

June 26, 2018

Washington State Office of the Insurance Commissioner  
5000 Capitol Blvd SE  
Tumwater, WA 98501

Submitted via email to [rulescoordinator@oic.wa.gov](mailto:rulescoordinator@oic.wa.gov)

Re: Short-term limited duration medical plan rulemaking (WAC 284-43-xxx)

Dear OIC Rules Coordinator:

Northwest Health Law Advocates (NoHLA) appreciates the opportunity to submit these comments on OIC's proposed rulemaking on short-term limited duration medical plans. As advocates for improved access to health care, particularly for low-income and vulnerable Washington State residents, we support OIC's efforts to mitigate the effects of proposed federal rules which seek to undermine the individual market by expanding short-term limited duration (STLD) medical plans.

OIC's proposed limitations in the length of STLD plans and bar on issuing such plans during the open-enrollment period encourage individuals receiving coverage through ACA-compliant plans to remain in the ACA-compliant market. As a result, these provisions may help control increases in premium costs for Washingtonians resulting from healthy individuals leaving the marketplace for short-term plans that fail to provide meaningful coverage.

While these proposed rules make a substantial step toward protecting our state insurance market and preventing market segmentation, Washington consumers would benefit from stronger restrictions on the look-back period for pre-existing conditions and from provisions which ensure that the standard disclosure form be available in multiple languages.

**WAC 284-43-XXX: Definition of short-term limited-duration plan**

We strongly support the proposed limitations on the length of short-term limited-duration (STLD) plans, both in terms of the limitation to three months of coverage within any twelve-month period, and the bar on renewability. We also strongly support the bar on issuing STLD plans during open enrollment. These limitations make it easier for consumers to distinguish between short-term and ACA-compliant plans and prevent individuals from being incentivized to use STLD plans as a replacement for meaningful health care coverage.

We appreciate the proposed limitations on the look-back period for pre-existing conditions. However, OIC's proposed 24-month look-back period remains substantial. Short-term plans, especially with a three-month limit, will be used primarily by individuals who have recently lost coverage, often unexpectedly. If they had coverage until shortly before applying for STLD, there is no reason to exclude coverage for a pre-existing condition that was recently covered. The concept of portability should apply, just as it did in the Washington insurance marketplace before the ACA was implemented. We recommend both shortening the look-back period and ensuring that it does not exceed the period since they were last insured. This would protect Washington consumers using STLD plans during unexpected gaps in coverage.

Subsection (a) of the proposed definition relies on the term "major medical coverage" defined in WAC 284-50-350(1). There, major medical expense coverage is subject to an aggregate maximum of not less than \$10,000. We recommend, however, that the aggregate maximum for short-term limited duration plans be not less than \$1 million.

**Recommendation:**

Restrict the look-back period for pre-existing conditions to three months **or** the period during which the purchaser has been uninsured, whichever is shorter.

Change the aggregate maximum for short-term limited duration plans to not less than \$1 million.

**WAC 284-43-XXX: Standard disclosure form for short-term limited-duration medical plans.**

We support the strong standard disclosure for STLD plans. We particularly appreciate the language informing potential purchasers of STLD plans that "[h]ealth plans sold through the exchange provide more coverage and protections" and providing links to purchase a plan through the state exchange and to check whether purchasers qualify for a special enrollment period. These provisions facilitate easier enrollment in the Exchange, help to preserve the ACA-compliant market, and encourage consumers to purchase insurance that covers essential health benefits.

While OIC's proposed disclosures make it clear to consumers that STLD plans are not ACA-compliant, Washington State regulations bar issuers from conditioning or limiting enrollment for "health plans" based on preexisting health conditions. WAC 284-43-5000. Although plans "deemed by the insurance commissioner to have a short-term limited purpose or duration" are exempted from this requirement (WAC 284-43-0160(17)(k)), consumers may be inclined to believe that state policies nonetheless require STLD carriers to provide coverage for preexisting health conditions. Thus, we recommend that proposed language referring to short-term limited duration "health plans" be changed to remove ambiguity.

