

# SHORT TERM – LIMITED DURATION INSURANCE AND ASSOCIATION HEALTH PLANS

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# SHORT TERM – LIMITED DURATION INSURANCE (STLDI)

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- Fill temporary gaps or lapses in health insurance coverage.
- Exempt from ACA requirements
  - Underwritten
  - Restrict coverage for pre-existing conditions
  - Not required to cover Essential Health Benefits
- Under current federal regulation:
  - Plans are limited to a 3-month period, are nonrenewable, and must clearly disclose that they are not qualified health coverage under the ACA.

# EXECUTIVE ORDER

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- Executive Order 13813 asked the Secretaries of the Treasury, Labor, and Health and Human Services should consider “**allowing such insurance (STLDI) to cover longer periods and be renewed by the consumer.**”
- As of 1/9/2018 proposed regulations/rules have not been issued.

# VERMONT REGULATION OF STLDI

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- Currently no short term limited duration plans approved in Vermont.
  - United States Fire Insurance Co. filed STLDI plan
  - Department of Insurance review is on hold pending federal action as well as state action.
    - Per Act No.85: Sec. E.345.2 HEALTH INSURANCE REGULATION; MARKET STABILITY (a) The Green Mountain Care Board, the Departments of Financial Regulation and of Vermont Health Access, and other State agencies and departments with responsibility for the regulation of health insurers and health insurance plans shall, to the maximum extent permitted under federal law, take such actions as are necessary to maintain the existing health care regulatory framework and a stable health insurance market for major medical health insurance in 2017 while the General Assembly is not in session.

# NAIC - STLDI

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- Did not support limiting plan durations to 3 months. Could potentially harm consumers by limitations around duration and renewability:
- “Instead of redefining short-term, limited duration plans, the focus should be on educating consumers and ensuring that they are aware of the limitations of these and other excepted benefit plans...Consumers complain that they were confused or misinformed when they purchased a policy that appeared similar to a major medical policy and thought they had purchased comprehensive medical coverage that complied with the ACA. However, when the consumer made a claim, they were dismayed to learn that the policy limited coverage and had pre-existing condition exclusions.”
- Comment on Proposed Federal Regulation of Short Term Limited Duration Insurance; August 9, 2016  
[http://www.naic.org/documents/government\\_relations\\_160809\\_hhs\\_reg\\_short\\_term\\_dur\\_plans.pdf](http://www.naic.org/documents/government_relations_160809_hhs_reg_short_term_dur_plans.pdf)



# STLDI – CONSIDERATIONS

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- STLDI is usually less expensive than major medical coverage offered through the State or Federal Marketplaces.
- Plans can be underwritten and do not have to be ACA compliant
- Still must comply with Vermont state mandated health benefits
- Expansion of short term limited duration plans has potential to draw healthy lives away from individual exchange population.
- Vermont does not currently have any legislation or regulation specifically addressing short term limited duration plans.

# ASSOCIATION HEALTH PLANS

- Coverage offered to collections of individuals and/or employers through entities that may be called associations, trusts, multiple employer welfare arrangements (“MEWAs”), purchasing alliances, or purchasing cooperatives.

# ASSOCIATION HEALTH PLANS (AHP)

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- Policy can be held by the association (fully-insured) or the association self-insures for members' medical claims.
- “...the group health plan exists at the individual employer level and not at the association-of-employers level...the size of each individual employer participating in the association determines whether that employer's coverage is subject to the small group market or the large group market rules.”
- CMS Insurance Standards Bulletin, Application of Individual and Group Market Requirements Under Title XXVII of the Public Health Service Act when Insurance Coverage is Sold to, or through, Associations (September 1, 2011)
- [https://www.cms.gov/CCIIO/Resources/Files/Downloads/association\\_coverage\\_9\\_1\\_2011.pdf](https://www.cms.gov/CCIIO/Resources/Files/Downloads/association_coverage_9_1_2011.pdf)



