



*American Council
of Life Insurers*

Creating Connections

Seizing Opportunities

ACLI Annual Conference 2018

The Impact of STLDI Regulations on Supplemental Benefits

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Background

- What is Short Term Limited Duration Insurance?
 - Originally intended to be temporary primary coverage for people in transition
 - Excluded from the HIPAA and ACA definition of individual health insurance (See, 42 USC §300gg-91; 45 CFR §144.103) & Exempt from all ACA requirements
 - Key Features:
 - Temporary coverage (usually 3 – 9 months)
 - Underwriting and pre-existing condition exclusions allowed
 - Usually not network-based coverage
 - Wide variation in which health benefits are covered
 - Sometimes crafted with indemnity-type benefits rather than expense-based
 - Usually has relatively low annual benefit limits
 - Negative regulatory perception of STLDI exists in many states due to marketing practices, benefit limits, narrow scope of coverage, and consumer complaints
 - Obama Administration limited duration to 3 months

Why Has STLDI Become an Issue?

- New STLDI federal regulation (See, 83 FR 38212 (8/3/18)) effective October 2, 2018 expands permitted coverage, key aspects of the regulation include:
 - Initial coverage period up to 12 months
 - Renewability allowed up to total of 36 months with same carrier and same policy
 - Notice to consumers required regarding type of coverage being provided (but, no consumer acknowledgement required)
 - Severability clause allows regulation to survive even if the 36 month renewability is invalidated by a federal court
 - “Renewability guarantees” are permitted to extend coverage without underwriting at time of renewal; renewal guarantee permits coverage to be extended beyond 36 months, but requires a new contract of coverage and effective date (can be exact same policy form issued during first 36 months)
 - Coverage not subject to ACA minimum standards (e.g. can have pre-existing condition exclusion and no minimum benefit requirements)
- Many states are taking action to establish requirements for STLDI within their borders

What Does This Have To Do With Excepted Benefits?

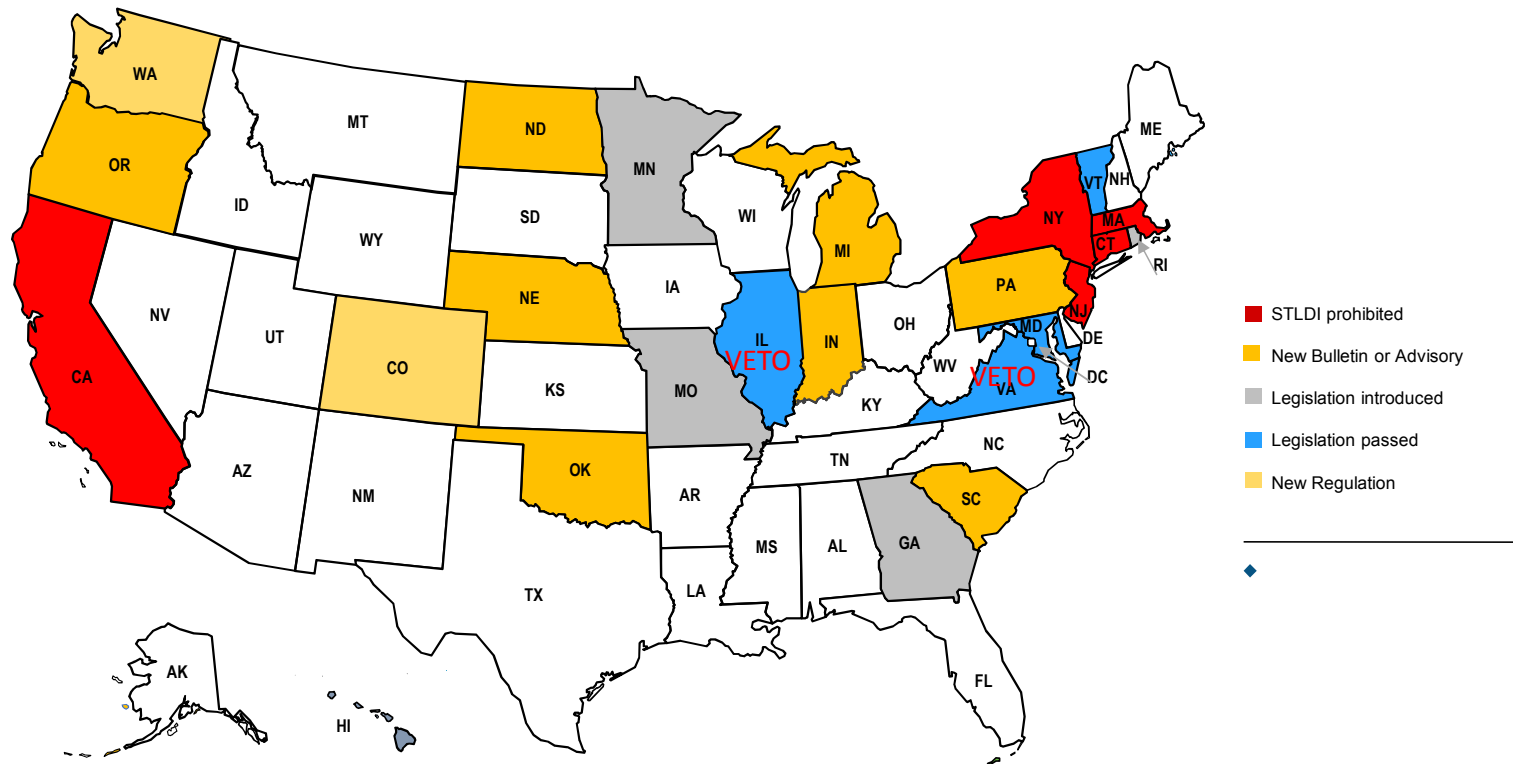
- Intertwined regulatory structure
 - State legal and regulatory provisions governing STLDI are often imbedded in the same sections as excepted benefits
 - Consumer advocates and many state regulators strongly dislike the new federal rule and will take action to impose limits and requirements on STLDI in their states creating potential for “spillover” onto traditional supplemental health products
 - STLDI is often structured to resemble supplemental fixed indemnity insurance
- Marketing practices for and product design of certain excepted benefits attracts negative regulatory attention

