BlueCross BlueShield Association

An Association of Independent Blue Cross and Blue Shield Plans

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January 31, 2020

The Honorable Martin Carbaugh
Representative
Indiana General Assembly
200 W Washington St
Indianapolis, IN 46204

RE: BCBSA Recommendations on Proposed NCOIL Short Term Limited Duration Insurance Model Act

Dear Representative Carbaugh,

The Blue Cross Blue Shield Association (BCBSA) appreciates the opportunity to provide additional comments on the proposed National Council of Insurance Legislators' (NCOIL) "Short Term Limited Duration Insurance Model Act" (Model).

BCBSA is a national federation of 36 independent, community-based and locally operated Blue Cross and Blue Shield (BCBS) companies that collectively provide healthcare coverage for one in three Americans. For 90 years, BCBS companies have offered quality healthcare coverage in all markets across America – serving those who purchase coverage on their own as well as those who obtain coverage through an employer, Medicare and Medicaid.

As discussed previously, we share your goal of helping consumers have access to quality, affordable health insurance that works best for themselves and their families. This Model Act will help ensure that short-term policies have appropriate consumer protections, given these products can now provide coverage for up to three years. Historically, states exempted short-term, limited-duration products from many mandates because individuals only purchased them to cover brief periods of being uninsured. For example, these products were oftentimes exempt from annual spending limits and specific minimum covered benefits, while also not requiring short-term policies to provide certain consumer disclosures. Now that short-term products are sold for longer periods, it is important that states appropriately regulate these policies to ensure consumers are properly protected.

We deeply appreciate your consideration and adoption of many of our previous recommendations and believe these additional recommendations will further improve the ability of the Model to achieve these necessary consumer protections. In preparation for the next NCOIL meeting, we recommend the following:

Our comments are focused in three areas:

- Ensuring the model provides the state with the authority to regulate all short-term, limited-duration coverage issued to residents in their state.

- Adding the rescission provision applicable to "comprehensive" individual and group health insurance coverage.

- Further enhancing the disclosure language based on language Texas recently adopted to ensure consumers understand the limitations of the coverage they are buying.

In addition, we have some technical suggested edits.

We appreciate your consideration of our comments. We look forward to working with you on the issue of short-term, limited-duration insurance. If you have any questions or want additional information, please contact Mike Lyle at 202.626.8622 or michael.lyle@bcbsa.com.

Sincerely,

Clay McClure
Executive Director, State Relations
Blue Cross Blue Shield Association

Copies To: Assemblywoman Pamela Hunter, NY
Representative Deborah Ferguson, AR
Will Melofchik, NCOIL

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BCBSA DETAILED COMMENTS ON NCOIL SHORT TERM LIMITED DURATION INSURANCE MODEL ACT

I. Clarify Application of State Law (Add New § 2; Amend § 3)

Issue:

The Model does not provide the state or insurance commissioner with clear authority to regulate a short-term insurance plan issued to a resident of the state through an association or "group trust" when the policy is delivered to the association or "group trust" in another state. Typically, this is done by issuing the policy in the other state and then issuing certificates to the residents in numerous other states.

Recommendation:

The Model should be amended to clarify that insurance regulators have jurisdiction to regulate all short-term insurance plans covering residents of their states, even if the policy is delivered or issued in another state (*e.g.,* to a group or association).

Suggested language:

1. Insert a New Section after Section 2 and renumber subsequent sections:

   Section 3. Applicability

   This Act shall apply to short term insurance plans delivered or issued for delivery to residents of this state, regardless of the situs of the contract or policy.

2. Clarify the definition of "short term insurance plan" to match the new applicability section by modifying current § 3(d) as follows (bracketed and struck through language deleted):

   "Short Term Insurance Plan" means [~~a policy of~~]health insurance that…

Rationale:

A common approach to writing short-term insurance plans is to deliver the policy to a group or association located in one state and sell the coverage in other states while claiming that these other states do not have jurisdiction over the short-term insurance plans because the policy was delivered in another state. However, states where covered individuals live have jurisdiction to regulate these short-term insurance plans if the model law is written to include them because premiums are collected from these states, coverage documents are sent into these states and healthcare provider payments are sent into these states.