# PROPOSED RULE – DEPARTMENT OF LABOR / 01-05-2018

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- Proposed regulation would expand the conditions where a group of employers could satisfy the definition of “employer” under ERISA section 3(5)
- Treat Associations as an “Employer” Sponsor of an Employee Welfare Benefit Plan

# DEFINITION: EMPLOYER WELFARE BENEFIT PLAN

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- “any plan, fund, or program . . . established or maintained by an **employer** or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing . . . medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment. . . .”
- ERISA Preempted

# DEFINITION: EMPLOYER

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- “... any person acting directly as an employer, or indirectly in the interest of an employer, in relation to an employee benefit plan; and includes a group or association of employers acting for an employer in such capacity.”
- Current Elements of Employer Commonality Test:
- (1) whether the group or association is a bona fide organization with business/organizational purposes and functions unrelated to the provision of benefits;
- (2) whether the employers share some commonality and genuine organizational relationship unrelated to the provision of benefits; and
- (3) whether the employers that participate in a benefit program, either directly or indirectly, exercise control over the program, both in form and substance

# PROPOSED RULE

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- **Employers Could Band Together for the Single Purpose of Obtaining Health Coverage**
- In the same trade, industry, line of business, or profession (business purpose)
- Have principal place of business within a region that does not exceed the boundaries of the Same state or the same metropolitan area (metro area can include more than one state) (geographic)
- Does not have to exist for purpose other than providing insurance
- Do not have to be a pre-existing organization

# PROPOSED RULE

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- **The Group or Association Must Have An Organizational Structure and Be Functionally Controlled by its Employer Members.**
- Formal organizational structure with governing body and by-laws
- “Act in the interest” of participating employers
- Employer members control AHP
- Mirrors current sub-regulatory guidance

# PROPOSED RULE

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- **Group or Association Plan Coverage Must Be Limited to Employees of Employer Members and Treatment of Working Owners**
- Ensure that the groups or associations sponsoring the covered AHPs are bona fide employment-based
- Working owners may be participants in AHP regardless of the legal form in which the business is operated (e.g., sole proprietors or other working owners of businesses, whether incorporated or unincorporated)



# PROPOSED RULE

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- **Health Nondiscrimination Protections**
- Cannot restrict membership in the association based on any health factor, as defined in the HIPAA/ACA health discrimination rules

# VERMONT LAW

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- 8 V.S.A. §3368 prohibits any insurer from marketing a plan in Vermont unless it is licensed to do business in the state;
- 8 V.S.A. § 4079(2) permits group policies to be issued to Associations and MEWAS that:
  - Have a minimum of 100 persons at the time of incorporation if formed outside this State, and a minimum of 25 persons at the time of incorporation if formed in this State;
  - Organized and maintained in good faith for purposes other than that of obtaining insurance;
  - Existence for at least one year; and
  - Shall have a constitution and bylaws

# MULTIPLE EMPLOYER WELFARE ARRANGEMENT

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- For purpose of proposed rule, AHPs would be considered a type of MEWA
  - ERISA plan that covers the employees of two or more unrelated employers
- 1983 ERISA amendment gave State insurance regulators joint authority over MEWAs
- AHPs would be subject to State Insurance Laws and Regulations
  - Solvency and reserve contributions to ensure payment of promised benefits
- Fully Insured vs Self Insured
- “Because AHPs are MEWAs under ERISA, States also may have flexibility under ERISA’s MEWA provisions to extend benefit standards to self-insured AHPs. ERISA generally precludes States from applying such standards to self-insured ERISA plans that are not MEWAs.” p.53, Footnote 30

# ADDITIONAL RESOURCES

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- Proposed Rule: <https://www.gpo.gov/fdsys/pkg/FR-2018-01-05/pdf/2017-28103.pdf>
- MEWA Regulatory Guidance: <https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/publications/mewa-under-erisa-a-guide-to-federal-and-state-regulation.pdf>
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