

VERMONT DEPARTMENT OF FINANCIAL REGULATION

RULE I-2018-03

SHORT-TERM, LIMITED-DURATION HEALTH INSURANCE

Section 1. Purpose

This rule is promulgated pursuant to 8 V.S.A. § 4084a and in response to the publication on August 3, 2018 by the United States Department of Labor, the Department of Health and Human Services, and the Department of the Treasury of a final rule (the “Final Rule”) amending the definition of short-term, limited-duration insurance found in 26 C.F.R. pt. 54, 29 C.F.R. pt. 2590, and 45 C.F.R. pts. 144, 146, and 148. *See* Short-Term, Limited-Duration Insurance, 83 Fed. Reg. 38,212 (August 3, 2018) (to be codified at 26 C.F.R. pt. 54, 29 C.F.R. pt. 2590, and 45 C.F.R. pts. 144, 146, and 148). The Final Rule lengthens the maximum duration of short-term, limited-duration insurance from less than three months after the effective date of the contract to up to twelve months after the contract date. It also provides that short-term, limited-duration policies may be renewed or extended to a maximum duration of up to thirty-six months after the initial contract date. The preamble to the Final Rule makes clear that states are free to adopt more restrictive definitions and rules governing short-term, limited-duration health insurance to meet the specific needs of their health insurance markets.

Short-term, limited-duration health insurance is a type of health insurance coverage that is designed to fill temporary coverage gaps that may occur when an individual is transitioning from one plan or coverage to another plan or coverage. It is not intended to function as comprehensive health care coverage. Short-term, limited-duration health insurance is not considered Minimum Essential Coverage (“MEC”) under the Affordable Care Act (“ACA”) and is not required under federal law to provide essential health benefits or to cover preexisting conditions. Short-term, limited-duration health insurance is not subject to the ACA’s requirements of guaranteed availability and guaranteed renewability and may, in contrast to ACA-compliant health coverage, contain annual and lifetime dollar limits.

The purpose of this rule is to set forth rules and procedures governing the filing, sale, marketing, and issuance of short-term, limited-duration health insurance in Vermont. This rule protects Vermont consumers by ensuring that short-term, limited-duration health insurance provides robust benefits and clear disclosure of its limitations compared to ACA-compliant health care policies and other types of MEC. It promotes the stability of Vermont’s health insurance markets, including Vermont Health Connect, by ensuring that short-term, limited-duration health insurance is sold only to bridge temporary gaps in coverage and not as comprehensive health care coverage. Pursuant to 8 V.S.A. § 4084a, Vermont limits short-term, limited-duration health insurance to a three-month term and precludes renewal within a 12-month period. Nothing in this rule shall be construed to allow a short-term, limited-duration health insurance policy to be sold in Vermont prior to the effective date hereof.

Section 2. Definitions

The following terms are defined for purposes of this rule as follows:

- A. “Short-term, limited-duration insurance” means individual health insurance that provides medical, hospital, or major medical expense benefits coverage pursuant to a policy or contract with an insurer and that has an expiration date specified in the policy or contract that is three months or less after the original effective date of the policy or contract.
- B. “Commissioner” means the Commissioner of the Vermont Department of Financial Regulation.
- C. “Department” means the Vermont Department of Financial Regulation.
- D. “Insurer” means any insurer, nonprofit hospital or medical service corporation, health maintenance organization, or managed care organization offering health insurance as defined in 8 V.S.A. § 3301(a)(2).

Section 3. Authority

This rule is promulgated pursuant to the authority granted the Commissioner under 8 V.S.A. §§ 10, 11, 15, 4084a, and 4724.

Section 4. Scope

This rule shall apply to all short-term, limited-duration health insurance products delivered or issued for delivery in the State of Vermont. Notwithstanding the specificity of the following provisions, nothing in this rule shall be construed as exempting short-term, limited-duration health insurance, its issuers, or its sales agents from any requirement of Title 8 of the Vermont Statutes Annotated that is generally applicable to insurers, insurance products, insurance sales and marketing, and the business of insurance, unless such requirement is inconsistent with the provisions of this rule.

Section 5. Certificate of Authority

An insurer shall not provide short-term, limited-duration health insurance coverage in this State unless the insurer possesses a certificate of authority from the Commissioner to offer health insurance as defined in 8 V.S.A. § 3301(a)(2); is licensed or registered with the Commissioner as a nonprofit hospital or medical service corporation, health maintenance organization, or managed care organization; or is exempted from these requirements by the provisions of 8 V.S.A. § 3368.

