

INSURANCE DIVISION [191]

Adopted and Filed Emergency

Proposing rule making related to short-term limited-duration health insurance

The Insurance Division hereby proposes to amend Chapter 35, “Accident and Health Insurance,” and Chapter 36, “Individual Accident and Health – Minimum Standards and Rate Hearings,” of the Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 514D.3.

State or Federal Law Implemented

This rule making is intended to implement, in whole or in part, a final rule issued by the Internal Revenue Service, Department of the Treasury; Employee Benefits Security Administration, Department of Labor; Centers for Medicare & Medicaid Services, Department of Health and Human Services found at 83 FR 38212.

Purpose and Summary

The new federal rule, 83 FR 38212, (new DOL rule) extends the permissible policy term periods for short-term limited-duration health insurance policies to up to 12 months (increased from three months). The new federal rule also allows such plans to be renewable for a period of up to three years. Prior to this new DOL rule, these plans were not renewable for extended periods past the policy term limits. The new DOL rule was published on August 3, 2018, and will be effective October 2, 2018.

The rules proposed in this rule-making document set a minimum standard of benefits for

short-term limited-duration health insurance policies, in response to the new DOL rule. It is important for these benefit standards to be in place when the federal rule becomes effective because the proposed rules provide increased consumer protection for consumers who wish to purchase these new federally permitted plans.

In compliance with Iowa Code section 17A.4(3), these rules are filed emergency because immediate adoption of the rules is necessary to implement the ability for insurance carriers, in response to the October 2, 2018, effective date of the new DOL rule, to offer short-term limited-duration coverage that provides meaningful benefits. As part of the federal rule-making process, notice of the proposed rule was provided on February 20, 2018, and public comment was accepted from that date through April 21, 2018. (The comment submitted by the Iowa Insurance Division can be found at <https://www.regulations.gov/document?D=CMS-2018-0015-8866>.) Delays caused by the notice and public participation requirements of Iowa Code section 17A.4 would be contrary to public interest, and these amendments are also published herein under Notice of Intended Action as ARC _____ to allow for public comment. The Insurance Division finds that the availability and affordability of health insurance is critical for the greater public interest, and the necessity of ensuring that short-term limited duration coverage has appropriate consumer protections requires these rules to be immediately implemented.

The Insurance Division will adopt these rules September 12, 2018.

These amendments are also published herein under Notice of Intended Action as ARC _____C to allow for public comment.

Fiscal Impact

This rule making may have some fiscal impact to the State of Iowa, in that an increase in the number of these plans being sold would increase the amount of premium tax funds collected

by the State from the issuing companies. While the expected fiscal impact is unknown because the number of plans that will be sold by the issuing companies is unknown, the Insurance Division does not expect a large fiscal impact from the amount of premium tax funds collected.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found. The staff of the Insurance Division should be able to handle the work required to administer these rules.

Waivers

The Division's general waiver provisions of 191—Chapter 4 apply to these rules.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

Item 1. Amend rule 191—35.23(509), the definition of “creditable coverage,” line numbered 11, as follows:

11. A short-term ~~limited-duration~~ limited-duration policy.

Item 2. Amend rule 191—35.23(509), the definition of “health insurance coverage,” line numbered 2, third bulleted line, as follows:

- Short-term ~~limited-duration~~ limited-duration insurance.

Item 3. Amend rule 191—35.23(509) to strike the definition of “short-term limited duration insurance,” and insert in lieu thereof a **new** definition of “short-term limited-duration insurance,” as follows:

“Short-term limited-duration insurance” means individual health insurance coverage provided pursuant to a contract with an issuer that has an expiration date specified in the contract that is less than 12 months after the original effective date of the contract and, taking into account renewals or extensions, has a duration of no longer than 36 months in total. Such policies must also contain the notices required of short-term limited duration insurance set forth in the Public Health Service Act, 45 C.F.R. Section 144.103.

Item 4. Add **new** subrule 36.4(17) as follows:

36.4(17) *“Short-term limited-duration insurance”* means health insurance coverage provided, pursuant to a contract with an issuer, that has an expiration date specified in the contract that is less than 12 months after the original effective date of the contract and, taking into account renewals or extensions, has a duration of no longer than 36 months in total.

Item 5. Add a **new** subrule 36.6(11) as follows:

36.6(11) “*Short-term limited-duration insurance coverage.*”

a. “Short-term limited-duration insurance coverage” is an individual accident and sickness insurance policy that provides health expense coverage to an aggregate maximum of not less than \$1,000,000; coinsurance percentage per year not to exceed 40 percent of covered charges, provided that the coinsurance out-of-pocket maximum after any deductibles does not exceed \$15,000 per year; a deductible stated on a per-illness, per-policy term, or a combination of these bases not to exceed \$10,000; and a minimum of all of the following services:

- (1) Hospitalization services that include but are not limited to inpatient hospital, physician and surgical services.
- (2) Mental health and substance-use disorder services.
- (3) Ambulatory patient services that include but are not limited to the following services:
 1. Urgent care center or facility;
 2. Home health care;
 3. Emergency room;
 4. Emergency transportation or ambulance;
 5. Primary care to treat an injury or illness;
 6. Specialist visit;
 7. Other practitioner, including a nurse and physician’s assistant, office visit.
 8. Outpatient facility; and
 9. Outpatient surgery physician or surgical services.