NAIC Models 170 and 171

- Previously “Minimum Standards for Accident and Sickness Insurance” included excepted benefits, STLDI, and major medical insurance
- Post-ACA, the NAIC created a separate ACA compliance model for major medical insurance coverage
- Models 170 and 171 will now encompass HIPAA excepted benefits and STDLI coverage
- Models will be called “Minimum Standards for Supplementary and Short Term Health Insurance”
- Greater focus on establishing standards for STLDI in Model 171 is expected in 2019

States Are Reacting to the New STLDI Rule

As of September 24, 2018





Regulatory and Industry Considerations for Reducing Market Confusion?

- Establishing clear requirements for STLDI which distinguishes STLDI from supplemental health products
- Proper marketing of supplemental health products as secondary or complementary to primary medical insurance
- Monitoring producer sales practices to prevent “bundling” fixed indemnity health products and marketing supplemental health products as a replacement for primary medical insurance
- Avoiding complex supplemental health product designs which push or exceed boundaries of excepted benefit status



Potential “Spill-over” to Excepted Benefits

- Regulatory and legislative proposals that could “spill over” to Excepted Benefit products:
 - Restrictions on underwriting
 - MLR requirements
 - Disclosure requirements that are appropriate for primary coverage but not supplemental benefits
 - Benefit and coverage mandates
 - Prohibitions on certain indemnity benefit structures
 - Marketing restrictions
 - Suitability requirements



Forms of “Spill-over”

- Intentional
 - Regulator/Legislator initiatives
 - States frontrunning NAIC process
 - Consumer advocates seeking to extend “protections” more broadly
- Unintentional
 - Sweeping in supplemental benefit products through incorrect drafting, often due to misunderstanding differences between STLDI and other supplemental benefits

“Spill-over” Prevention and Remediation

- Outreach and education to regulators/legislators
 - Distinguish supplemental products from STLD (medical insurance)
 - Distance products from ACA related issues and battles
 - Highlight value to consumers and popularity of indemnity products
 - Existing protections in place and segregated NAIC work being done on Reg. 171
- Lessons learned from Affordable Care Act implementation in the states



Impact of 2018 State Elections

- Governor's Races
 - Gubernatorial elections in 36 states this fall.
 - Republicans currently have a 33-16-1 advantage
 - Republicans will be defending 27 governorships to the Democrats' 9.
- Insurance Commissioner Turnover
 - Over-under odds of new commissioners for 2019 is 16, with that number trending upward.
 - 4 commissioner races this November (CA, GA, KS, OK)
- State Legislative Races
 - 87 of the nation's 99 state legislative chambers will hold elections for 6,070 seats
 - 82 percent of all state legislative seats will be up for election.
 - Due to retirements and primary losses, nearly one-fifth of state legislators elected in 2018 will be newcomers.



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