



Eric Milstead  
Director

# Legislative Services Office

## Idaho State Legislature

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### MEMORANDUM

**TO:** Senators PATRICK, Agenbroad, Ward-Engelking and,  
Representatives DIXON, DeMordaunt, Smith

**FROM:** Elizabeth Bowen - Principal Legislative Drafting Attorney

**DATE:** August 07, 2019

**SUBJECT:** Temporary Rule

IDAPA 18.04.18 - Rules Governing Short-Term Health Insurance Coverage (New Chapter) - Adoption of Temporary Rule - Docket No. 18-0416-1902

We are forwarding this temporary rule to you for your information only. No analysis was done by LSO. This rule is posted on our web site. If you have any questions, please call Elizabeth Bowen at the Legislative Services Office at (208) 334-4845. Thank you.

Attachment: Temporary Rule

Kristin Ford, Manager  
Research & Legislation

Paul Headlee, Manager  
Budget & Policy Analysis

April Renfro, Manager  
Legislative Audits

Glenn Harris, Manager  
Information Technology

**IDAPA 18 – IDAHO DEPARTMENT OF INSURANCE**  
**18.04.16 – RULES GOVERNING SHORT-TERM HEALTH INSURANCE COVERAGE**  
**DOCKET NO. 18-0416-1902 (NEW CHAPTER)**  
**NOTICE OF RULEMAKING – ADOPTION OF TEMPORARY RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2019.

**AUTHORITY:** In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Sections 41-211, 41-4207, 41-5211, Idaho Code, and House Bill 275.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule:

On August 3, 2018, the U.S. Departments of Treasury, Labor and Health and Human Services issued new rules to amend the definition of short-term, limited-duration insurance to lengthen the maximum duration of short-term health insurance. This rulemaking follows enactment of HB 275 which defined enhanced short-term health insurance and directed the Department to establish standards through rulemaking.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

House Bill 275 passed the legislature and was signed into law by the Governor. This rule is new and will offer choices to consumers for individual health insurance.

This rule will allow enhanced short-term plans and define the consumer protections required to offer such plans. Carriers may begin offering these plans following the adoption of this rule.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the temporary rule, contact Weston Trexler at [weston.trexler@doi.idaho.gov](mailto:weston.trexler@doi.idaho.gov), or (208) 334-4315.

Dated this 28th day of June, 2019.

Dean L. Cameron, Director  
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**THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE FOR DOCKET NO. 18-0416-1902**  
**(NEW CHAPTER)**

**IDAPA 18**  
**TITLE 04**  
**CHAPTER 16**

**18.04.16 – RULES GOVERNING SHORT-TERM HEALTH INSURANCE COVERAGE**

**000. LEGAL AUTHORITY.**

This rule is promulgated and adopted pursuant to the authority vested in the Director under Chapters 2, 21, 42, and 52, Title 41, Idaho Code. (7-1-19)T

**001. TITLE AND SCOPE.**

**01. Title.** This rule is titled IDAPA 18.04.16, “Rules Governing Short-Term Health Insurance Coverage.” (7-1-19)T

**02. Scope.** The purpose of this rule is to implement Chapters 21, 42, and 52, Title 41, Idaho Code, regarding short-term, limited-duration insurance by separately defining requirements for enhanced short-term plans and nonrenewable short-term coverage, including minimum standards for benefits, rating rules, enrollment, renewability and required disclosure provisions. (7-1-19)T

**03. Applicability.** This rule applies to all enhanced short-term plans and nonrenewable short-term coverage that provide medical expense coverage. This rule shall not apply to short-term disability income protection coverage. (7-1-19)T

**002. WRITTEN INTERPRETATIONS.**

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements which pertain to the interpretation of the rules of this chapter, or to the documentation of compliance with the rules of this chapter. These documents will be available for public inspection and copying at cost in the main office and at each regional or district office of this agency. (7-1-19)T

**003. ADMINISTRATIVE APPEALS.**

All administrative appeals will be governed by Chapter 2, Title 41, Idaho Code, and the Idaho Administrative Procedure Act, Title 67, Chapter 52, Idaho Code, and IDAPA 04.11.01, “Idaho Rules of Administrative Procedure of the Attorney General.” (7-1-19)T

**004. OFFICE -- OFFICE HOURS -- MAILING ADDRESS, STREET ADDRESS AND WEB SITE.**

**01. Office Hours.** The Department of Insurance is open from 8 a.m. to 5 p.m. except Saturday, Sunday and legal holidays. (7-1-19)T

**02. Mailing Address.** The department’s mailing address is: Idaho Department of Insurance, P.O. Box 83720, Boise, ID 83720-0043. (7-1-19)T

**03. Street Address.** The principal place of business is 700 West State Street, 3rd Floor, Boise, Idaho 83720-0043. (7-1-19)T

