Community Catalyst

The Advocate's Guide to:

SHORT-TERM LIMITED DURATION INSURANCE

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Problem: Adequate Coverage

The Affordable Care Act (ACA) guaranteed health insurance in the individual market includes critical protections, including ending discrimination against people with pre-existing conditions and requiring coverage of a comprehensive set of essential health benefits. But some brokers and insurers are marketing short-term limited duration insurance (short-term plans) as a cheaper alternative to comprehensive ACA-compliant coverage now that they are allowed to be sold for a 12-month term in most states. Short-term plans provide inadequate coverage that discriminates based on pre-existing conditions and limits or excludes key benefits. As a result, people enrolled in short-term plans can face huge medical bills if they become sick. Those remaining in the ACA-compliant individual market experience higher premiums because the insurers expect healthy people to leave for the cheaper, inadequate, short-term plans.

Potential Solution: Restrict the Sale or Add Consumer Protections to Short-Term Plans

Given an expected increase in enrollment in short-term plans as a long-term coverage option, state policymakers and advocates are considering ways to protect individuals shopping for coverage and the individual health insurance market. About half the states restrict the sale of short-term plans so that they are not an option to provide long-term coverage. A number of states apply some or all ACA consumer protections to short-term plans in an effort to improve the products.

What Are Short-Term Plans?

Short-term health plans were originally intended to provide temporary insurance to prevent a coverage gap, such as between jobs or for a short-period after aging off a parent's insurance plan. Short-term plans do not provide the same coverage people have come to expect after the ACA. These plans discriminate against people with pre-existing conditions by denying coverage based on an applicant's answers to a health questionnaire and excluding coverage for pre-existing conditions. Sometimes the answers to the health questionnaire are used to retroactively cancel coverage, an insurance practice called rescissions. In one instance, after a heart attack a short-term insurer looked closely through an enrollee's medical record and rescinded his plan claiming he had not disclosed pre-existing conditions during the application process.[1] All his claims were denied because the insurer determined he should never have been issued coverage.

Without a requirement to cover the essential health benefits, short-term plans exclude key services. Short-term plans routinely exclude maternity care, mental health, substance use treatment and prescription drugs.[2] When short-term plans do cover mental health, substance use treatment, or prescription drugs, the coverage is very limited, with low dollar limits applied per service or coverage period.[3]

Short-term plans often have no network, which means enrollees can face balance billing for any medical claim. While some of the coverage limits are detailed in the plan brochures, the amount that an insurer considers reasonable and customary is typically unknown. Plus, enrollees may not understand that detailed limits, such as $1,000 for room and board, are well below the actual cost of care. In one example, a man enrolled in a short-term plan had less than $12,000 of a $211,000 hospital bill for heart surgery covered by the plan.[4]

How Are Short-Term Plans Sold?

People can buy a short-term plan by shopping online, working with an insurance broker, or answering a telemarketing call. For those shopping for insurance online, the process can be very confusing. Websites selling short-term plans or giving consumer information to brokers selling short-term plans are likely to appear in web searches regardless of whether somebody is specifically shopping for short-term plans or looking for comprehensive coverage.[5]

Those purchasing through a website, such as a web broker or directly from the insurer, generally have access to a marketing brochure that provides a benefit summary and list of some excluded services. However, these brochures are not nearly as comprehensive as the standard plan summary ACA-compliant plans must provide. And while the brochures do include a mandated disclosure and generally note exclusions such as pre-existing conditions, they are not presented in a way that consumers shopping without assistance generally understand the limitations.[6]

How Are Short-Term Plans Regulated?