(4) Preventive and wellness services, including office visits, and included but not limited to the following:

1. Immunizations;
2. Mammography exams;
3. Prostate-specific antigen blood tests; and
4. Papanicolaou tests.

(5) Prescription drugs that cover at least one drug in each United States Pharmacopeia category and class;

(6) Medically necessary durable medical equipment; and

(7) All other applicable benefits mandated by Iowa law, including Iowa Code chapter 514C, as if the policy were a policy under Iowa Code chapter 514A..

b. The prescription drug benefit required by subparagraph 36.11“a”(5) may have a deductible separate from the per-illness or per-policy deductible of an amount not exceeding \$10,000.

c. No short-term limited-duration policy may contain any preexisting condition exclusions.

d. The requirements set forth in paragraphs 36.11“a” through “c” may not apply to short-term limited-duration policies issued for a period of 90 days or less.

e. A short-term limited-duration policy shall have an expiration date specified in the contract that is less than 12 months after the original effective date of the contract and that, taking into account renewals or extensions, has a duration of no longer than 36 months in total.

f. All short-term limited-duration policies shall contain the notices required of short-term limited-duration insurance set forth in the Public Health Service Act, 45 C.F.R. Section 144.103.

g. All short-term limited-duration policies shall contain a free-look period of not less than 10 days after the insured receives the policy during which the insured may cancel the policy. If so cancelled, all fees and premium paid shall be promptly refunded and the policy shall be voided as if the policy had not been issued. Notice of the free-look period shall be prominently displayed on the first page of the policy or certificate.

(1) For the purposes of this sub-section the policy shall be determined to be received by the insured as follows:

1. Pursuant to Iowa Code section 554D.117 if received electronically; and
2. Four days after the policy is postmarked for delivery if sent in the mail,

(2) For the purposes of this sub-section, the insured may cancel the policy by giving notice to the insurance company, agent, broker or other representative in any manner, including but not limited to via electronic notice or by telephone.

h. All applications for short-term limited duration insurance policies shall contain clear and unambiguous questions designed to ascertain the health condition of the applicant.

i. Companies that are approved to sell short-term limited-duration policies shall be prohibited against postclaims underwriting.

j. Companies that are approved to sell short-term limited duration policies shall be prohibited from rescinding the policy except in upon a showing that the insured knowingly and intentionally misrepresented material facts relating the insured's health.

Item 6. Add a **new** subrule 36.7(13) as follows:

36.7(13) *Short-term limited-duration insurance coverage.*

a. Outline of coverage. An outline of coverage, in the form prescribed below, shall be issued in connection with any short-term limited-duration insurance coverage policy, as set forth in subrule 36.6(11). This outline of coverage must be provided in addition to the notices required by section 36.6(11)'f.'" The items included in the outline of coverage must appear in the sequence prescribed below, and sections A and B must be in at least 14-point type or, if electronic, of equivalent prominence:

[COMPANY NAME]

SHORT-TERM LIMITED-DURATION INSURANCE COVERAGE

OUTLINE OF COVERAGE

A. 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.

B. For policies that are 90 days or less in duration: **Health conditions which you may presently have (preexisting conditions) may not be immediately or fully covered under this policy.**

C. This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions

will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR POLICY CAREFULLY.

D. [A brief specific description of the benefits, including dollar amounts, contained in this policy:]

[NOTE: The above description of benefits shall be stated clearly and concisely, and shall include a description of any deductible or copayment or other out-of-pocket cost provisions applicable to the benefits described. The above description shall also clearly state any applicable provider network requirements including but not limited to distinctions in cost provisions for in and out of network providers.]

E. [A description of any other policy provisions which exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits described in Section C above including but not limited to any pre-existing condition exclusions for policies that are 90 days or less in duration.]

F. [A description of policy provisions regarding renewability or continuation of coverage, including any reservation of right to change premiums.]

b. Application for coverage for short-term limited-duration insurance. All applications for short-term limited duration policies that are 90 days or less in duration shall contain the notice prescribed below and shall be in at least 14-point type or, if electronic, of equivalent prominence. One signed copy of such notice shall be retained by the applicant and an additional copy signed by the applicant shall be retained by the insurer.

STATEMENT TO APPLICANT BY ISSUER, AGENT [BROKER OR OTHER REPRESENTATIVE]:

Health conditions which you may presently have (preexisting conditions) may not be immediately or fully covered under this policy. This could result in a denial or delay of payment of benefits. If you wish purchase a short-term limited duration policy, be certain to truthfully and completely answer all questions on the application concerning your medical health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, reread it carefully to be certain that all information has been properly recorded.

(Signature of Producer, Broker or Other Representative)

[Typed Name and Address of Producer or Broker]

The above "Notice to Applicant" was delivered to me on:

(Date)

(Applicant's Signature)