



Pete Ricketts, Governor

## NOTICE

**TO:** All Companies Writing Health Insurance in Nebraska

**FROM:** Bruce R. Ramge, CPCU, CIE  
Director of Insurance

**DATE:** September 14, 2018

**RE:** Short-Term Duration Medical Plan Filing Requirements

On August 3, 2018 the federal government finalized rules regarding short-term duration medical plans. The final rules go into effect on October 2, 2018. See 83 FR 38212. The federal rule created minimum standards for these plans, including two new disclosure requirements, which are dependent upon issuance date. The rule allowed the states to regulate the plans with regard to allowance of the plans, duration, benefits, disclosures and renewability of the plans.

Under the federal regulation, the following notice for policies having a coverage start date before January 1, 2019, titled "Notice 1" under the federal rule, must be prominently displayed in the contract and contain the following in 14-point type:

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, preventative 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. Also, this coverage is not "minimum essential coverage." If you don't have minimum essential coverage for any month in 2018, you may have to make a payment when you file your tax return unless you qualify for an exemption from the requirement that you have health coverage for that month.

With respect to policies having a coverage start date on or after January 1, 2019, the federal government requires that "Notice 2" must be prominently displayed also in 14-point type. It requires the following:

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In either instance, the regulation allows the state to amend the consumer notice(s) with additional required disclosures. Based upon those allowances under the federal regulation, Nebraska hereby requires the additional consumer disclosures:

1. **Length of the contract:** The carrier shall display the duration of the contract. The policy may not exceed 364 days in length.
2. **Renewability:** The policy may be renewed up to 36 months. The carrier must provide, in clear and unambiguous terms, the process for renewal of the policy by both the carrier and the insured, the length of time the carrier will allow renewal, the additional costs, if any, for renewal. The carrier shall additionally disclose, within the policy, any reasons that it may choose to not renew a policy. The carrier shall also disclose whether or not any additional underwriting will occur at the point of renewal and what the consequences of re-underwriting are in relation to the cost and coverage of the policy.
3. **Pre-Existing Conditions:** The carrier shall clearly define within the policy what constitutes a pre-existing condition. If the policy offers a waiver of pre-existing conditions, the policy must also contain a statement as to how the conditions are waived, length of the waiver and additional premium costs, if any, of the waiver.
4. **Free Look Period:** The carrier must provide and display in their notice that the policy is subject to a free look period under Neb. Rev. Stat. § 44-710.18.
5. **Benefits Provided:** The carrier shall provide a comparison between the benefits offered in the plan compared to the benefits required under an Affordable Care Act (ACA) individual market plan. If the plan provides benefits that are mandated under the ACA, but at a coverage level lower than the ACA coverage standard, the policy shall disclose an explanation of the limited level of benefit coverage in order to prevent consumer confusion. This can be done in the form of a comparison chart. Examples of comparison points for the chart include, but are not limited to, annual and lifetime limits, maternity coverage, mental health benefits, pre-existing condition restrictions and pharmacy benefits.

6. **Provider Networks:** The carrier must provide a disclosure of the plan's provider network. If the plan includes a network, the carrier must have written provider agreements with all providers offering medical or ancillary services to its insureds. The agreements are subject to the Insurers Examination Act, Neb. Rev. Stat. § 44-5901 et. seq. The carrier shall maintain a copy of each producer agreement it has entered. The carrier shall maintain, and display in the policy and advertisements, an internet website with an up-to-date list of the names and addresses of the providers with which it has contracted directly or through a provider network. It shall also maintain a toll-free telephone number for members to obtain additional information about on the policy and an up-to-date list of the names and addresses of the providers with which it has contracted directly or through a provider network. The website and toll-free number shall be displayed prominently in the policy and in advertisements.
7. **External Review:** The carrier must disclose that the policy is subject to internal and external review pursuant to Health Carrier Grievance Procedure Act, Neb. Rev. Stat. § 44-7301 et. seq. and the Health Carrier External Review Act, Neb. Rev. Stat. § 44-1301 et. seq.
8. **Association Plans:** If a plan is issued to an association "situated" in another state, the policy must be filed in Nebraska prior to the issuance of any certificates to Nebraskans pursuant to Neb. Rev. Stat. § 44-710(2). The policy must further disclose where the plan was issued or situated to the policyholder.
9. **Mandatory Provisions:** The policy must include all mandatory provisions as listed in Neb. Rev. Stat. § 44-710.03.
10. **Permissive Provisions:** The policy must comply with conditions set forth in Neb. Rev. Stat. § 44-710.04.
11. **Annual/Lifetime Limits:** The policy must disclose the annual limits and lifetime limits.
12. **State Mandates:** All of Nebraska's state mandates regarding individual health insurance are applicable to short-term duration policies and must be provided in the policy.

Additionally, insurers who sell this product are instructed that they shall be required to:

1. **Refiling:** Insurers shall be required to refile their policies to conform to both federal and state requirements.

2. **Marketing Requirements:** Insurers shall be required to retain, as market conduct records, all transactions, including audio from solicitation to sale, records pursuant to the sale of the policies and advertisements used in paper or electronic form. This material shall be provided to the Department upon request. Any marketing plan that uses deceptive practices, including but not limited to phone numbers not directly affiliated with the carrier, internet or email solicitations that provide misleading or incorrect information about the plan, shall be subject to the Unfair Trade Practices Act, Neb. Rev. Stat. § 44-1523 et. seq.

Questions concerning this notice may be directed to Martin Swanson, Health Policy Administrator, at [martin.swanson@nebraska.gov](mailto:martin.swanson@nebraska.gov) or to Laura Arp, Life and Health Administrator at [laura.arp@nebraska.gov](mailto:laura.arp@nebraska.gov).