States are the primary regulators of short-term health plans, but recent changes to federal regulations have changed the regulatory landscape. In 2016, federal regulations limited short-term plans to a contract term of less than 3 months and required a disclosure that the plan is not required to comply with the ACA's protections. The Obama Administration issued these regulations because of a concern that people were enrolling in short-term plans in-lieu of purchasing ACA compliant coverage. The Trump Administration issued regulations last year allowing short-term plans to be offered for a much longer period. The initial contract term is now limited to less than 12 months under federal regulations and short-term plans may be renewed for a total of 36 months of coverage. (The administration also strengthened the disclosure notice to include more language than the Obama-era rule required making the limits of the policy more clear.)

The federal regulations serve as a minimum regulation and states can regulate short-term plans as they see fit as long as they do not allow longer durations or a less comprehensive disclosure. In response to the new federal regulations on short-term plans, nine states and the District of Columbia passed laws or issued regulations in 2018.[7]

Currently, 22 states limit short-term plans to a shorter contract term than the federal term of "less than 12 months."[8] Some of these states go further and prohibit a practice called "stacking" in which brokers or insurers sell consecutive short-term plans together so a new plan starts as soon as the enrollee reaches the end of the state's contract term limit. Stacking is effectively a loophole to simple contract term limits.

State regulation ranges from a minimal regulatory touch in a number of states to an explicit ban of all short-term plans in California. In between, some states apply significant consumer protections to short-term plans, such as banning discrimination based on pre-existing conditions, banning rescissions, or requiring coverage of the essential health benefit categories. A handful of states treat short-term plans exactly like other individual market coverage.

Even states that rely on the federal regulations to define and limit short-term plans generally do require the insurance products and rates be filed with the state insurance department. However, unlike ACA marketplace coverage, filings are often not reviewed for approval prior to the plans being sold on the market. In some states, insurers simply need to file product and rate information for short-term plans and are then allowed to sell in the state.

Policy Considerations

State Considerations

Short-term plans place state insurance markets and those purchasing coverage at risk. As healthy people turn to short-term plans as a cheaper coverage option, the premium costs for ACA-compliant coverage will increase. Some insurers may drop out of the individual health insurance market if they are left with too costly a risk pool. At the same time, those purchasing short-term plans may find themselves left with the financial risk of a serious illness or injury. Whether or not they understood the limitations of the plan they are purchasing, enrollees could be left with tens of thousands of dollars in uncovered costs and providers may then be left with uncompensated care.

Protecting against substandard plans, like short-term health plans, is an important step for states that want to build upon the foundation of the ACA to get more people covered. If short-term plans are weakening the ACA insurance market, then there is a weaker foundation from which to build better coverage. It is also important for states that are not expecting to work towards expanding coverage to shore up their markets by protecting against short-term plans.

Ban the Sale of Short-Term Plans: States can either explicitly ban the sale of all short-term plans, or effectively ban their sale by requiring their compliance with the same insurance regulations as other individual market coverage.

- California explicitly banned the sale of any short-term plan through the passage of a law in 2018, as a response to the new federal regulations.[9]
- Short-term plans have not been available for sale for years in Massachusetts, New Jersey, or New York because these states have long required that all health insurance sold to individuals comply with a comprehensive set of consumer protections, including not discriminating against people with pre-existing conditions.[10] This could be seen as having an effective ban on the sale of short-term plans.
- Short-term plans are not for sale in some other states, potentially because of stringent regulation. For example, no short-term plans are available for sale in Rhode Island, where the plans are not allowed to exclude coverage for preexisting conditions and must spend at least 80 percent of premiums on claims and quality improvement (have an 80 percent medical loss ratio or MLR).[11] Some states that passed new laws or issued new regulations in 2018 appear to no longer have any short-term plans for sale in the state, suggesting that some of the options discussed below may, either alone or in combination, effectively ban the sale of short-term plans.

Limit the Duration of Short-Term Plans: Limiting the duration of short-term plans allows a market for the product, but only as a temporary coverage option. Limits on duration, stacking, and renewal of short-term plans can also make it more obvious to consumers shopping for coverage that these are a different type of insurance product intended only for temporary coverage.