**04. Web Site Address.** The department’s website is <https://doi.idaho.gov>. (7-1-19)T

**005. PUBLIC RECORDS ACT COMPLIANCE.**

Any records associated with these rules are subject to the provisions of the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code. (7-1-19)T

**006. -- 009. (RESERVED)**

**010. DEFINITIONS.**

For the purposes of this rule, the following terms will be used as defined below:

**01. Benchmark Medical Plan.** “Benchmark medical plan” means the health benefit plan identified by the U.S. Department of Health and Human Services to be applicable in establishing required benefit coverages by Qualified Health Plans within Idaho, excluding any supplements for pediatric dental or vision. (7-1-19)T

**02. Exchange.** “Exchange” means the Idaho health insurance exchange established through Title 41, Chapter 61, Idaho Code. (7-1-19)T

**03. Nonrenewable Short-term Coverage.** “Nonrenewable short-term coverage” means short-term, limited-duration insurance that is not renewable, has a duration of six (6) months or less in total, and does not meet the standards for an Enhanced Short-term Plan established by this rule. (7-1-19)T

**04. Preexisting Condition.** “Preexisting condition” shall not be defined more restrictively than the following: (7-1-19)T

**a.** A condition that would have caused an ordinarily prudent person to seek medical advice, diagnosis, care or treatment during the six (6) months immediately preceding the effective date of coverage; (7-1-19)T

**b.** A condition for which medical advice, diagnosis, care or treatment was recommended or received during the six (6) months immediately preceding the effective date of coverage; or (7-1-19)T

**c.** A pregnancy existing on the effective date of coverage. (7-1-19)T

**05. Qualified Health Plan.** “Qualified health plan” or “QHP” means a health plan that has been certified as such by the Exchange. (7-1-19)T

**06. Reissuance.** “Reissuance” or to “reissue” means the practice of the carrier issuing a short-term, limited-duration insurance policy covering at least one individual who had short-term, limited-duration insurance coverage within sixty-three (63) days of the policy’s effective date. This practice may also be called “replacement” or to “replace.” (7-1-19)T

**07. Short-term, Limited-duration Insurance.** “Short-term, limited-duration insurance” means health insurance coverage pursuant to a contract that has an expiration date specified in the contract that is less than twelve (12) months after the original effective date of the contract and, taking into account renewals or extensions, has a duration of no longer than thirty-six (36) months in total. (7-1-19)T

**011. GENERAL RULES FOR ENHANCED SHORT-TERM PLANS.**

**01. Application of Requirements.** Any short-term, limited-duration insurance that, considering possible renewals, reissuance or extensions, has a duration of longer than six (6) months in total shall be considered an enhanced short-term plan and subject to the requirements applicable to such a plan. (7-1-19)T

**02. Requirement to Offer Exchange Plans.** In order to offer an enhanced short-term plan, the carrier must also offer individual QHPs through the Exchange in the same service area. (7-1-19)T

**03. Guaranteed Issue.** Enhanced short-term plans must be offered only on a guaranteed issue basis. (7-1-19)T

**04. Portability.** Coverage through an enhanced short-term plan shall be considered qualifying previous coverage as defined by Chapter 52, Idaho Code, and therefore preexisting condition exclusions must be waived for the period of time an individual was previously covered by an enhanced short-term plan or other qualifying previous coverage. (7-1-19)T

**012. -- 019. (RESERVED)**

**020. ENROLLMENT.**

**01. Enhanced Short-term Plans.** Carriers may choose one of the following two options for enrolling individuals in enhanced short-term plans. (7-1-19)T

**a. Enrollment Throughout the Year.** A carrier that opts to allow year-round enrollment in enhanced short-term plans must apply the following provisions: (7-1-19)T

**i.** A preexisting condition exclusion period, as defined at Subsection 010.04, may be applied, subject to Section 41-5208, Idaho Code. (7-1-19)T

**ii.** The policy must be offered on a plan year rather than a calendar year basis. (7-1-19)T

**b. Enrollment Through an Annual Open Enrollment Period.** A carrier that opts to restrict enrollment in enhanced short-term plans to an annual open enrollment period must apply the following provisions: (7-1-19)T

**i.** No preexisting condition exclusion period may be applied. (7-1-19)T

**ii.** The beginning and ending dates of the open enrollment period shall be identical to those for enrollment in QHPs, unless the Director allows an extension of the open enrollment period for enhanced short-term plans, after determining it is in the public interest. (7-1-19)T

**iii.** Special enrollment periods must be allowed to the same extent as allowed for QHP enrollment. (7-1-19)T

**02. Nonrenewable Short-term Coverage.** Nonrenewable short-term coverage shall be offered on a year-round basis. (7-1-19)T