Section 6. Filing Requirements

- A. No policy of short-term, limited-duration health insurance, unless exempted by 8 V.S.A. § 3368, shall be delivered or issued for delivery in this State, nor shall any endorsement, rider, or application form be used in connection with such policy, until the form, premium rates, and rules for the classification of risks pertaining thereto have been filed with and approved by the Commissioner.

- B. Every such filing shall be made at least thirty days in advance of such delivery or issuance for delivery. If not affirmatively approved, at the expiration of such thirty days, the form, rate, or rule so filed shall be deemed approved unless prior thereto it has been disapproved or found to be incomplete. The Commissioner may extend by not more than an additional sixty days the period within which he or she may so affirmatively approve or disapprove any such form or rate, by giving notice to the insurer before the expiration of the initial thirty-day period. If not affirmatively approved at the expiration of any such extended period, the form, rate, or rule so filed shall be deemed approved unless prior thereto it has been disapproved or found to be incomplete.
- C. In making his or her determination, the Commissioner shall consider whether a policy form, premium rate, or rule is affordable and is not unjust, unfair, inequitable, misleading, or contrary to the laws of this State. The Commissioner shall notify an insurer in writing if the insurer files any form, rate, or rule containing a provision that does not meet the standards expressed in this subsection. In such notice, the Commissioner shall state that a hearing will be granted within twenty days upon the insurer's written request. Insurers requesting a hearing must do so within thirty days of the date of the Commissioner's notice of disapproval.
- D. The Commissioner may at any time withdraw approval of a form, rate, or rule by written notice to the insurer stating the reasons therefore. In any notice withdrawing approval of a previously approved form, rate, or rule, the Commissioner shall state that a hearing will be granted within twenty days of an insurer's request. Insurers requesting a hearing must do so within thirty days of the date of the Commissioner's notice of withdrawal of approval. Any such withdrawal of approval of a previously approved form, rate, or rule shall be effective not less than thirty-one days after the giving of the notice of withdrawal, as the Commissioner shall state the effective date of withdrawal in such notice. Any demand for a hearing relative to the Commissioner's withdrawal of approval of a form which has been received by the Commissioner prior to the effective date of such withdrawal shall stay such action pending the hearing thereon.
- E. Each filing of a policy form of short-term, limited-duration health insurance, or other document form, premium rate, or rule submitted pursuant to this section, shall be accompanied by payment to the Commissioner of a nonrefundable fee of \$150.00, as set forth in 8 V.S.A. § 4062a.

Section 7. Benefit Requirements

- A. Every short-term, limited-duration health insurance policy shall, at a minimum, provide the following benefits and protections:
 - 1. Benefits as required in 33 V.S.A. § 1806(b)(1)-(2).
 - 2. Policy provisions that comply with Department Regulation H-2009-03, §§ 2.2 Disclosure of Information; 2.4 Access to and Continuity of Care: Emergency and

Urgent Services; and 5.1 Ensuring Adequacy of Access to Providers and Continuity of Services.

3. All other insurance requirements and benefit mandates for health insurers as provided in 8 V.S.A. Chapter 107 and 18 V.S.A. Chapter 221, as may be amended from time to time, or as specified by rule by the Commissioner.
 4. All other benefits required to comply with applicable federal laws and regulations.
- B. An insurer shall not deliver or issue for delivery a short-term, limited-duration health insurance policy covering lives located in this State that contains an exclusion or limitation for pre-existing conditions or a waiting period on the coverage of pre-existing conditions.

Section 8. General Rules

- A. A short-term, limited-duration health insurance policy or contract shall be nonrenewable, and an insurer shall not issue a short-term, limited-duration health insurance policy or contract to any person if the insurance would result in the person being covered by short-term, limited-duration health insurance coverage for more than three months in any twelve-month period.
1. Every application for a policy of short-term, limited-duration health insurance shall contain a statement by the applicant attesting that purchase of the policy would not result in any insured being covered by short-term, limited-duration health insurance for more than three months during the preceding twelve-month period.
 2. Such attestation shall be witnessed in person and in writing on the application form by the insurer or responsible producer. If the policy or contract is completed online, the attestation must be provided conspicuously, in full, and must be acknowledged electronically by each consumer
 3. Compliance by the insurer or producer with the requirements parts (1) through (3) of this subsection shall create a presumption that the insurer or producer has complied with the obligations set forth in subsection 8(A).
- B. Short-term, limited-duration health insurance shall not be sold on a group or blanket basis.
- C. Medical Loss Ratio. The rates for a policy of short-term, limited-duration health insurance shall comply with the medical loss ratio and rebating requirements of 45 C.F.R. §§ 158.210-240. A medical loss ratio of eighty percent is required and shall be calculated consistent with the federal methodology. All expenses incurred by the insurer and payable to a licensed agent, broker, or producer who is not an employee of the insurer shall be incorporated into the medical loss ratio under this subsection and shall be incorporated in the administrative expense portion of an insurer's rate filing.