- Limits per contract: The most common limit on short-term plans is a limitation on the contract duration of any single short-term insurance contract. Most states that limit contract duration limit to about 6 months or less. However, seven of the eight states that passed new laws or issued new regulations limiting contract duration in 2018 limited the duration to about 3 months or less.[12] The new trend towards limits of about 3 months, or 90 days, appears to be an attempt to preserve the limits in effect under the 2016 regulations.
- Limits on stacking: A limit on stacking of short-term plans prevents insurers and brokers from circumventing a duration limit by selling multiple consecutive short-term plans to provide a year or more coverage to one enrollee. Some states only prohibit stacking plans issued by the same insurer. For example, Oregon prohibits renewal of short-term plans and considers renewal to include the sale of a new plan by the same insurer within 60 days of the end of the contract and Nevada does not allow an individual to be enrolled in a short-term plan by one insurer for more than 185 days in a 365-day period.[13] Other states apply a limit to the total amount of time an individual can be enrolled in any short-term plan. For example, Vermont and New Mexico only allow an individual to be enrolled in a short-term plan for a total of 3 months in any 12-month period.[14]

Add Consumer Protections to Short-Term Plans: Limiting the duration of short-term plans does nothing to protect individuals that enroll from the financial risks of the limited coverage. A catastrophic event can happen during a 3-month contract period. By applying some consumer protections, states can protect against some of the risks of short-term plans.

- Preexisting condition protections: Some states now limit or prohibit discrimination based on preexisting conditions in short-term plans. The District of Columbia passed a law in 2018 that prohibits short-term insurers from denying a plan or excluding coverage for a service because of a pre-existing condition if the individual sought treatment for the condition in the 12 months prior to application or is in an active course of treatment.[15]
- Rescissions: Rescinded coverage was considered one of the most egregious practices of the insurance industry before the ACA because it left people without coverage when they needed it most, and thought they were covered. In 2018, Illinois passed a law prohibiting rescission of short-term plans except for cases of fraud on behalf of the enrollee and Washington issued regulations prohibiting rescissions except in certain instances of fraud or non-disclosure.[16]
- Medical Loss Ratio: The ACA requires that individual market health plans have a medical loss ratio (MLR) of at least 80 percent. This means that 80 percent of the premiums collected must go towards medical claims or quality improvement. Rhode Island applies the same MLR requirement to short-term plans.[17]
- Benefit Requirements: Many states require that short-term plans provide some or all of the state mandated benefits that apply to individual market health plans. But these benefit mandates do not require a comprehensive set of benefits. Connecticut and Colorado both require short-term plans cover the essential health benefits, or at least the ten essential health benefit categories.[18] Washington issued regulations in 2018 that require a more limited minimum benefit for short-term plans, including hospital, surgical, and medical expenses and a benefit limit of no less than $1 million.[19]
- External Appeal Rights: States can also make sure that their external appeal requirements apply to short-term plans. While this does not improve the actual coverage, it may help

ensure that plans are complying with their own rules.

Advocate Considerations

Advocates working to protect consumers' access to comprehensive coverage can build on the strong public support for pre-existing condition protections and emerging stories of short-term plans failing to cover needed medical services to enact new protections in the short-term market. But it is important that advocates understand the existing regulatory framework in their state and consider what end result they want from policy changes.

Find Out How Your State Regulates Short-Term Plans: Every state regulates short-term plans differently. An important first step is to find out what is in your state's statutes and regulations. One place to start is existing summaries of how states regulate short-term products.[20] Another option is to meet with your state's Department of Insurance. Advocates should start by finding answers to these questions:

- Does your state have duration limits? Are there any protections against stacking?
- What consumer protections apply to short-term plans? How does regulation of short-term plans differ from other individual market coverage?
- What are the state's filing requirements for short-term plans? Do plans and rates need to be approved before insurers begin selling the plans? What information does the Department of Insurance receive from short-term insurers?
- Does the Department of Insurance have any authority under current law to define short-term plans through regulations? Are there any enforcement mechanisms that can be used to ensure compliance with existing laws?

