



Subject: **Short-term Limited Duration Policies – Final Rules**  
Date: August 3, 2018

An [Executive Order](#) issued on October 12, 2017 directed the Affordable Care Act's tri-governing agencies (Departments of Treasury, Labor and Health and Human Services) to issue regulations expanding the availability of short-term limited duration insurance policies.

Currently, the Affordable Care Act (ACA) limits short-term limited duration insurance policies to a period of no more than 3 months. To achieve the goal set forth in the Executive Order, [regulations](#) were issued on August 3, 2018 expanding the duration of these policies from 3 months to up to 364 days, with the ability to renew, not to exceed 36 months from the origination date.

Notably, these short-term limited duration policies do not qualify as minimum essential coverage. Further, these policies are not required to comply with the market provisions to which more comprehensive coverage is subject to, such as limitation on preexisting condition exclusions, maternity coverage, mental health coverage, the guaranteed issue and guaranteed renewal requirements, among others.

Proponents to these regulations believe that this change would allow a cost-effective option for individuals. Opponents to the proposal believe that it will diminish the risk pool, leaving only high risk claims individuals in the ACA marketplace.

Individuals contemplating enrolling in a short-term limited duration policy will need to be aware of the limitations on coverage offered, as well as the potential consequence that coverage could be cancelled. A possible adverse scenario could be where an individual develops a health condition while covered by one of these policies. If his/her policy were to lapse and not be renewed, the individual would not be able to enroll in the marketplace until the open enrollment period, potentially leaving a gap in coverage. Thus, the attractive cost of this type of coverage will need to be weighed against the potential risk.

#### ***Notice Requirement***

Insurers issuing short-term limited duration insurance policies are required to prominently display one of two versions of a notice (model language below) in both the insurance contract and application materials. The notice language differs depending on whether coverage begins prior to January 1, 2019, or whether coverage begins on or after January 1, 2019. The reason for the two different types of notices relates to the repeal of the individual penalty for failure to maintain minimum essential coverage.

Model notice language for short-term limited duration policies where coverage begins *before* January 1, 2019:

*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.*

Model notice language for short-term, limited duration policies where coverage begins *on or after* January 1, 2019:

*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.*

### ***State Regulation***

It is important to note that a state can regulate the availability and scope of these policies; for example, a state could provide that a short term policy is limited to 90 days. Several states, such as Hawaii, Maryland, Massachusetts, New Jersey, New York and Vermont have recently enacted laws to limit the duration of these policies to 3 months, as well as prohibit renewals or extensions. California and Illinois are currently working through their legislative process to also restrict these policies.

### ***Effective Date***

These regulations take effect on October 2, 2018, and apply to policies sold on or after that date.

In closing, there is a school of thought that the Administration will be challenged in that it may have exceeded its authority by expanding the definition of short-term limited duration insurance policies in this manner. Stay tuned for further developments.

## CBIZ Health Reform Bulletin

*About the Author:* Karen R. McLeese is Vice President of Employee Benefit Regulatory Affairs for CBIZ Benefits & Insurance Services, Inc., a division of CBIZ, Inc. She serves as in-house counsel, with particular emphasis on monitoring and interpreting state and federal employee benefits law. Ms. McLeese is based in the CBIZ Kansas City office.

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