

Final Regulations Expand Availability of Individual Insurance Not Meeting ACA Requirements

Ballard Spahr
LLP

Article By

[Edward I. Leeds](#)

[Jean C. Hemphill](#)

[Ballard Spahr LLP](#)

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The U.S. Departments of the Treasury, Labor, and Health and Human Services have jointly issued [final rules](#) modifying the definition of short-term, limited-duration insurance (STLDI).

STLDI provides health coverage that is intended to be transitional in nature. It is not regarded as individual health insurance or minimum essential coverage and is exempt from certain Affordable Care Act (ACA) requirements that apply to plans in the individual health insurance market. For example, STLDI may include limits on coverage for pre-existing conditions, preventive care, and annual and lifetime medical expenses in a manner prohibited by the ACA's market reform rules. In addition, an STLDI policy is not required to cover expenses that the ACA identifies as essential health benefits, such as hospitalization, prescription drugs, or mental health benefits. Coverage under an STLDI policy is not guaranteed to be renewable.

Making certain modifications to the [proposed regulations](#) issued earlier this year, the new final regulations provide that:

- a policy for STLDI must last for an initial period that is less than one year;
- STLDI coverage may be renewed to continue for no more than 36 months; and

- the STLDI policy must include a prescribed notice addressing limitations that may apply to the coverage. The notice will change for policies issued in 2019, when the individual mandate assessment ceases to apply.

The new rules are scheduled to take effect October 2, 2018. This short lead time may require insurers to take swift action to include the new notice and take other appropriate measures.

There are some obstacles, however, that may affect the implementation of new STLDI policies. First, Senate Democrats are making a push to override the new regulations under the Congressional Review Act. Even if they are able to muster enough votes in the Senate, they are not likely to overturn the regulations in the House. Second, some of the comments to the proposed regulations question the authority of the three departments to issue these STLDI regulations, perhaps laying the groundwork for a legal challenge (just as certain states have challenged the recent issuance of final regulations expanding the scope of [association health plans](#)). Perhaps most significantly, states retain the authority to regulate insurance, and certain states may choose to delay approval of new STLDI policies while they consider whether to impose more stringent rules than the new federal regulations require.

If and when the new rules are implemented, their effect on coverage, the cost of coverage, and enrollment in the individual and group health insurance markets will be closely examined.

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