

# Understanding the Federal Short-Term Limited Duration and Fixed Indemnity Rule

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# Short-Term Limited Duration Insurance

- Short-term limited duration insurance has existed for decades
  - Underwritten
  - Long pre-existing condition lookback
  - Limited coverage (i.e. no mental health, no Rx coverage)
- For a very long time, “Short-Term” was defined in various federal rules (not just STLDI) as less than 1 year
- Pre-ACA States had varying law but most states allowed policies of less than 1 year often with an extension
- Provides coverage to fill insurance gaps
  - Missed open enrollment deadline
  - Between jobs or when school-based coverage ends

# Short-Term Limited Duration Insurance has been the subject of significant controversy

- The ACA individual market protections created a distinction. STLDI does not have guaranteed issue, essential health benefits, or cost-sharing limits
  - Poses risks for consumers who do not understand the differences
- The Obama administration defined short-term as a 3-month policy that could not be extended but could enroll in multiple consecutive policies
  - Was ultimately never enforced
- The Trump Administration redefined short-term as less than one year and separately defined limited duration as less than 3 years
  - Allowed policies to be 3 years – close to typical enrollment time in individual major medical plans

# Hospital and Fixed Indemnity

- Offers fixed payments based on benefit triggers
  - \$100 / day hospital payment
  - \$25
- Not designed to cover all costs
  - Protection for unexpected costs, deductibles, co-pays etc.
- Under HIPAA is an “excepted benefit” when offered as an independent “non-coordinated” benefit
- Obama administration rules required that all policies certify that the consumer had major medical coverage at time of purchase
- Central United v. Burwell struck down the requirements
- States are the primary regulator of these plans
  - NAIC Model 170 and 171
  - Rate and Form Filing
  - Agent licensure
  - Consumer Complaints

# Hospital and Fixed Indemnity

- Similar to STLDI, fixed indemnity coverage has been developed, marketed and sold to consumers as a replacement for ACA coverage
- Some insurers have offered plans that look very much like major medical plans
  - Fee schedules that include separate prices for every possible procedure
  - Coverage exceeding \$1 million year
  - Similar to pre-ACA individual market coverage
- Not all states have taken action
  - Problematic policies have been approved for sale
  - Many states have “file and use” for these policies with limited review
  - Even with new Market Conduct Annual Statement no sense of the size of the market

# Final Rule - STLDI

- Federal definition of STLDI: term of no more than three months, and maximum duration of no more than four months
- Plans cannot be renewed or extended by the same issuer or any issuer in the same controlled group, to the same policyholder within a 12-month period
- Requires a standard be prominently displayed on all plan documents and online, stating that the STLDI is not comprehensive health coverage and does not have the consumer protections of a Marketplace plan
- Individuals who lose eligibility for STLDI coverage are already eligible for a special enrollment period (SEP) and have 60 days to enroll in a group health plan
- No SEP into individual market coverage
- Effective date: policies or contracts sold on or after September 1, 2024

# Final Rule - Fixed Indemnity

- Revised consumer notice that is currently required for fixed indemnity excepted benefits coverage in the individual market
- New requirement to provide a consumer notice in the group market
- Plans and issuers must prominently display the notice in marketing, application, and enrollment (and reenrollment) materials in the individual and group markets
- Effective date January 1<sup>st</sup>, 2025

# Proposed But Not Finalized

- Fixed Indemnity
  - The agency proposed a number of reforms that were not ultimately finalized
  - Payments on a strict per-period basis, for a fixed dollar amount, regardless of expenses incurred
  - Plans must be independent and not coordinate with other coverage
  - IRS tax treatment of excepted benefits (i.e. if plans are offered on a pre-tax basis, the benefits would be a taxable event for both the employer and employee)
- Specified Disease
  - The agencies highlighted a concern that specified disease coverage could start operating like hospital and fixed indemnity coverage and as ACA replacement
- Level Funded Plans
  - The Tri Agencies are concerned that level funded (ERISA) plans do not provide ACA protections and will take good risk out of risk pool



# Possible Legal Issues

- Short-Term Limited Duration
  - Some states looking to sue over definition and federal authority
  - Changing long-time definition of short-term from 12 months to 3 months
  - Insurer “control” group definition violates decades of understanding in insurance law including issues in federal law like HIPAA.
- Fixed Indemnity
  - Likely lawsuit as speculation that the new notice violates administrative procedures act
  - Fixed indemnity is an excepted benefit
  - Manhattan Life (formerly Central United) suing on the fixed indemnity notice
    - Federal government excepted from regulation
    - Concern about “income replacement”
    - Notice is inaccurate – Fixed Indemnity is health insurance just not major medical or comprehensive health insurance

# HBI Concerns

- In general
  - These issues are better left to the states who
    - License agents and insurers
    - Review rates and forms
    - Conduct market conduct exams
    - Respond to consumer complaints
  - The federal government has no understanding of the issues and little ability to enforce
- Short-Term Limited Duration
  - Three months is too short and is anti-consumer
  - Control group may be unenforceable – does HIPAA allow data sharing in this way?
  - Current deadline will leave people uninsured
- Fixed Indemnity
  - Requiring new notices on policies that have been in force doesn't make sense
  - Notice is poorly written and inaccurate
  - Fixed Indemnity is NOT income replacement

# Patient and Consumer Concerns

- Consumer risk
  - The general understanding of what insurance is has evolved, and today's consumers expect a basic level of protection
  - Secret shopper studies consistently find misleading marketing, even during the COVID Medicaid redeterminations process (unwinding)
  - Patients and consumers face significant financial liability when attempting to use these types of limited products
  - Healthy people leaving the individual market for these plans, creates a smaller, sicker and more expensive risk pool.
- Short-term Limited Duration
  - Vast majority of patient, consumer, and physician groups support the rule
  - State action alone cannot address plans sold through associations across state lines
  - Comprehensive coverage is more affordable and available than ever before
- Fixed Indemnity
  - Notices are an important first step to helping consumers understand what they're purchasing
  - Concerns remain about the risk when indemnity plans are sold as a replacement for comprehensive coverage

***Questions?***

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