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The terms, they may be a-changin'

A primer on proposed changes to short-term medical plans

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How did we get here? The face of emerging Trump-era regulation

In October 2017, President Trump signed a presidential executive order promoting healthcare choice and competition across the United States. The executive order outlined three approaches to expanding choice and competition in the individual and group markets: 1) increasing availability of association health plans (AHPs) to create options in the small group market; 2) extending allowable periods of coverage in short-term, limited-duration insurance (STLDI) to create options in the individual market; and 3) expanding health reimbursement arrangements (HRAs) to create options in the large group market.

In January 2018, the proposed regulations supporting the AHP leg were released, and in February 2018, a proposed rule supporting STLDI (also known as "short-term medical") was released. Those in favor of the STLDI proposal may see this as a lower-cost health insurance market option, customized to the services needed at premiums the insured can afford. Those not in favor may say that giving individuals options outside the Patient Protection and Affordable Care Act (ACA) market will remove healthy individuals from the ACA market, which could lead to premium rate increases and leave consumers without the comprehensive coverage and consumer protections currently provided by the ACA market.

Both sides likely agree with comments made by Milliman's Mike Sturm to Congress regarding the proposed AHP rule, which also apply to STLDI: "Different rating rules create the possibility of risk pool segregation between more expensive and less expensive members in a given market."[1]

Proposed regulatory change and potential STLDI repositioning

On February 20, 2018, the U.S. Department of Health and Human Services (HHS) released a proposed regulation to allow STLDI policies to have longer contract periods, as long as the contract expires less than 12 months after the original effective date (including any *guaranteed* renewal options).[2] Such a change would be a significant increase over current rules, which allow STLDI contracts to extend for, at most, three months (including *all* renewal options).

STLDI policies have been regulated separately from individual health insurance since the Health Insurance Portability and Accountability Act (HIPAA) decreed that STLDI was not individual health insurance. Under the HIPAA framework, and particularly in the current post-ACA world, consumers use (and issuers sell) STLDI policies as a temporary coverage solution between jobs while waiting for other anticipated coverage to begin, or in other limited periods where gaps in health insurance coverage existed. Under the proposed rule, HHS appears to be repositioning STLDI as an alternative form of individual health insurance coverage, running parallel to the current ACA-compliant individual health insurance market rather than serving as a supplement to it.[3]

Possible impact of the revised regulation

Answering several key questions, along with the accompanying sidebar, may guide stakeholders to understanding how this proposed rule might affect health insurance markets:

WHAT DOES RENEWAL MEAN FOR STLDI POLICIES AND ISSUERS?

The term "renewal" for an STLDI plan has a different meaning than for ACA plans. Under STLDI, issuers have greater discretion in determining the policies to renew, which may complicate issuer decision-making or simply lead to renewals of the healthiest STLDI members.

[1] Mike Sturm's full opening statement at the small business health plan roundtable of the Senate Health, Education, Labor, and Pension Committee on January 29, 2018, can be found at https://www.help.senate.gov/imo/media/doc/Sturm.pdf.

[2] This new definition is generally consistent with the rules in place prior to April 2017. The full text of the proposed rule is available at https://www.federalregister.gov/documents/2018/02/21/2018-03208/short-term-limited-duration-insurance.

[3] On March 8, 2018, the head of the Centers for Medicare and Medicaid Services (CMS) explicitly referenced STLDI as a legal pathway to enable non-ACA-compliant individual health insurance in response to Idaho's "state-based plan" proposal. This letter is available at https://www.cms.gov/CCIIO/Resources/Letters/Downloads/letter-to-Otter.pdf. The concept of a split in the individual health insurance market has been discussed in several industry publications and at industry conferences. David Hood recently described this concept in a Conference Chatter report for S&P Global Market Intelligence subscribers titled "Regulatory proposals may split individual health insurance market."

In essence, STLDI enrollees would renew their policies by purchasing another STLDI plan at the discretion of the issuer, who could approve or reject the application. Alternatively, if an issuer offered renewal coverage to an enrollee, conditions that developed and were covered under the prior STLDI policy could be considered preexisting conditions for the renewed STLDI contract, and so could be subject to any exclusions.

WHAT CHANGES CAN ISSUERS MAKE TO POLICIES UPON RENEWAL?

If issuers are provided greater discretion to change contract terms at renewal, such flexibility may allow STLDI issuers to offer interim, albeit potentially limited, coverage to less healthy enrollees that would provide these consumers a path to the next ACA open enrollment period and ACA comprehensive coverage in the individual market. On the other hand, consumers who choose such an interim path until the open enrollment period may not have the coverage they most need because of potential preexisting condition exclusions or limits on STLDI policies.

WHAT RULES WOULD THESE PLANS HAVE TO FOLLOW?

STLDI plans would not be required to follow federal regulations, beyond the limitations on policy duration and guaranteed renewal addressed in the proposal, and instead would be subject to state regulations. Current state approaches range from complete prohibitions on STLDI to complete exemption from many state insurance protections, with current regulations and consumer protections being typically minimal.[4] *Ultimately, state requirements may be expected to play a key role in determining how, if at all, STLDI plans affect the individual health insurance market*.

WHAT MAY STLDI ISSUERS BE REQUIRED TO TELL APPLICANTS WHO PURCHASE COVERAGE?

The proposed rule would require disclosure language to be prominently featured on the contract and in application materials. These disclosures would note that the policy need not comply with federal requirements for health insurance, implying that the issuer would not be required to renew the contract at expiration. Additionally, the disclosure required in 2018 would be required to state that the policy does not satisfy the ACA individual mandate.[5]

COULD THESE POLICIES OTHERWISE LOOK LIKE INDIVIDUAL ACA MARKET COVERAGE?

