



COMMONWEALTH OF KENTUCKY
DEPARTMENT OF INSURANCE
FRANKFORT, KENTUCKY

BULLETIN
2018-02

The following Bulletin is to advise the reader of the current position of the Kentucky Department of Insurance on the specified issue. The Bulletin is not legally binding on either the Department or the reader.

TO: All Insurers Authorized to Transact Health Business in Kentucky and all Kentucky Licensed Health Maintenance Organizations (collectively, “Health Insurance Issuers”)

FROM: Nancy G. Atkins, Commissioner, Kentucky Department of Insurance

RE: Requirements for Marketing and Sale of Short-Term, Limited Duration Insurance Policies Sold in Kentucky

DATE: October 18, 2018

I. INDIVIDUAL STLD HEALTH INSURANCE PURPOSE, SCOPE, AND BACKGROUND

This bulletin advises health insurance issuers intending to write individual short-term, limited duration health insurance (“STLD insurance”) policies in Kentucky of the current requirements. In this bulletin, the Kentucky Department of Insurance (“Department”) details specific state and federal mandates applicable to these products. Additionally, the Department provides a helpful checklist of relevant provisions to guide regulatory compliance, and best practice recommendations to ensure consumers are informed of important policy provisions.

STLD insurance is specifically excluded from the definition of individual health insurance coverage under Section 2791(b)(5) of the Public Health Service Act (“PHS Act”), which was incorporated into the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010 (“ACA”). As a result, STLD insurance is “generally exempt from the Federal market requirements applicable to health insurance sold in the individual market.”¹ Furthermore, STLD insurance “is not subject to the requirement to provide essential health benefits and it is not subject to the prohibition on preexisting condition exclusions or lifetime

¹ See, Department of Treasury, et al.; Short-Term, Limited Duration Insurance, 83 Fed. Reg. 38212, 38213 (Aug. 3, 2018)(codified at 26 C.F.R. 54.9801-2, 29 C.F.R. 2590.701-2, and 45 C.F.R. 144.103) (the three regulations are collectively referred to as “amended federal regulations”). Accessible online at: <https://www.gpo.gov/fdsys/pkg/FR-2018-08-03/pdf/2018-16568.pdf>

and annual dollar limits. It is also not subject to requirements regarding guaranteed availability and guaranteed renewability.”² In short, the mandates of the ACA do not apply to STLD insurance.

STLD insurance is not defined in the above statutes, but instead within regulations implementing requirements related to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”). On August 3, 2018, the Department of Treasury, Department of Labor, and Department of Health and Human Services finalized a regulation amending the definition of STLD insurance.³ The amended definition changes how STLD insurance may be marketed and sold to Kentuckians.

II. NEW FEDERAL REQUIREMENTS FOR STLD POLICIES

The amended regulations, effective October 2, 2018, establish new requirements for STLD insurance policies. The new requirements are:

- Short-Term
 - All STLD insurance policies are subject to a maximum initial contract term of less than twelve (12) months.
- Limited Duration
 - All STLD insurance policies are subject to a maximum duration for the same contract (including extensions and renewals, if applicable) of thirty-six (36) months of consecutive days.
 - Individuals may purchase separate STLD insurance contracts for periods totaling longer than thirty-six (36) months. For example, if on the termination of the initial contract, a consumer decides to purchase a different policy or a policy from a different issuer, the prior duration is not factored in on the subsequent contract’s limit.
- Notice
 - Specific notice language, below, is required to ensure consumers are aware of the limitations of these products and that STLD insurance is not comprehensive health insurance under the ACA. The notice must be on the cover page of the contract and any application materials in at least 14-point font.
 - All STLD policies issued *before* January 1, 2019 must include the following:

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

² See, Id.

³ See, Id.

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.

- All STLD policies issued *after* January 1, 2019 must include the following:

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.

These three changes are the minimum requirements for the sale of STLD insurance policies in Kentucky.

III. KENTUCKY SPECIFIC REQUIREMENTS AND RECOMMENDATIONS

The Department is relying on the amended federal regulations for the term and duration requirements. Health insurance issuers can market and sell STLD insurance policies in Kentucky with an initial contract term of less than twelve (12) months, and a maximum thirty-six (36) month duration (including renewals and extensions, if applicable) for the same contract.

Health insurance issuers are required to include the notice, above with the added emphasis, on the cover page of the contract and any application materials. The language included in the notice is dependent on the issue date of the STLD insurance policy.

Kentucky will continue to apply the specific contractual requirements, regulatory procedural requirements (*i.e.*, form and rate filing), and health benefit mandates for all individual non-health benefit plans to STLD insurance policies. The “Individual Short Term Limited Duration Plan Checklist” outlines these requirements and is available on the Department website (www.insurance.ky.gov) for review and guidance.

Health insurance issuers may offer renewals of STLD insurance policies in accordance with the amended federal regulations, KRS 304.17-270, and the durational limitation. The Department, at this time, is not imposing a guaranteed renewability requirement. However, the Department strongly recommends issuers highlight the renewability provisions, if any, in all STLD insurance policies for consumers prior to purchase. Satisfying this recommendation can include the use of bold or underlined language, or employing the use of a specific attestation outlining the renewal policy that consumers must affirmatively check before a transaction is completed.

The Department also refers all health insurance issuers to KRS 304.14-130. The commissioner may disapprove any form or withdraw previous approval where the benefits provided

within an individual health insurance policy (*i.e.*, STLD insurance policy) “are unreasonable in relation to the premium charged.”⁴

IV. FILING OF FORMS AND RATES

Due to the changes in term, duration, and notices required within a STLD insurance policy, as well as the recommended best practice changes, all issuers are required to file all modified forms for approval prior to their use within Kentucky in accordance with KRS 304.17-120. When filing the forms, issuers shall comply with the form revision requirements of 806 KAR 14:007(6). Additionally, all rates shall be filed in accordance with KRS 304.17-380, 806 KAR 14:007, and 806 KAR 17:070.

V. QUESTIONS

The Department is available to answer questions regarding STLD insurance policy requirements and this Bulletin. Please contact the Division of Insurance Product Regulation at DOI.healthmail@ky.gov.

/s/ Nancy G. Atkins
Commissioner
Kentucky Department of Insurance
On this 18th day of October 2018

⁴ See, KRS 304.14-130(1)(d).