The proposed applicability section clarifies this authority by providing that the Model applies to short-term insurance plans delivered or issued for delivery in a state, regardless of the situs of the contract. The proposed change to the definition of "Short Term Insurance Plan" clarifies that the short-term insurance plan does not necessarily have to be a "policy" to trigger application of

the Model. Under this definition, the Model would apply even to a certificate of group insurance delivered or issued for delivery in a state.

II. Clarify Application of Annual Limit Requirement (Amend § 3(d)(3); Add § 6)

Issue:

The definition of "short term insurance plan" is written in a way that allows some products to escape the requirement to have an annual limit of $2,000,000.

Recommendation:

Suggested language:

1. Eliminate current § 3(d)(3).

2. Insert a new section after Section 5 and renumber subsequent sections:

   Section 6.

   A short term insurance plan shall have an annual limit of at least two million dollars ($2,000,000).

Rationale:

The proposed change ensures the Model captures all short-term insurance plans in a state. If this provision was left in the definition of short-term insurance plan, then plans that have a lower annual limit, theoretically, would not be considered short-term insurance plans and would evade the Model's requirements.

III. Regulation of Rescissions (New Section)

Issue:

The Public Health Service Act requirements to rescission do not apply to short-term, limited-duration insurance and state law often does not address this.

Recommendation:

A section should be added to the Model incorporating the same standards as applied to group and individual health insurance coverage.

Suggested language:

Insert a new section as follows:

Section __. Rescission

An insurer that issues a short term insurance plan shall not rescind such plan or coverage with respect to an enrollee once the enrollee is covered under such plan involved, except for an act or practice that constitutes fraud or intentional misrepresentation of material fact consistent with the requirements in Public Health Service Act § 2712 (42 U.S.C. § 300gg-12) and 45 C.F.R. § 147.128 or their successors.

Rationale:

The minimum federal requirements in the Public Health Service Act for rescission of health insurance coverage do not apply to short-term insurance plans. Having a standard for rescission is an important consumer protection. We recommend that the federal requirements on rescission of health insurance coverage be applicable to short-term insurance plans under the Model. This change is important because it protects the individual from losing coverage due to an innocent omission in their medical history during the application process. Under our suggestion, rescission could occur in cases of fraud or intentional misrepresentation of material facts, but in no other circumstances. This protects covered individuals from unexpectedly losing coverage when they did not intend to misrepresent or commit fraud.

IV. Disclosure Relating to Short Term Insurance Plans (Amend § 7)

Issue:

Consumers should understand the benefits covered by a short-term insurance they are considering buying.

Recommendation:

We suggest using the robust short-term insurance plan disclosure recently enacted in Texas. We propose replacing current § 7 of the Model with the language of the Texas provision that appears in Appendix 1 of this letter.

Note that in the Appendix, the provision in Subsection (b), Paragraph (7), does not appear in the Texas provision. We suggest including this requirement to inform consumers of the existence of maximum allowable charges on short-term insurance plans that cap reimbursements at, for instance, 120 percent of Medicare allowable charges or of any dollar limits or annual limits on certain benefits, resulting in sizable “surprise” for consumers. For example, some plans are marketed as providing the freedom to choose any provider, but the maximum allowable charges such as being limited to 120 percent of Medicare are not disclosed in marketing materials.

Rationale:

We appreciate your incorporation of our feedback specifying which essential health benefits are not covered by a short-term insurance plan. This helps consumers understand the benefits of the short-term insurance plan they are buying. However, we recently became aware of more robust disclosure language for short-term insurance plans that Texas recently enacted (see

Appendix 1). This strong disclosure provision ensures consumers know what they are getting (or not getting) when they consider short-term insurance plans.

While the appendix is somewhat lengthy, including this disclosure provides consumers with additional information they likely do not otherwise receive, at least in a clear manner, from marketing materials. Given the significant amount of press coverage about consumers finding out they owe hundreds of thousands of dollar in medical bills for services not covered by their short-term plan, we believe, similar to the Texas state legislature, that this level of disclosure is important.

V. Network Based Plan Requirements (Amend §§ 3(c) and 6)

Issues:

1. Use of both the terms "participating provider organization" and "network based plan" for all types of provider network arrangements is confusing.