Get data on consumer complaints on short-term plans. If the Department of Insurance collects that data, consumers' experiences with short-term plans may help make the case for banning, limiting or applying protections to short-term plans.

Get information on the short-term market in your state. The Department of Insurance should know which insurers have short-term plans filed with the state and may have an estimate of the number of people enrolled. [21] However, many regulators do not have a complete picture of which insurers are actively marketing.[22] Data from the Department of Insurance can be combined with information gleaned from an online marketing scan and conversations with local insurance brokers.

Frame the Short-Term Plan Discussion so Policymakers Understand the Market and its Limitations: There are numerous options for regulating short-term markets and most are designed to limit or discourage the sale of the products. It is important to be prepared for stakeholder responses in your state and to make it clear how policy options will protect insurance markets and consumers in your state.

- Expose the fine print of short-term plans so policymakers understand how these policies can leave people without true protection. In Illinois, advocates messaged around a plan that did not cover hospitalization when admitted over the weekend. These details can be combined with real life stories of people whose claims were denied .
- Proponents of short-term plans may say they are needed to bridge gaps in coverage. But most circumstances used as examples of when people need short-term plans are actually circumstances that would make an individual eligible for a special enrollment period

to enroll in ACA-compliant coverage. These include aging off of a parent's health plan, transitioning between jobs with a gap in coverage, and early retirement. Marketplaces can be used for temporary coverage and may actually be less expensive for those eligible for premium tax credits.

- Where there isn't support for banning short-term plans, a combination of policies can be designed that allows short-term plans to continue as a temporary coverage option for people who can't get coverage until the next open enrollment period while still protecting insurance markets and consumers. For example, a short duration limit combined with a prohibition on stacking will prevent short-term plans from being sold as an alternative to ACA-compliant coverage for long periods.
- Consumer protections can improve short-term coverage. However, anything that does not drive short-term insurers out of the state's market will only limit but not eliminate problems of selection and risk to enrollees. In some instances, consumer protections like benefit requirements may make short-term plans look more like comprehensive coverage and add to confusion.
- Consider using the open enrollment period as a lever to limit enrollment or duration of short-term plans. Limiting or prohibiting sale of short-term plans during open enrollment can reduce the number of people enrolling in short-term plans in lieu of ACA coverage. Requiring short-term insurers notify enrollees of open enrollment and having all short-term plans terminate at the beginning of the Marketplace plan year allows people to transition from short-term to ACA coverage.
- Improving disclosure and notice of the limitations and exclusions in short-term plans is important to make sure consumers know what they are buying, but it is not a substitute for other regulation. A notice requirement does not guarantee that applicants see or understand the notice. Some requirements, such as having an applicant sign an attestation that they have read a disclosure, may serve to protect the agents and brokers selling short-term plans more than the applicant by making it more difficult to take action if they were misled into buying the plan.
- There may also be unintended consequences of passing a new law. Depending on the duration limits imposed by a new law or regulation and when they take effect, some consumers enrolled in short-term plans may find that coverage ends before the next open enrollment period for ACA-compliant coverage. It is important to think through what ramifications may exist for people already enrolled in short-term plans and how they can be transitioned to ACA-compliant coverage.

Conclusion

New federal rules are promoting the sale of short-term plans, as these limited benefit products can now be used as a long-term alternative to ACA coverage. But, states have broad authority to regulate the short-term market as long as they do not allow for a longer duration than 12 months, renewal beyond 36 months, or a less comprehensive disclosure than in the federal rules. States have taken a variety of approaches to regulating short-term plans, with nine states and the District of Columbia enacting new protections since the federal rule change. States have multiple options, ranging from an explicit ban of short-term plans to limiting plan duration or requiring consumer protections in the short-term market.

