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FINAL RULE ISSUED ON SHORT-TERM, LIMITED-DURATION INSURANCE

On August 1, 2018, the Departments of Health and Human Services, Labor, and Treasury (Departments) released the final rule on short-term, limited-duration insurance (STLDI). Originally, the Departments released proposed regulations on STLDI on February 21, 2018, in response to an Executive Order signed on October 12, 2017, directing the Departments to draft rules to expand the availability of STLDI. The final rule is effective on October 2, 2018. Highlights of the final rule are detailed below.

Length and Renewability of STLDI

STLDI was designed to provide individuals with insurance during temporary gaps in coverage. For example, if an individual had a gap in employment, they could enroll in STLDI (i.e., limited health coverage) during the time they were unable to enroll in an employer-sponsored plan. Prior to the final rule, the maximum amount of time an individual could be enrolled in a STLDI policy was a period of less than three (3) months.

The STLDI final rule **extends** the maximum time an individual can be enrolled in a STLDI policy from less than three (3) months, to a period of less than twelve (12) months. Thereafter, insurers may renew or extend a STLDI policy for a total maximum coverage period of up to thirty-six (36) months from the original date of enrollment. Previously, if a STLDI policy could only cover an individual for less than three (3) months, an individual could potentially be subject to new underwriting requirements, waiting periods, or deductibles every time the STLDI coverage expired (e.g., at the end of the three (3) month period). By extending a STLDI policy to less than twelve (12) months, and allowing renewal of that policy for up to thirty-six (36) months, the final rule allows individuals to remain covered for an extended period of time without being subject to re-underwriting, new waiting periods, and new deductibles every time an individual's coverage expires. The final rule also allows individuals to enroll in two or more separate short-term policies consecutively for a total duration of up to thirty-six (36) months of coverage.

The final rule also affords states the authority to impose more stringent requirements on STDLI coverage. For example, although the final rule allows an insurer to extend or renew a STLDI policy for up to thirty-six (36) months, a state may adopt a more restrictive requirement, and reduce the maximum coverage period to less than thirty-six (36) months.

This is informational only, and is not intended to serve as legal, tax or financial advice. You should consult with our qualified legal, tax, or financial advisor before making any changes to your plan.

FINAL RULE ISSUED ON SHORT-TERM, LIMITED-DURATION INSURANCE (CONTINUED)

Notice Requirements

Under the STLDI final rule, insurance providers of STLDI are required to provide a notice to individuals purchasing such coverage within their contract and/or application materials. The notice must include that STLDI coverage is not subject to certain requirements under the Affordable Care Act (e.g., coverage of Essential Health Benefits) and an individual may have to wait until open enrollment to obtain other coverage once his/her STLDI policy expires. In addition, if the STLDI policy begins before January 1, 2019, which is the date the Individual Mandate penalty is reduced to $0, the insurer must notify the individual that the STLDI does not qualify as Minimum Essential Coverage (MEC).

No Action Required

Interested employers and individuals may want to review the final rule, which may allow individuals in certain states the option to enroll in STLDI for a period longer than less than three (3) months, beginning October 2, 2018.

For the final rule, see: https://www.federalregister.gov/documents/2018/08/03/2018-16568/short-term-limited-duration-insurance

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QUESTION OF THE MONTH

Can the Benefit Booklet Provided by Our Plan's Insurer Serve as the SPD?

QUESTION: We have a fully insured group health plan. The insurer provides a state-law required certificate of insurance booklet that describes the coverage provided under the plan. Can we use that booklet as the summary plan description (SPD) for this plan?

ANSWER: The booklet probably cannot serve as the SPD on its own. ERISA requires that SPDs include certain specific information, and it is unlikely that the insurer-provided booklet contains all of the necessary details. Among the information required to be in the SPD is plan-identifying information; descriptions of eligibility, benefits, and circumstances causing loss of benefits; claims procedures; and a statement of ERISA rights. The insurer-provided booklet typically contains detailed benefits information and may include descriptions of claims procedures and rights under ERISA, but is often missing meaningful details about eligibility or circumstances causing loss of benefits. Sometimes it is customized to provide employer and plan-identifying information, but that information may be incomplete or inaccurate.

You may want to consider using a separate document that, when combined with the insurer-provided booklet, meets the ERISA requirements. This "wrap SPD" approach takes advantage of the detailed benefits information provided by the insurer's booklet while allowing customization of the overall SPD. Such a wrap SPD must be consistent with the booklet and the underlying plan documents and should be drafted to avoid creating conflicts. For example, ambiguities may arise if the same information is covered in the wrap SPD and the booklet but the descriptions are not identical, or if a future change to that information only gets reflected in one of the documents. It is important to review both documents together to ensure that, when combined, they form a complete and accurate SPD. In addition, it is recommended that the wrap SPD be submitted to the insurer for review before it is finalized and adopted.

Source: EBIA

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