2. Network requirements do not apply to mental health and substance abuse services.

Recommendation:

1. Sections 3(c) and 6 should be amended to replace the term "participating provider organization" with "network based plan." Suggested language (bracketed and struck through language deleted; italicized and underlined language added):

   § 3(c): *"Network based plan"*[~~"Preferred Provider Organization"~~] means a type of health plan that contracts with healthcare providers to create a network of participating providers to provide healthcare services at a discounted cost to covered persons.

   § 6: Network Based Plan Requirements

   (a) This section applies to an insurer that issues a short term insurance plan and undertakes a *network based*[~~preferred provider~~] plan to render health care services to covered individuals under the short term insurance plan.

   (b) An insurer described in subsection (a) shall ensure that the *network based*[~~preferred provider~~] plan meets the following requirements:

      (1) The *network based*[~~preferred provider~~] plan includes essential community providers in accordance with PPACA.

      (2) The *network based*[~~preferred provider~~] plan is sufficient in number and types of providers (other than mental health and substance abuse treatment providers) to assure covered individuals' access to all health care services without unreasonable delay.

(3) The *network based*[~~preferred provider~~] plan is consistent with the network adequacy requirements that:

(i) apply to qualified health plan issuers under 45 [~~CFR~~]*C.F.R. §* 156.230(a) and 45 [~~CFR~~]*C.F.R. §* 156.230(b); and

(ii) are consistent with subdivisions (1) and (2).

2. Section 6(b)(2) should be amended to apply network plan requirements to those short-term insurance plans that cover mental health and substance abuse treatments. Suggested language (bracketed and struck through language deleted; italicized and underlined language added):

   The preferred provider plan is sufficient in number and types of providers [~~(other than mental health and substance abuse treatment providers) ~~]*for covered services* to assure covered individuals' access to all health care services without unreasonable delay.

Rationale:

1. We appreciate the change to the current § 6 title to use the term "network based plan" so that it applies to network-based plans, including preferred provider organizations, health maintenance organizations and exclusive provider organizations. For consistency, the term "network based plan" should be used where the terms "preferred provider plan" and "preferred provider organization" are used in current §§ 3 and 6.

2. Also for consistency, we recommend that if a short-term insurance plan covers mental health and substance abuse services, the short-term insurance plan should be subject to network-based plan requirements. While the Model does not require coverage of mental health and substance abuse services, if a short-term insurance plan does cover them, the network should be sufficient to ensure that those services are actually available to enrollees.

Appendix 1
Text of Suggested Provision on Disclosure Relating to Short Term Insurance Plans
Based on
Tex. Ins. Code § 1509.002 (Acts 2019, 86th Leg., ch. 657 (S.B. 1852), § 3, eff. Sept. 1, 2019)

(a) The commissioner [use name of state's chief insurance regulatory official] by rule shall prescribe a disclosure form to be provided with a short term insurance plan and application.

(b) The disclosure form must be in an easily readable font at least 14-point in size and include:

(1) the duration of coverage;

(2) a statement:

(A) of the number of times the short term insurance plan may be renewed or that the policy may not be renewed, as applicable;

(B) that the expiration of short term insurance plan is not a qualifying life event that would make a person eligible for a special enrollment period; and

(C) that the short term insurance plan may expire outside of the open enrollment period;

(3) to the extent the information is available, the dates of the next three open enrollment periods under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) following the date the short term insurance plan expires;

(4) whether the short term insurance plan contains any limitations or exclusions to preexisting conditions;

(5) the maximum dollar amount payable under the short term insurance plan;

(6) the deductibles under the short term insurance plan and the health care services to which the deductibles apply;

(7) whether there is a cap on reimbursements for individual services and a description of the cap;

(8) whether the following health care services are covered, including:

(A) prescription drug coverage;

(B) mental health services;

(C) substance abuse treatment;

(D) maternity care;

(E) hospitalization;

(F) surgery;

(G) emergency health care; and

(H) preventive health care; and

(9) any other information the commissioner [use name of state's chief insurance regulatory official] determines is important for a purchaser of a short term insurance plan.

(c) An insurer issuing a short term insurance plan shall adopt procedures in accordance with commissioner rule to obtain a signed form from the insured acknowledging receipt of the disclosure form described by this section. The rule must allow for electronic acknowledgment. The insurer shall retain an acknowledgment form until the fifth anniversary of the date the insurer receives the form, and the insurer shall make the form available to the commissioner [use name of state's chief insurance regulatory official] on request.