Endnotes

[1]Abelson, R, "Without Obamacare Mandate, 'You Open the Floodgates' for Skimpy Health Plans," New York Times (Nov. 30, 2017).
[2] Karen Pollitz, Michelle Long, Ashley Semanskee, and Rabah Kamal, "Understanding Short-Term Limited Duration Health Insurance" (Henry J. Kaiser Family Foundation, Apr. 2018).
[3] See, for example, Dania Palanker, JoAnn Volk, and Kevin Lucia, "Short-Term Health Plan Gaps and Limits Leave People at Risk," To The Point, The Commonwealth Fund, (Oct. 30, 2018) and Dania Palanker, Maanasa Kona, and Emily Currant, "States Step Up to Protect Insurance Markets and Consumers from Short-Term Health Plans" (The Commonwealth Fund, May 2019).
[4] Cheryl Fish-Parcham to Alex Azar, Seema Verma, David Kautter, and Preston Rutledge, April 23 2018, Comments on Short-Term Limited Duration Insurance Proposed Rule (CMS-9924-P).
[5] Sabrina Corlette, Kevin Lucia, Dania Palanker, Olivia Hoppe, "The Marketing of Short-term Health Plans: An Assessment of Industry Practices and State Regulatory Responses" (Urban Institute, Jan. 2019).
[6] Kleimann Communication Group, Report on Testing Consumer Understanding of a Short-Term Health Insurance Plan (March 2019).
[7] Dania Palanker, Maanasa Kona, and Emily Currant, States Step Up to Protect Insurance Markets and Consumers from Short-Term Health Plans" (The Commonwealth Fund, May 2019).
[8] For updates, see: What Is Your State Doing to Affect Access to Adequate Health Insurance?, The Commonwealth Fund, April 2019.
[9] Cal. Ins. Code § 10123.61
[10] Dania Palanker, Maanasa Kona, and Emily Currant, States Step Up to Protect Insurance Markets and Consumers from Short-Term Health Plans" (The Commonwealth Fund, May 2019).
[11] Kevin Lucia, Justin Giovannelli, Sabrina Corlette, JoAnn Volk, Dania Palanker, Maanasa Kona, and Emily Curran, "State Regulation of Coverage Options Outside of the Affordable Care Act: Limiting the Risk to the Individual Market" (The Commonwealth Fund, March 2018).
[12] Dania Palanker, Maanasa Kona, and Emily Currant, States Step Up to Protect Insurance Markets and Consumers from Short-Term Health Plans" (The Commonwealth Fund, May 2019).
[13] ORS 743B.005(16)(c) and NAC 689A.434
[14] 8 V.S.A. § 4084a; 13.10.29 NMAC and Dania Palanker, Maanasa Kona, and Emily Currant, States Step Up to Protect Insurance Markets and Consumers from Short-Term Health Plans" (The Commonwealth Fund, May 2019).
[15] DC Code Title 31 § 31–3303.13d
[16] 215 ILCS 190/ and WAC 284-43-8030
[17] RI Gen L § 27-18-75
[18] 3 CCR 702-4 Series 4-2-59 and State of Connecticut, Insurance Department, Bulletin HC-121, Aug. 2018.
[19] WAC 284-43-8000
[20] "What Is Your State Doing to Affect Access to Adequate Health Insurance?," The Commonwealth Fund, (Apr. 2, 2019).
[21] Enrollment data is considered to undercount, in part because telemarketers and web brokers sell short-term plans through out-of-state associations. See; Emily Curran, Dania Palanker, and Sabrina Corlette, "Short-Term Health Plans Sold Through Out of State Associations Threaten Consumer Protections," To The Point, The Commonwealth Fund, (Jan. 31, 2019).
[22] Emily Curran, Kevin Lucia, Sabrina Corlette, and Dania Palanker, "Do States Know the Status of Their Short-Term Health Plan Markets?," To The Point, The Commonwealth Fund, (Aug. 3, 2018).