- D. In addition to complying with all insurance requirements and benefit mandates as set forth in 8 V.S.A. Chapter 107 and 18 V.S.A. Chapter 221, and all applicable Department regulations, every policy of short-term, limited-duration health insurance delivered or issued for delivery in this State:
1. shall include a process for subscribers to appeal adverse benefit determinations that complies with the requirements of 8 V.S.A. § 4089f and Department Regulation H-2011-02;
 2. may not contain a provision purporting to reserve discretion to the insurer to interpret the terms of the contract or to provide standards of interpretation or review that are inconsistent with the laws of this State. Any such policy, contract, certificate, or agreement shall be null and void to the extent it conflicts with this subsection, pursuant to 8 V.S.A. § 4062f.
 3. shall not contain an exclusion or limitation for pre-existing conditions or a waiting period on the coverage of pre-existing conditions.
- E. The notice required by the Final Rule shall be included as required by federal law and shall be titled “Federal Law Notice.” Additionally, every application form for short-term, limited-duration health insurance and the cover page of every policy and/or contract of short-term, limited-duration health insurance delivered or issued for delivery in this State shall contain the following notice prominently displayed in no less than 15-point boldface type of uniform font. The Vermont Resident Notice shall come immediately before the Federal Law Notice and be displayed in the same font, but a larger size, as the Federal Law Notice:

“VERMONT RESIDENT NOTICE

Vermont residents have greater rights and protections under Vermont law. Despite the language in the Federal Law Notice below, all short-term, limited-duration health insurance marketed, offered, and delivered in Vermont or to a Vermont resident must provide the federal Essential Health Benefits, the state-mandated benefits (including hospitalization, maternity care, preventive care, prescription drugs, and mental health and substance use disorder services), and emergency services, as well as covering pre-existing conditions and prohibiting annual limits.

This is a policy of short-term, limited-duration health insurance and is designed to fill temporary coverage gaps that may occur when an individual is transitioning from one plan to another. This policy is nonrenewable, and you may not be covered by a policy of short-term, limited-duration insurance for more than three months in any twelve-month period. Short-term, limited-duration insurance provides limited benefits and consumer protections compared to comprehensive health care coverage. You should not purchase this policy as comprehensive health care coverage. You may be able to purchase more affordable comprehensive health care coverage on Vermont Health Connect. This is not minimum essential coverage that

satisfies the health coverage requirement under Vermont law. If you have questions about this policy or whether it is right for you, you should consult your broker, a Vermont Health Connect Assister, or the Vermont Department of Financial Regulation at _____.”

Every policy of short-term, limited-duration health insurance shall include the Department’s current consumer service telephone number and website in the blank provided in the above notice.

- F. Insurers marketing or offering short-term, limited-duration health insurance policies in this State shall provide a plain-language explanation of the general limits of the policy in the application, and the application should have a signature line indicating that the consumer received and understood this explanation.
- G. In the footer on every page of a short-term, limited-duration health insurance contract, application, policy, advertising or marketing materials, and outline of coverage the following statement in no less than 12-point boldface type of uniform font shall be included: “Short-term, limited-duration health insurance provides temporary coverage and limited benefits.”

Section 9. Advertising and Marketing

- A. An insurer issuing a short-term, limited-duration health insurance policy in this State shall file its advertising and marketing materials with the Department for prior approval.
- B. Insurance agents, brokers, and all third parties involved in the marketing or sale of a short-term, limited-duration health insurance policy in this State or to residents of this State shall use only marketing materials that have been submitted to the Department by the issuer of such policy and approved pursuant to subsection (A) above. Insurance agents, brokers, and third parties marketing short-term, limited-duration health insurance policies are subject to Title 8 and all applicable provisions of Vermont law regarding advertising practices.
- C. Insurance agents, brokers, and all third parties involved in the marketing or sale of a short-term, limited-duration health insurance policy in this State or to residents of this State shall read aloud the second paragraph of the “Vermont Resident Notice” to all consumers contacted and receive verbal confirmation that each consumer has understood the notice. If the product is advertised or marketed online, the notice must be provided conspicuously, in full, and must be acknowledged electronically by each consumer.
- D. Using metal levels—bronze, silver, gold, and/or platinum—in the name of a short-term, limited-duration health insurance policy, or in the advertising or marketing materials therefore, shall be a per se violation of the provisions governing false information and advertising of insurance policies in 8 V.S.A. § 4724 (The Insurance Trade Practices Act).