OIC's disclosure requirements could be further improved with additional disclosures. We are concerned that the need for disclosures of these limited policies is highly important and must be made clear to all consumers, including those who are limited English proficient. There must be a way to identify consumers who need translated disclosures so as to ensure they do not enroll without a full understanding of the limitations of STLD plans. We are doing additional research on language access and will send more information to OIC by mid-July.

**Recommendation:**

Add the phrase "pre-existing conditions" to the disclosure. While the language in OIC's proposed standard disclosure form is clear and understandable, consumers familiar with the term "pre-existing condition" may be looking for this language as they read the form.

*Proposed language:*

CAUTION: This plan may not cover any pre-existing medical or behavioral health condition you have or have had before enrolling in this plan.

Add language making it explicit that loss of eligibility or coverage in a short-term plan does not trigger a special enrollment period.

*Proposed language:*

When this plan expires or if you no longer qualify for this plan, you may have to wait until the next open enrollment period to buy health insurance. Open enrollment begins November 1 each year for coverage that is effective beginning the upcoming January. Loss of eligibility or coverage in this plan does not allow you to apply for other health insurance before the next open enrollment period.

Update the language in section (1) of the standard disclosure provisions to reflect the fact that STLD plans may not be considered "health plans" according to WAC 284-43-0160(17)(k).

*Proposed language:*

- (1) For short-term limited duration medical plans issued on or after January 1, 2019, all carriers offering a short-term limited duration medical plan must issue a disclosure form for each short-term limited duration ~~health~~ medical plan in the same format and with the same content as the standard disclosure form included in this section. This disclosure form must be provided to the person at the time of completion of the medical plan application.

Require STLD plan carriers to identify limited English proficient applicants, and issue the disclosure in the language they indicate they can read, or provide an interpreter.

**WAC 284-43-XXX: Short-term limited-duration medical plan cancellation and rescission.**

We appreciate the protections limiting carriers' ability to cancel or rescind STLD plans. However, subsections (3) and (4) of this proposed rule contain differences in language that OIC may want to address before finalizing the proposed rulemaking on cancellation and rescission. Subsection (4), which provides that "the falsity of any ... statement shall not bar the right to recovery under the contract unless such false statement was made with actual intent to deceive *or unless it materially affected either the acceptance of the risk or the hazard assumed by the carrier*" (emphasis added), undermines the very consumer protections afforded by this rule.

For example, if a person failed to disclose a particular condition in their application for coverage because they did not think that it counted as a preexisting condition, while such misrepresentation would not be deemed material under section (3), it might nevertheless "materially [have] affected either the acceptance of the risk or the hazard assumed by the carrier," barring the right to recovery under the contract. For this reason, we urge OIC to remove this language, which protects STLD carriers rather than consumers.

**Recommendation:**

Eliminate the final clause of subsection (4) to ensure consumer protections against cancellation and rescission of STLD plans by carriers.

*Proposed language:*

(4) In any application for a short-term limited duration medical plan made in writing by a person, all statements in the application by the person shall, in the absence of fraud, be deemed representations and not warranties. The falsity of any such statement shall not bar the right to recovery under the contract unless such false statement was made with actual intent to deceive ~~or unless it materially affected either the acceptance of the risk or the hazard assumed by the carrier.~~

Update subsection (3) to reflect language in subsection (4) regarding intent.

*Proposed language:*

(3) Except as provided in subsection (4) of this section, no oral or written misrepresentation or warranty made in the process of applying for a short-term limited-duration medical plan, by the person applying for coverage or on his or her behalf, shall be deemed material or allow the carrier to rescind the medical plan, unless the misrepresentation or warranty is made with the actual intent to deceive.

Thank you for your consideration of these comments.

Sincerely,

/s/

Huma Zarif  
Staff Attorney

/s/

Shireen Farahani  
Legal Intern

Northwest Health Law Advocates  
101 Yesler Way, Suite 300  
Seattle, WA 98104