These plans would not be required to comply with ACA benefit requirements, but issuers appear to have the discretion to offer similar benefits. Health status underwriting may enable healthy individuals to find coverage resembling what is available on the exchange, with slightly shorter durations and significantly lower premiums. Less healthy Individuals may face choices that are more limited because STLDI policies may reduce benefits and/or exclude preexisting conditions for services those consumers currently need.

STLDI ALONGSIDE THE ACA

STLDI policies would not be subject to the major reforms made by the ACA to the individual market, including (but not limited to):

- The requirement to offer coverage to everyone who applies
- The prohibition on preexisting condition exclusions
- The requirement to cover the 10 categories of essential health benefits (EHBs)
- The prohibition on annual and lifetime coverage limits
- The prohibition on using health status to determine rates
- The 3:1 limitation on rate variation for adults
- The prohibition on varying rates by gender

Individual market ACA policies and STLDI policies have two key differences:

1. ACA policies *must* guarantee renewal, while STLDI would be prohibited from guaranteeing renewal.
2. ACA policies must end on December 31 of the issue year; STLDI policies could end at any time but would be made to comply with mandated duration limits.

WHAT RISKS DO ISSUERS WHO OFFER THESE POLICIES FACE?

Issuers offering STLDI policies may face three primary risks:

1. **Financial performance:** For ACA issuers, the potential splitting of risk pools with the introduction of STLDI plans may lead to concerns of further deterioration of the ACA-compliant risk pool if healthier ACA enrollees opted into STLDI coverage. STLDI financial performance may rely on how effectively issuers are able to classify and rate risks and use available risk mitigation mechanisms. However, ACA disenrollment and transfer into the STLDI pool may undercut the financial performance of the total individual health insurance block, due to the increased morbidity and remaining reduced risk adjustment transfer payments remaining to support the ACA-compliant block. A counterargument may be that healthier risks would leave or have already left the ACA market, such that the impact of STLDI plans on overall financial performance may be more limited. Additionally, the STLDI market's likely focus on reduced premium levels could make the expense loads underlying ACA-compliant plans unsustainable in the STLDI market. On the other hand, STLDI policies are subject to

[4] The Commonwealth Fund discusses how 10 different states regulate these policies at http://www.commonwealthfund.org/publications/blog/2018/jan/short-term-health-plan-proposed-changes.

[5] The Tax Cuts and Jobs Act of 2017 eliminated the penalty for individuals without health insurance. Fritz Busch and Paul Houchens discuss the potential impacts of individual mandate repeal at http://www.milliman.com/insight/2018/The-individual-mandate-repeal-Will-it-matter/.

fewer taxes and fees, and are not subject to the 80% minimum medical loss ratio. The ability of STLDI issuers to price appropriate expense loads may depend on the willingness of the market to bear the resulting premiums.

2. **Enrollment composition:** As with any market evolution, STLDI and the remaining individual ACA market enrollment composition and risk pool morbidity may take time to stabilize. Given the ACA's reliance on pricing to the average morbidity level in the risk pool, the STLDI rule could result in mispricing risk in both the STLDI and ACA markets, at least in the near term. While STLDI rating may offer more risk management tools to mitigate mispricing risk (assuming carriers use those tools and follow their established rules and guidelines), the individual ACA market may be more susceptible to the resulting market changes. Proponents of the STLDI rule may note that this rule simply restores the previous definition of short-term insurance, so issuers have a historical baseline understanding of the remaining risk pool. Critics may argue that the ACA's individual mandate limited the adoption of STLDI and the lack of an associated penalty going forward. This possibility, coupled with the increased spotlight on STLDI as a result of this proposal, could increase the potential for STLDI to materially affect ACA plan enrollment.
3. **Consumer education and goodwill:** A primary criticism of STLDI has been that consumers may not be sufficiently educated on the restrictions and limitations that come with these policies to understand the trade-offs they would make to receive lower premiums. While the terms may be clear in the contract, STLDI issuers may need to spell out and emphasize coverage disclosures. They may also need to commit to training distribution channels and agents about the differences and how to provide accurate and appropriate messaging to enhance consumer understanding. Without disclosure and messaging emphases, STLDI issuers risk the loss of consumer goodwill (and could face potential litigation) from STLDI consumers who expected the same breadth of protection and coverage available in the ACA market and received something less.

WHEN COULD THESE POLICIES BECOME AVAILABLE?

The proposed rule notes that changes to STLDI will not be effective until 60 days after publication of the final rule. Based on the timelines typically associated with federal rule-making, it is unlikely that the revised STLDI requirements would apply before the third quarter of 2018.

HOW COULD STLDI PLANS INFLUENCE THE ACA-COMPLIANT INDIVIDUAL MARKET?

As noted earlier, the influence of STLDI plans and opportunities for STLDI issuers may vary significantly based on how each state chooses to regulate STLDI. Because STLDI products would not be eligible for ACA subsidies, the lower-income subsidized individuals who make up a significant portion of most states' current ACA markets may not find STLDI plans appealing. However, unsubsidized healthy individuals may find STLDI products to be an appropriate and welcome compromise between cost and coverage, especially in 2019 when the individual mandate penalty drops to $0. While STLDI may not help the ACA individual market, it remains to be seen just how, if at all, the proposed STLDI market may hinder that same market.

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Caveats

In preparing this report, we relied on the proposed rule text as published in the Federal Register on February 21, 2018. To the extent that differences between the details found in this proposed rule and the final rule exist, the statements and conclusions reached in this paper may require modification.

Our interpretations of the proposed regulation should not be relied on as legal interpretations. In addition, readers should not interpret this paper as an endorsement of any particular legislation by Milliman or the authors. The views expressed in this paper are made by the authors and do not represent the collective opinion of Milliman, Inc.

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