**021. RENEWAL AND REISSUANCE.**

**01. Enhanced Short-term Plans Renewals.** The following provisions apply to the renewal of enhanced short-term plans: (7-1-19)T

**a.** A policy must be renewable at the option of the enrollee, consistent with the provisions provided in Section 41-5207, Idaho Code. (7-1-19)T

**b.** No new application or questions concerning the health or medical condition of the covered individuals may be requested to effectuate the renewal. (7-1-19)T

**c.** A policy must not be renewed if a renewal would extend the total duration of coverage under the policy beyond thirty-six (36) consecutive months. (7-1-19)T

**d.** Upon exhaustion of a policy's renewability due to duration or age, the policyholder shall be eligible for enrollment into fully renewable coverage, including all of the current carrier's QHPs, when an enhanced short-term policy has been in effect for at least eleven (11) months. The carrier shall provide timely notification to the policyholder of this eligibility along with the notification of any offer of reissuance. (7-1-19)T

**02. Enhanced Short-term Plans Reissuances.** Enhanced short-term plans must be reissued at the option of the enrollee, upon exhausting any renewability due to duration or age, with the following provisions: (7-1-19)T

**a.** No new application or questions concerning the health or medical condition of the covered individuals may be requested to effectuate the reissuance. (7-1-19)T

**b.** The premium rate for reissuance shall be considered a change in premium rate and subject to the provisions of IDAPA 18.04.14.036.17, "Change in Premium Rate." (7-1-19)T

**03. Nonrenewable Short-term Coverage.** The following provisions apply to renewal and reissuance of nonrenewable short-term coverage, regardless of any change in benefits or to the terms of coverage: (7-1-19)T

**a.** Carriers are prohibited from renewing nonrenewable short-term coverage. (7-1-19)T

**b.** Carriers are prohibited from reissuing or replacing nonrenewable short-term coverage issued by the same or another carrier. (7-1-19)T

**022. RATING REQUIREMENTS.**

**01. Enhanced Short-term Plans.** The following provisions apply to the rates of enhanced short-term plans, in addition to any other requirements of Idaho Code or rules applicable to individual health benefit plans: (7-1-19)T

**a.** Unisex Rating. Premium rates may not vary according to gender. (7-1-19)T

**b.** Geographic Rating Areas. Geographic rating areas must be identical to those used for QHPs offered through the Exchange. (7-1-19)T

**c.** Medical Underwriting. Medical underwriting criteria may be used to ascertain the risk characteristics of an applicant, provided such criteria are limited to those found in the Universal Health Statement Addendum and available claims data. (7-1-19)T

**d.** Single Risk Pool. Enhanced short-term plans must comprise a single risk pool with all of a carrier's other actively marketed individual health benefit plans subject to Chapter 52, Title 41, Idaho Code. (7-1-19)T

**e.** Rating Period. The rating period shall be on a calendar year basis, meaning the rates filed must apply to all enrollees uniformly during a given calendar year, and changes to premium rates must occur at the start of a new calendar year. (7-1-19)T

**02. Nonrenewable Short-term Coverage.** The following provisions apply to the rates of nonrenewable short-term coverage, in addition to any other requirements of Idaho Code or rules for major medical health insurance coverage: (7-1-19)T

**a.** The rates for nonrenewable short-term coverage must not utilize case characteristics other than age, individual tobacco use, and geography. The rates may vary by the duration of coverage requested. (7-1-19)T

**b.** Case characteristics shall be applied in a uniform manner, without regard to the risk characteristics of an eligible individual. (7-1-19)T

**c.** An applicant's risk characteristics or health status shall not impact the premium rate. (7-1-19)T

**d.** The premium rate shall not change for the duration of the policy. (7-1-19)T

**023. -- 029. (RESERVED)**

**030. MINIMUM STANDARDS FOR BENEFITS.**

**01. Covered Benefits.** A policy subject to this rule must provide coverage for at least: (7-1-19)T

- a.** Daily hospital room and board expenses subject only to limitations based on average daily cost of the semiprivate room rate in the area where the insured resides; (7-1-19)T
- b.** Miscellaneous hospital services; (7-1-19)T
- c.** Surgical services; (7-1-19)T
- d.** Anesthesia services; (7-1-19)T
- e.** In-hospital medical services; and (7-1-19)T
- f.** Out-of-hospital care, consisting of physicians' services rendered on an ambulatory basis where coverage is not provided elsewhere in the policy for diagnosis and treatment of sickness or injury, diagnostic x-ray, laboratory services, radiation therapy, and hemodialysis ordered by a physician. (7-1-19)T

**02. Additional Benefits.** Any additional benefits may be included as part of the base contract or as a rider. A separate premium corresponding to benefits offered through a rider must be filed and actuarially justified. A policy subject to the rule must also provide not fewer than three (3) of the following additional benefits: (7-1-19)T

