

Could Short-Term, Limited-Duration Insurance Help Lower COBRA Costs?

In accordance with President Trump's October 2017 Executive Order Promoting Healthcare Choice and Competition Across the United States, the Departments of Health and Human Services, Labor and Treasury ("Departments") issued proposed regulations to modify the rules for **short-term, limited-duration insurance**. This type of insurance, generally sold to individuals is short-term in nature (currently no longer than three months) and is not subject to the Affordable Care Act ("ACA"). Short-term, limited-duration health insurance can be medically underwritten with pre-existing condition limitation restrictions, may limit the benefits and services that are covered (i.e. these policies are not required to include all the ACA Essential Health Benefits¹) and the coverage may include annual and/or lifetime limits.

These policies may be attractive and more cost effective to cover a short gap in health coverage to those who:

- May seek a more affordable option than COBRA when for example, transitioning to a new job that could impose a waiting period for coverage,
- May not qualify for Marketplace premium assistance, or
- Missed an opportunity to sign up for coverage during an open enrollment or special enrollment period.

Proposed Changes

The proposed changes would modify the maximum contract duration from less than three months (as implemented under the Obama administration regulations issued in 2016) to less than twelve months. In addition, the disclaimer that must appear in at least 14-point type on the policy contract, application and enrollment materials will be modified as follows for policies having a coverage effective date before January 1, 2019:

THIS COVERAGE IS NOT REQUIRED TO COMPLY WITH FEDERAL REQUIREMENTS FOR HEALTH INSURANCE, PRINCIPALLY THOSE CONTAINED IN THE AFFORDABLE CARE ACT. BE SURE TO CHECK YOUR POLICY CAREFULLY TO MAKE SURE YOU UNDERSTAND WHAT THE POLICY DOES AND DOESN'T COVER. 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.

Policies with a coverage effective date of January 1, 2019 or later will require a different disclaimer as the penalty for individuals failing to have ACA Minimum Essential Coverage will be zero, and will read as follows:

THIS COVERAGE IS NOT REQUIRED TO COMPLY WITH FEDERAL REQUIREMENTS FOR HEALTH INSURANCE, PRINCIPALLY THOSE CONTAINED IN THE AFFORDABLE CARE ACT. BE SURE TO CHECK YOUR POLICY CAREFULLY TO MAKE SURE YOU UNDERSTAND WHAT THE POLICY DOES AND DOESN'T COVER. 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.

The Departments are seeking comments on the proposed rules which must be submitted by April 23, 2018 and include:

- Should the length of these policies be something other than the proposed twelve months,
- What, if any are the conditions that insurers might be allowed to extend a policy beyond twelve months, and should there be an expedited process for reapplication, and

- How the ACA individual market may be impacted with consideration that young, healthy individuals may be more inclined to purchase lower cost, less expansive health insurance coverage than is required by the ACA.

The rules would become effective for policy effective dates 60 days following the issuance of final regulations.

¹States must ensure that the Essential Health Benefits package covers items and services in the ten benefit categories specified in the ACA which include: (1) ambulatory patient services, (2) emergency services, (3) hospitalization, (4) maternity and newborn care, (5) mental health and substance use disorder services, (6) prescription drugs, (7) rehabilitative and habilitative services and devices, (8) laboratory services, (9) preventive and wellness services as well as chronic disease management, and (10) pediatric services including oral and vision care.

ADDITIONAL INFORMATION

Information contained in this Update is not intended to render tax or legal advice. Employers should consult with qualified legal and/or tax counsel for guidance with respect to matters of law, tax and related regulation. Cherry Bekaert Benefits Consulting, LLC provides comprehensive consulting and administrative services with respect to all forms of employee benefits, risk management, qualified and non-qualified retirement plans, private client services, transaction services, and compensation and human resources.

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