SCOTT A. WHITE
COMMISSIONER OF INSURANCE
STATE CORPORATION COMMISSION
BUREAU OF INSURANCE

COMMONWEALTH OF VIRGINIA

P.O. BOX 1157
RICHMOND, VIRGINIA 23218

1300 E. MAIN STREET
RICHMOND, VIRGINIA 23219

TELEPHONE: (804) 371-9741
www.scc.virginia.gov/boi

OBSOLETE November 1, 2018

Administrative Letter 2018-08
REVISED 1-23-2019

TO: All Carriers Licensed to Write Accident and Sickness Insurance in Virginia, All Health Services Plans and Health Maintenance Organizations Licensed in Virginia, and Interested Parties

RE: Requirements Applicable to Short-Term Limited-Duration (STLD) Insurance Coverage in Virginia

The purpose of this Administrative Letter is to provide guidance to carriers regarding the statutory and regulatory requirements that apply to STLD insurance coverage in Virginia in light of the recent issuance of a final federal rule pertaining to such plans by the U.S. Departments of Health and Human Services, Labor, and Treasury. The final federal rule, which took effect on October 2, 2018, amends the federal definition of STLD insurance coverage to allow such plans to cover an initial period of less than 12 months (*i.e.*, up to 364 days), and to be renewed or extended for a maximum duration of no longer than 36 months in total. This final rule reverses prior federal rules that limited STLD insurance coverage to a maximum duration of three months.

Although STLD insurance coverage that is sold to individuals in the individual market is exempt from the Affordable Care Act's ("ACA") market reforms that are applicable to individual health insurance coverage (*e.g.*, essential health benefit requirements and prohibitions on medical underwriting, preexisting condition exclusions and lifetime and annual limits), such coverage is subject to the requirements outlined in this Administrative Letter under the new final federal rule and under Virginia laws and regulations. Please note that the requirements contained in this Administrative Letter are not exhaustive and that other provisions of the Virginia Administrative Code and of Title 38.2 of the Code of Virginia ("Code") may apply.

The Bureau of Insurance ("Bureau") is currently developing form and rate review checklists to assist carriers as they prepare their STLD insurance product filings to comply with these federal and state requirements and to assist the Bureau in its review of such filings. Additionally, the Bureau has attached two charts to this Administrative Letter that delineate the key differences between traditional ACA health plans and STLD plans, as well as the key requirements pertaining to STLD insurance coverage in Virginia.

OBSOLETE

Form and Rate Filings

Forms associated with STLD insurance coverage that are issued in Virginia shall be filed with and approved by the Bureau pursuant to § 38.2-316 of the Code. Forms associated with STLD insurance coverage issued outside of Virginia to a group defined in § 38.2-3521.1 of the Code (*e.g.*, to an association or trust) or pursuant to § 38.2-3522.1 of the Code (to a discretionary group), may not be offered to individuals in Virginia unless the carrier submits such forms to the Bureau and the Bureau acknowledges these forms as "Filed" prior to use.

Rates associated with individual STLD insurance coverage shall be filed with and approved by the Bureau in accordance with § 38.2-316.1 of the Code, including rates for coverage issued to individuals in Virginia through a non-employer group such as an association operating either inside or outside Virginia.

Regardless of whether forms or rates have been previously approved by the Bureau or filed with the Bureau for informational purposes, carriers must refile forms and rates associated with STLD insurance coverage to be issued in Virginia on or after January 1, 2019, – or to a Virginia resident, as applicable – and receive approval by the Bureau (if applicable) pursuant to the guidance set forth herein prior to January 1, 2019.

Notices

All STLD insurance policies issued on or after October 2, 2018, must prominently display on the face of the policy and in any application materials in at least 14-point type one of the two notices set forth in 45 CFR § 144.103, depending on whether the coverage begins prior to January 1, 2019, or on or after January 1, 2019. **Pursuant to the new final federal rule, carriers must ensure that forms issued on or after October 2, 2018, include such notice and have been filed with and approved by the Bureau, as applicable, prior to their issuance.**

Additional Requirements[1]

General

STLD insurance policies shall be captioned as such (*See* § 38.2-305 A 2 of the Code).

Renewability and Preexisting Conditions Provisions

Pursuant to § 38.2-3514.2 of the Code, all individual STLD insurance coverage that: (i) exceeds six months in duration; or (ii) is not more than six months in duration but is medically underwritten, shall be renewable for a maximum duration of 36 months in total. Per § 38.2-3514.2 of the Code, only group association STLD insurance coverage or individual STLD insurance coverage that is six months or less in duration and not subject to medical underwriting can be nonrenewable.

---

[1] Note that unless otherwise noted, these requirements apply to coverage forms that must be filed with and approved by the Bureau.