- a.** In-hospital private duty registered nurse services; (7-1-19)T
- b.** Convalescent nursing home care; (7-1-19)T
- c.** Diagnosis and treatment by a radiologist or physiotherapist; (7-1-19)T
- d.** Rental of special medical equipment, as defined by the insurer in the policy; (7-1-19)T
- e.** Artificial limbs or eyes, casts, splints, trusses or braces; (7-1-19)T
- f.** Treatment for functional nervous disorders, and mental and emotional disorders; or (7-1-19)T
- g.** Out-of-hospital prescription drugs and medications. (7-1-19)T

**03. Enhanced Short-term Plans Covered Benefits.** Enhanced short-term plans must provide covered benefits consistent with the Idaho benchmark medical plan, including: (7-1-19)T

- a.** Outpatient services; (7-1-19)T
- b.** Emergency care; (7-1-19)T
- c.** Hospitalization; (7-1-19)T
- d.** Maternity and newborn care; (7-1-19)T
- e.** Mental health and substance abuse disorder services; (7-1-19)T
- f.** Prescription drugs; (7-1-19)T
- g.** Rehabilitation treatment; (7-1-19)T
- h.** Laboratory services; and (7-1-19)T
- i.** Preventive care. (7-1-19)T

**04. Prescription Drug Formulary.** When a policy subject to this rule applies a prescription drug coverage formulary, the carrier's applicable formulary drug list must: (7-1-19)T

- a.** Include at least one drug in every United States Pharmacopeia (USP) category and class; (7-1-19)T
- b.** Cover a range of drugs across a broad distribution of therapeutic categories and classes and recommended drug treatment regimens that treat all covered disease states, and does not discourage enrollment by any group of enrollees; and (7-1-19)T
- c.** Provide appropriate access to drugs that are included in broadly accepted treatment guidelines and that are indicative of general best practices at the time. (7-1-19)T

**05. Cost Sharing.** A policy subject to this rule must meet the following cost sharing provisions: (7-1-19)T

- a.** Any coinsurance percentage is not to exceed fifty percent (50%) of covered charges. (7-1-19)T
- b.** The maximum out-of-pocket must be stated in the policy and in aggregate shall not exceed four percent (4%) of the aggregate annual limit under the policy for each covered person. All deductibles, copayments, coinsurance and any other cost-sharing must be applicable to the maximum out-of-pocket. The policy may include separate out-of-pocket limits applicable to particular services. (7-1-19)T
- c.** The annual limit must not be less than one million dollars (\$1,000,000) for each covered person. (7-1-19)T

**06. Benefit Requirements.** The minimum benefits required by Subsection 030.01 may be subject to all applicable deductibles, coinsurance and general policy exceptions and limitations. A policy may also have special or internal limitations for prescription drugs, nursing facilities, intensive care facilities, mental health treatment, alcohol or substance abuse treatment, transplants, experimental treatments, mandated benefits required by law and those services covered under Subsection 030.02 and other such special or internal limitations as are authorized or approved by the Director. Except as authorized by Subsection 030.05 through the application of special or internal limitations, a policy must be designed to cover, after any deductibles or coinsurance provisions are met, the usual, customary and reasonable charges, as determined consistently by the carrier and as subject to prior written approval by the Director or another rate agreed to between the insurer and provider, for covered services up to the annual limit. (7-1-19)T

**031. -- 039. (RESERVED)**

**040. REQUIRED DISCLOSURE PROVISIONS.**

In addition to complying with all applicable disclosure requirements found in IDAPA 18.04.08, "Individual Disability and Group Supplemental Disability Insurance Minimum Standards Rule," enhanced short-term plans and nonrenewable short-term coverage must display prominently, in the application for coverage, any application materials and the insurance contract, in at least 14 point type the following language:

"This coverage is not required to comply with certain federal market requirements for health insurance, principally those contained in the Affordable Care Act. Be sure to check your policy carefully to make sure you are aware of any exclusions or limitations regarding coverage of preexisting conditions or health benefits (such as hospitalization, emergency services, maternity care, preventive care, prescription drugs, and mental health and substance use disorder services). Your policy might also have lifetime and/or annual dollar limits on health benefits. If this coverage expires or you lose eligibility for this coverage, you might have to wait until an open enrollment period to get other health insurance coverage." (7-1-19)T

**041. SEVERABILITY CLAUSE.**

If any provision of this rule, or the application thereof to any person or circumstance, is held invalid, such determination shall not affect other provisions or applications of this rule which can be given effect without the invalid provision or application, and to that end the provisions of this rule are severable. (7-1-19)T

**042. -- 999. (RESERVED)**