Final Rules on Short-Term Limited-Duration Insurance: Can It Help Lower Employer Plan Costs?

The Trump administration released final rules on Short-Term, Limited-Duration Insurance ("STLDI") to help provide consumers with a more cost-effective healthcare option than traditional insurance. STLDI, generally sold to individuals, is not classified as "individual insurance" and therefore, generally exempt from federal market requirements including the Affordable Care Act ("ACA"). STLDI generally will provide less comprehensive coverage than ACA-compliant plans (i.e. not required to include the ten ACA Essential Health Benefits), may be medically underwritten with pre-existing condition limitations, and include annual and/or lifetime limits. These lower-cost policies, intended to help fill potential gaps in coverage for a limited timeframe, may be attractive to those who:

- May seek a more affordable option than COBRA when for example, transitioning to a new job that imposes a waiting period (which can be as long as 90 days),
- May not qualify for an ACA Marketplace premium assistance subsidy as household income is too high, or
- Missed an opportunity to sign up for coverage during an open enrollment or special enrollment period.

What is Short-Term, Limited-Duration Insurance? The Final Rules

Under the final rules, STLDI has an initial expiration date less than twelve months from the effective date of the contract (i.e. 364 days) with the policyholder being able to extend the coverage under the policy for up to thirty-six months. Issuers may offer STLDI up to thirty-six months without any medical underwriting or experience rating beyond what was required upon the initial sale of the policy, provided the applicable notice is provided to consumers and the initial contract term is less than twelve months. The final rules contain a severability clause if a court should determine the thirty-six-month extension provision is invalid. This will allow all other STLDI provisions to stand in the event the thirty-six-month extension is challenged and struck down.

Because STLDI does not provide all the benefits and protections under ACA-compliant plans, these policies will be required to prominently display a notice in the contract and in any application/enrollment materials in at least 14-point type that states:

> *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 pre-existing conditions or health benefits (such as hospitalization, emergency services, maternity care, prescription drugs, and mental health and substance abuse 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.*

STLDI is not Minimum Essential Coverage ("MEC") under the ACA. For any STLDI policies issued prior to January 1, 2019 (when the ACA penalty for not having MEC is set to zero), the following must be added to the above disclaimer:

> *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.*

STLDI is not a new concept. Historically, STLDI was generally limited to a period of not more than twelve months, although the Obama administration issued rules to limit STLDI to no more than three months. These final federal rules, effective

October 2, 2018, only establish standards for (i) the maximum length of the initial contract, (ii) the maximum duration of a policy, including renewals and extensions, and (iii) a consumer notice. States are free to regulate STLDI in every other aspect of this coverage and, for example may adopt shorter initial and maximum contract durations. States including Massachusetts, New York, and New Jersey currently prohibit the sale of STLDI.

Concerns about STLDI have been expressed ranging from (i) exposing consumers to potentially high healthcare expenses if health conditions arise that are not covered by the policy, to (ii) the impact on the individual ACA Marketplace if healthier consumers opt for STLDI leaving those with health conditions remaining in ACA Marketplace plans, further causing premiums to escalate. The Trump administration and advocates for STLDI acknowledge the short-comings of these policies but also insist they offer consumers a lower-cost, temporary health care solution, rather than requiring a comprehensive, higher-priced one-size-fits-all coverage package required under the Affordable Care Act.

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