

Bulletin 263

Disclosure Requirements for Short-Term Policies

"Short-term" health insurance policies were authorized by the Legislature in 1995. These nonrenewable policies are intended to provide inexpensive coverage on a temporary basis. One significant distinction between short-term coverage and regular individual coverage is that short-term policies do not give the policyholder any continuity of coverage rights.

Exclusion from continuity of coverage means that the short-term policy insurer may subject benefits to preexisting condition exclusions whether or not the insured had coverage for the condition under a prior policy. In addition, a short-term policyholder who subsequently obtains regular individual or group coverage is not treated as having had "prior coverage" for purposes of state or federal "portability" laws, and generally must start all over again for purposes of any applicable preexisting condition waiting periods. See 24-A M.R.S.A. §§ 2849-B(8), 2849-B(2)(A). (If short-term coverage is sandwiched between periods of regular coverage, the period of short-term coverage will be treated like any other break in coverage, so that continuity will apply between the two regular plans if the second one begins within 90 days after the first one expired.¹)

Fair marketing practices demand that everyone being sold a short-term policy be given full disclosure of the rights that they are waiving by choosing this coverage option. An obligation to furnish written disclosure is codified in law at 24-A M.R.S.A. § 2849-B(8)(A).

It is also essential that the subsequent insurer provide adequate disclosure, and use policy language that accurately reflects its intent. The continuity law allows — but does not require — insurers to disregard prior short-term coverage for purposes of imposing preexisting condition exclusions. 24-A M.R.S.A. § 2849-B(2)(A). If insurers choose to impose the maximal exclusion allowed by law, they must clearly spell this out in the terms of the policy, and must adequately explain the effects of the exclusion to applicants and insureds.

If the policy language does not explicitly provide that a period of prior short-term coverage will be treated as a break in coverage, that period cannot and will not be treated as a break in coverage. In particular, when the policy provides benefits for preexisting conditions to the extent they would be covered under prior health coverage, "prior coverage" includes a short-term policy unless there is a clear and unambiguous exception for prior short-term policies.

¹At the time this Bulletin is being written, some provisions of the continuity law currently permit a "3-month" gap in coverage rather than a "90-day" gap. Legislation to correct this inconsistency is pending. Where applicable, the 3-month standard must be honored unless and until this bill takes effect.

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