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To: Senate Committee on Finance  
From: Jill Rickard, Department of Financial Regulation  
Date: April 6, 2018  
Re: H.892 Proposed Amendments

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Dear Senators:

Thank you for the opportunity to propose the following amendments to H.892. Further to my testimony in your committee Thursday, I've provided language below for the three amendments I discussed. This language has been reviewed and is supported by the federal health care issues working group.

I. Renewability

The Department understands that some insurers may be using a practice known as "4 by 3s" to circumvent the Affordable Care Act's prohibition on renewability of short-term, limited duration insurance (STLDI) policies. This practice involves issuing new policies every three months (four policies, three months each).

We would propose the following **bolded** language be added to 8 V.S.A. § 4084a(c) to clarify that policies may only be issued for three months in any 12-month period:

(c) A short-term, limited-duration health insurance policy or contract shall be nonrenewable. **No insurer shall issue or renew a short-term, limited-duration health insurance policy or contract to any person who has been covered under such a policy or contract for three months or more within the preceding 12-month period.**



II. External appeals

The bill appears to leave STLDI insureds without an appeal route, because it does not incorporate the existing independent external appeals process in 8 V.S.A. § 4089f. We would propose the following language be added as 8 V.S.A. § 4084a(f):

**(f) The provisions of section 4089f of this title, and any rules adopted under that section, shall apply to short-term, limited duration health insurance coverage.**

III. Enforcement

The bill appears to leave a gap in the Department's enforcement powers, because neither the Insurance Trade Practices Act (8 V.S.A. § 4724) nor the general insurance enforcement authority in 8 V.S.A. § 3661 clearly encompasses self-insured association health plans (AHPs).<sup>1</sup>

Federal rules may be promulgated that limit the Department's regulatory authority over self-insured AHPs to solvency and contribution standards. However, it would remain important to authorize the Department to take the actions set forth in 8 V.S.A. § 3661 in case a self-insured AHP violates a Vermont law. Examples of such violations would include misrepresentation of financials, embezzlement of premiums, or, if an AHP processes claims itself rather than using a third-party administrator, violating the provisions of the Insurance Trade Practices Act.

We would propose the following language be added as 8 V.S.A. § 4079a(c):

**(c) The provisions of 8 V.S.A. § 3661 shall apply to association health plans.**

I understand the federal health care issues working group may be providing one additional amendment proposal regarding application of the claims tax in Title 32 to STLDI. If you have any questions or require additional information, please don't hesitate to contact me.

Sincerely,



Jill Rickard

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<sup>1</sup> The Insurance Trade Practices Act does not make a violation of a statute an unfair trade practice and 8 V.S.A. § 3661 applies to "insurers," which arguably does not include self-insured AHPs.