after October 2, 2018.

Background

Short-term, limited-duration insurance is a type of health insurance coverage designed to fill temporary gaps in coverage when an individual is transitioning from one plan or coverage to another plan or coverage.

Although short-term, limited-duration insurance is not an excepted benefit, it is exempt from Public Health Service Act (PHS Act) requirements because it is not individual health insurance coverage. The PHS Act provides that the term “individual health insurance coverage” means health insurance coverage offered to individuals in the individual market, but does not include short-term, limited-duration insurance.

Currently, for short-term, limited-duration insurance with policy years beginning on or after January 1, 2017, coverage must be less than three months in duration, including any period for which the policy may be renewed and including extensions that may be made by the policyholder with or without the issuer’s consent.

An insurer must prominently display the following notice in the contract and application materials as part of coverage enrollment:

THIS IS NOT QUALIFYING HEALTH COVERAGE (“MINIMUM ESSENTIAL COVERAGE”) THAT SATISFIES THE HEALTH COVERAGE REQUIREMENT OF THE AFFORDABLE CARE ACT. IF YOU DON’T HAVE MINIMUM ESSENTIAL COVERAGE, YOU MAY OWE AN ADDITIONAL PAYMENT WITH YOUR TAXES.

Final Rule

The final rule redefines short-term, limited-duration insurance as health coverage with an initial contract term of less than 12 months and a total duration of up to 36 months, including renewals or extensions under the same insurance contract.

An insurer must prominently display the following consumer notice in at least 14-point type in the contract, application, and coverage enrollment materials:

This coverage is not required to comply with certain federal market requirements for health insurance, principally those contained in the Affordable Care Act. Be sure to check your policy carefully to make sure you are aware of any exclusions or limitations regarding coverage of preexisting conditions or health benefits (such as hospitalization, emergency services, maternity care, preventive care, prescription drugs, and mental health and substance use disorder services). Your policy might also have lifetime and/or annual dollar limits on health benefits. If this coverage expires or you lose eligibility for this coverage, you might have to wait until an open enrollment period to get other health insurance coverage. Also, this coverage is not “minimum essential coverage.” If you don’t have minimum essential coverage for any month in 2018, you may have to make a payment when you file your tax return unless you qualify for an exemption from the requirement that you have health coverage for that month.

The notice’s last two sentences must appear only on policies sold on or after October 2, 2018, that have a coverage start date before January 1, 2019.

States can continue to apply state law requirements to short-term, limited-duration insurance. For example, states can require short-term, limited-duration insurance to have a shorter maximum initial contract term or shorter maximum duration (including renewals and extensions), or both. States can also require insurers to provide additional consumer disclosures. Further, states can prohibit the sale of short-term, limited-duration insurance.

In the final rule, the Departments indicate that a person’s loss of eligibility for short-term, limited-duration insurance creates a HIPAA special enrollment opportunity to enroll in a group health plan.

By October 2, 2018, employers should be familiar with identifying short-term, limited-duration insurance as described in this final rule so that they can appropriately respond to employees’ requests to enroll mid-year in employer-sponsored group health plans.

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