STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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The Honorable John Carney
Governor

John A. McNeal
Director

MEMORANDUM

DATE: November 30, 2018

TO: Ms. Leslie W. Ledogar, Regulatory Specialist
Department of Insurance

FROM: Nick J. Fina, Ed.D - Chairperson
State Council for Persons with Disabilities

RE: 22 DE 326 (Emergency Regulation Department of Insurance - Related to Short Term Health Insurance Policies, (11/1/18)

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Insurance's emergency regulation to adopt new Regulation 1320, Minimum Standards for Short-Term, Limited Duration Health Insurance Plans. This emergency regulation was published as 220 DE Reg. 326 in the November 1, 2018 issue of the Register of Regulations

This regulation deals with short-term limited duration (STLD) health insurance policies. STLD policies were originally designed for people to fill a temporary gap in health insurance coverage. Under the Affordable Care Act (ACA), STLD policies are exempt from the market rules that apply to most major medical health policies. These include rules that prohibit medical underwriting, excluding pre-existing conditions, and limits on lifetime and annual coverage. STLD polices are also exempt from the minimum coverage requirements of the ACA. The policies provided coverage for a limited period of time, usually less than 365 days and were not renewable.

The Department of Health and Human Services (DHSS) issued a final rule that applies to STLD policies sold on or after October 2, 2018. The final rule extends the coverage period in the initial contract to less than twelve (12) months and allows for renewals or extensions of the policies up to a maximum of thirty-six (36) months. The final rule only sets the minimum and maximum term of the contract and prescribes a notice requirement that must be given applicants. DHSS

leaves it to the states to establish additional standards for the issuance of STLD policies. Since the sale of the STLD plans can start soon, the Insurance Commissioner issued an emergency order establishing standards for the issuance of these policies. The Commissioner's concern was that the sale of these policies will take many healthy consumers out of the Health Insurance Marketplace (HIM), possibly resulting in an unhealthy risk mix and increases in health insurance premiums. This coupled with the reduction by Congress in ACA's mandate tax penalty to $0 beginning in 2019, could result in more consumer purchasing STLD policies. This regulation was promulgated in response to the final rule by DHSS and was designed to implement consumer protections for the sale of STLD policies and to codify the standards contained in the Commissioner's Emergency order dealing with STLD policies.

The purpose of the regulation as stated in the synopsis is to "ensure that carriers offering STLD health insurance plans comply with minimum consumer protection and notification standards so as to partially prevent the erosion of the stability of Delaware's HIM and to protect Delaware consumer from being potentially mislead into purchasing a STLD health insurance plan without being fully informed of its coverage limits or applicability."

The regulation does not apply to Medicare supplement policies and long-term care insurance policies.

The regulation applies to carriers, defined as insurance companies, health service organizations, managed care organizations, and any other entity providing a health insurance plan or health benefits. Health care services include medical care or hospitalization, services or supplies furnished to or incidental to the furnishing of medical care or hospitalization to an individual, and "services for the purpose of preventing, alleviating, curing or healing human illness, injury disability or disease." (§4.0).

The STLD policy cannot be issued for a period longer than three (3) months. The three (3) month term cannot be extended by re-issuing the same policy or by issuing a different STLD to the same individual more than once a year. The cost of the policy is to be offered at the "actuarially expected loss ratio of at least 60 percent." The Commissioner must approve the policy before it can be offered for sale. (§5.1 et seq.).
At the time of sale of a STLD policy, a carrier has to provide an "outline of coverage" and in most cases obtain a certificate of delivery unless the certificate of delivery describes the benefits, the exclusions and limitations of the policy, the non-renewability provisions, and the federal notice. (§§6.1, 6.2)

For policies commencing on or after January 1, 2019, the mandatory language shall be displayed in the application materials in 14 point bolded font and shall 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).

- Be sure to check your policy carefully to make sure you are aware of any 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.
- This coverage is NOT "MINIMUM ESSENTIAL COVERAGE." If you don't have minimum essential coverage for any month in 2019 or thereafter and the penalty for not having minimum essential coverage is more than the 2018 amount of $0, 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. (§6.5).

For policies commencing before January 1, 2019, the mandatory language shall be displayed in the application materials in 14 point font and shall 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).
- Be sure to check your policy carefully to make sure you are aware of any 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.
- 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. (§6.4).
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The application form for an STLD policy shall ask whether the STLD policy to be issued replaces other accident and sickness insurance the individual has. (§7.1)

If the carrier is not a direct response carrier or its agent, a notice as prescribed by the Commissioner shall be given to the applicant prior to issuance of the policy. (§7.2). The notice is a warning that because of existing factors, the coverage available under the new policy may be different than the existing policy. For example, pre-existing conditions may not be immediately or fully covered under the STLD policy. The notice also recommends that the individual discuss the proposed replacement with his or her current carrier in order to understand what replacing the present coverage means. (§7.3).

If the carrier is a direct response carrier, a notice as prescribed by the Commissioner shall be given to the applicant upon issuance of the policy. The notice is not required for the solicitation

of "accident only and single premium nonrenewable policies." (§7.2). The notice gives the individual ten (10) days to decide whether to keep the new STLD policy. The notice gives a right of rescission to the individual. The notice is a warning that because of existing factors, the coverage available under the new policy may be different than the existing policy. For example, pre-existing conditions may not be immediately or fully covered under the STLD policy. The notice also recommends that the individual discuss the proposed replacement with his or her current carrier in order to understand what replacing the present coverage means. (§7.4).

The regulation takes effect ten (10) days after final publication in the Register of Regulations.

The SCPD is endorsing the emergency regulation as it protects consumers, but suggests that the Department of Insurance engage in outreach activities to inform consumers of the disadvantages of these plans. Also, this regulation does not meet the spirit of the Affordable Care Act (ACA). The SCPD has concern about people with disabilities and pre-existing conditions and support the idea of quality affordable insurance and access for everyone.

Thank you for your consideration and please contact SCPD if you have any questions regarding our observations on the emergency regulation.

cc: The Honorable Trinidad Navarro
Ms. Laura Waterland, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

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