Individual STLD insurance coverage issued by a health carrier that: (i) exceeds six months in duration; (ii) is not more than six months in duration but is renewable; or (iii) is medically underwritten, shall comply with the requirements of § 38.2-3514.1 of the Code on preexisting conditions.

OBSOLETE

Covered Benefits

STLD insurance coverage issued by a health maintenance organization ("HMO") in the individual market shall cover basic health care services pursuant to § 38.2-4302 A 2 of the Code. In contrast, STLD insurance coverage issued to an individual by any carrier other than an HMO shall provide, at a minimum, major medical expense coverage (*See* 14 VAC 5-140-70 E).

STLD insurance coverage that: (i) exceeds six months in duration; or (ii) that is not more than six months in duration but renewable, shall comply with the mandated benefits requirements applicable to accident and sickness insurance policies (*See* Article 2 of Chapter 34 of Title 38.2 of the Code).

Internal Appeal and External Review

STLD insurance policies issued by a health carrier are subject to Virginia's internal appeal process requirements (*See* § Chapter 35.1 of Title 38.2 of the Code and 14 VAC 5-216-10 *et seq*.). When used in conjunction with an MCHIP, the Bureau must approve this process (*See* § 38.2-5804 of the Code).

STLD insurance policies issued by a health carrier shall provide an external review process that complies with Virginia's external review requirements (*See* Chapter 35.1 of Title 38.2 of the Code and 14 VAC 5-216-10 *et seq*.).

Any questions concerning this Administrative Letter may be addressed to:

Elsie Andy
BOI Manager
Rates and Forms Section
Life and Health Division
Bureau of Insurance
804-371-9072
elsie.andy@scc.virginia.gov

Cordially,

Scott A. White
Commissioner of Insurance

REVISED 1-23-2019

OBSOLETE

The "Renewability and Preexisting Conditions Provisions" section in this letter as well as the "Guaranteed Renewable" provision of the "Key Differences" slide and portions of the "Virginia STLD Insurance Coverage Requirements" slide were amended to clarify that §§ 38.2-3514.1 and 38.2-3514.2 of the Code apply only to individual STLD insurance policies.

Also, the "Rates" section of the "Virginia STLD Insurance Coverage" slide was amended to provide further instruction for STLD rate filings for approval.

OBSOLETE

Key Differences between Traditional Major Medical (ACA) Health Plans and Short-term Limited-duration Plans

Provision/Attribute	ACA Plans	Short-term Plans
Guaranteed Issue	Must accept any individual who applies for coverage; issuance limited to open enrollment or special enrollment periods	Carriers can deny coverage or exclude certain health conditions based on an applicant's application; issued year-round
Guaranteed Renewable	Coverage is guaranteed renewable regardless of changes in health	Individual policies issued in-state with an initial term that exceeds 6 months or that is underwritten must be renewable up to 36 months; individual policies issued in-state with a term of no more than 6 months and that is not underwritten may be either nonrenewable or renewable up to 36 months. In-state group association coverage or group coverage issued to Virginians through an out-of-state association may be either nonrenewable or renewable up to a maximum of 36 months.
Preexisting Conditions	Cannot exclude coverage for a service related to a preexisting condition	Carriers can issue coverage with a health condition exclusion based on the applicant's application
Dollar Value Limits	Cannot impose daily, annual or lifetime dollar limits on essential health benefits	Carriers can limit the amount they pay on a daily, annual or lifetime basis
Essential Health Benefits	Must cover essential health benefits defined in the ACA	Policies issued in-state must provide a minimum amount of benefits; however, coverage may be issued to Virginians through an out-of-state association without a minimum benefit requirement
Restrictions relating to premium rates	Premiums may only vary based on geography, age, and tobacco use	Premiums may vary based on health status of applicant among other factors
Discrimination based on health status	Premiums may not be increased due to health conditions	Premiums may vary and coverage may not be issued or may be non-renewed based on health status

OBSOLETE

Virginia STLD Insurance Coverage Requirements

	STLD Policy Issued in VA	Certificate issued to a VA resident through an out-of-state association
Policy Forms	Required to be filed and approved; must be in compliance with applicable state laws	Required to only be filed as long as extraterritoriality applies; not subject to most VA laws
Rates	Required to be filed and approved; must meet minimum loss ratio; rates and rating factors cannot vary by effective date or include automatic increases	Required to be filed and approved; must meet minimum loss ratio; rates and rating factors cannot vary by effective date or include automatic increases
If coverage is:		
Underwritten or > 6 months duration	Must be renewable up to 36 months (individual); All mandated benefits apply (individual) (EHB does not apply)	May renew up to 36 months; No requirement to comply with VA mandated benefits
Renewable or > 6 months duration	All mandated benefits apply (EHB does not apply)	No requirement to comply with VA mandated benefits
Not underwritten and 6 months or less duration	Some mandated benefits apply	No requirement to comply with VA mandated benefits