Section 10. Record Retention

An insurer doing business in Vermont shall maintain its books and records in accordance with Department Regulation 99-01.

Section 11. Enforcement Authority

- A. To ensure compliance with the provisions of this rule and protect Vermont health care consumers, the Commissioner may, in his or her discretion, utilize all of the powers granted by 8 V.S.A. §§ 13, 15, 18, 3368-3390, 3563-3574, 3661, 4726, and other provisions of Titles 8 or 18 as may be applicable.
- B. Any person or entity that violates any provision of this rule is subject to the penalties provided in Chapters 3, 101, 107, and 129 of Title 8 and such other provisions of Titles 8 or 18 as may be applicable.

Section 12. Notification to the Department

- A. An insurer shall notify the Department by March 1 of each year of all short-term, limited-duration health insurance policies it issued or had in force at any time during the preceding calendar year that covered residents of Vermont.
- B. Reporting Requirement for Fraudulent Activity.
 - 1. An insurer having knowledge or a reasonable suspicion that a policy of short-term, limited-duration health insurance that is not in compliance with the requirements of this rule is being marketed or sold in this State shall immediately report to the Commissioner in writing regarding the identity and contact information (if known) of the entity or person marketing or selling such policy, as well as providing any relevant documents in its possession.
 - 2. Confidentiality.
 - a. The documents and evidence provided pursuant to this-subsection (B) or obtained by the Commissioner in an investigation of suspected or actual conduct in violation of this rule shall be privileged and confidential, shall be exempt from public inspection and copying, and shall not be subject to discovery or introduction into evidence in any private civil action pursuant to 1 V.S.A. § 317(c)(26) and 8 V.S.A. § 3574, except as described in subdivision (b) of this subsection.
 - b. Subdivision (a) of this subsection does not prohibit release by the Commissioner of documents and evidence obtained in an investigation of suspected or actual conduct in violation of this rule:

- i. in administrative or judicial proceedings to enforce laws administered by the Commissioner;
 - ii. to federal, state, or local law enforcement or regulatory agencies, or to an organization established for the purpose of detecting and preventing such conduct or to the National Association of Insurance Commissioners; or
 - iii. at the Commissioner's discretion in the furtherance of legal or regulatory proceedings brought as part of the Commissioner's official duties or to civil or criminal law enforcement authorities for use in the exercise of such authority's duties, in such manner as the Commissioner may deem proper.
- c. Release of documents and evidence under subdivision (b) of this subsection does not abrogate or modify the privileges described in subdivision (a) of this subsection.

Section 13. Insurance Agents and Brokers

- A. Any person, including a licensed or unlicensed agent, broker, or any other individual, soliciting, offering, or selling a policy of short-term, limited-duration health insurance to a Vermont resident shall, prior to engaging in such activity, carry out and document appropriate due diligence to establish, at a minimum, the following:
1. That the insurer issuing the policy of short-term, limited-duration health insurance is licensed in the State;
 2. That the policy forms and rates for such policy have been approved by the Department;
 3. That the disclosures listed in subsection 8(E) of this rule are in the policy document and application form; and
 4. That the advertising and marketing materials he/she is using have been approved by the Department.
- B. Reporting Requirement for Fraudulent Activity. Any person, including a licensed or unlicensed agent, a broker, or any other individual, soliciting, offering, or selling a policy of short-term, limited-duration health insurance to a Vermont resident, having knowledge or a reasonable suspicion that such policy or the insurer issuing it, is not in compliance with the requirements of this rule, shall immediately report to the Commissioner in writing the identity of the entity, any known contact information or other materials, and the nature of the entity's practices triggering this reporting. The confidentiality provisions of Section 11(B)(2) shall apply to information submitted to the Commissioner pursuant to this subsection.

Section 14. Severability

If any provision of this rule, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect other provisions or applications of this rule that can be given effect without the invalid provision or application, and to that end the provisions of this rule are severable.