Short-Term Medical Working Group Report

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Introduction

The Maryland Insurance Administration ("MIA") is required by legislation passed in the 2017 Session of the Maryland General Assembly to conduct a study to assess the need in the State for short-term medical insurance offered by non-admitted insurers as surplus lines coverage.[1] This legislation requires that the MIA:

1. Seek to identify circumstances in which individuals are in need of short-term medical insurance;
2. Assess the availability of short-term medical insurance offered by admitted insurers in the State, including whether short–term medical insurance coverage offered by admitted insurers is unavailable to individuals in certain geographic regions of the State;
3. Determine whether short–term medical insurance policies are being offered online and, if so, whether the policies are being procured through licensed Maryland insurance producers;
4. Compare the coverages under, and premiums for, short–term medical insurance policies offered by admitted insurers and the underwriting practices of those insurers with the coverages under, and premiums for, short–term medical insurance policies offered by non-admitted insurers as a surplus line and the underwriting practices of those insurers;
5. Assess the impact on the admitted health insurance market and consumers of authorizing non-admitted insurers to offer short–term medical insurance as a surplus line to individuals in the State who:
    (i) are unable to obtain health coverage under the Affordable Care Act, including individuals who are unable to obtain health coverage due to not enrolling during an open enrollment period; or
    (ii) drop coverage obtained under the Affordable Care Act;
6. Review and provide information about consumer complaints and enforcement actions relating to short–term medical insurance policies; and
7. Recommend:
    (i) whether limitations in current law on the offering of short–term medical insurance by a non-admitted insurer as a surplus line should be altered to address any barriers to health coverage access encountered by individuals in the State; and
    (ii) the adoption of any disclosures or consumer protections that may be needed:
        1. for short–term medical insurance procured from admitted insurers; and
        2. for short–term medical insurance procured from nonadmitted insurers as a surplus line if offering the insurance is authorized for circumstances in addition to those permitted under current law.

Under current law, "short-term limited duration insurance" is health insurance coverage that is less than 3 months in duration and displays prominently in the application and contract that the health coverage provided does not qualify as minimum essential coverage under the federal Affordable Care Act.[2]

[1] House Bill 774, Senate Bill 380, Chapter 223, Acts of 2017: "Insurance-Short-Term Medical Insurance-Study".
[2] § 15-1301(s), Insurance Article, Annotated Code of Maryland; 45 C.F.R § 144.103.

As background, the Affordable Care Act ("ACA") governs much of the individual health insurance market. To obtain an ACA-compliant policy, an individual must apply during an open enrollment period, or during a special enrollment period due to a triggering event. An ACA policy does not have medical underwriting or an exclusion for pre-existing conditions. An ACA policy must include essential health benefits to provide broad coverage without annual dollar limits. Premiums are community-rated, and have been rising since the ACA began.

Short-term medical policies are excepted from ACA requirements. A short-term medical policy does not meet the requirements for minimum essential coverage to avoid a federal tax penalty.

This summer, MIA took steps to obtain information from admitted insurers, non-admitted insurers that offer short-term medical insurance policies as a surplus line, insurance producers, surplus lines brokers, Maryland consumers, members of the General Assembly, and other interested stakeholders. The MIA sent notice of the study to the list of those who testified on this legislation during the 2017 legislative session, the MIA's internal list of regulated and non-regulated contacts (as applicable), and those who otherwise identified themselves as stakeholders or interested persons. The MIA also created a quick link on its website for the short-term medical study and included an email address to solicit comments from stakeholders and the public. Information about the study and the email address was presented at the six MIA Producer Outreach Events and three public Life & Health specific meetings during 2017.

The MIA contacted and formally requested information from the six admitted carriers that have a certificate of authority and an MIA approved short-term medical policy form to sell and issue the product to Maryland residents. These carriers are:

- Freedom Life Insurance Company of America ("Freedom Life");
- Independence American Insurance Company ("Independence American");
- Kaiser Foundation Health Plan of the Mid-Atlantic ("Kaiser");
- Madison National Life Insurance Company, Inc. ("Madison National");
- National Health Insurance Company ("National General"); and
- Standard Security Life Insurance Company of New York ("Standard Security")[3].

Through this outreach, the MIA learned that there are three admitted carriers presently selling short-term medical policies in the State admitted market: Freedom Life, National General, and Standard Security. Subsequently, the MIA issued a market conduct survey through its Market Conduct Unit to these and the other admitted carriers. A substantially similar survey was also sent to surplus lines broker Tom Petersen of Petersen International Underwriters ("Petersen).[4]

Additionally, the MIA made attempts to contact carriers, agencies, and professional associations which may be interested or have members interested in selling short-term medical

[3] Independence American, Madison National, National General, and Standard Security are all members of IHC, an affiliated insurance holding company.

[4] Petersen is a surplus lines broker and underwriter that sells on behalf of certain Lloyd's of London underwriters.

policies including: Seven Corners, IHG, eGlobalHealth Insurers Agency, and surplus lines organizations such as the Surplus Lines Association of California, the Illinois Surplus Lines Association, and the Wholesale Specialty Insurance Association and National Association of Surplus Lines Offices, which have now merged.

A public meeting was held on August 15, 2017 in the Senate Finance Committee Hearing Room in Annapolis. A public notice of the meeting was published in the Maryland Register to promote the hearing and to solicit information and written testimony through the email address on the MIA's website. At the public meeting the MIA heard testimony from representatives of the admitted carriers, Petersen, insurance producers, regulators, consumers, representatives of health insurers, and other interested parties. Notably, there was limited interest in this study displayed by members of the surplus lines community and the general public.

Based on the above process, the MIA was able to gather information in order to analyze the requirements of the study and to perform a substantive review.

Analysis of Study Requirements

I. Seek To Identify Circumstances in Which Individuals In the State Are In Need of Short-Term Medical Insurance

To gather information on who might purchase short-term medical coverage, the MIA reviewed the documentation and testimony from individuals who testified in front of the General Assembly committees this year, and held a public meeting to provide all stakeholders and members of the public a chance to be heard on this specific issue. Although participation was limited, there were comments received from brokers and producers who indicated they get requests from individuals who are looking for short-term coverage for a variety of reasons.

At any given time there will be a certain number of individuals that find themselves without health insurance. These individuals need some type of short-term coverage which can serve as a bridge to long-term major medical coverage. Such an individual can be in this position for a variety of reasons. Insurance producers who sell short-term medical policies stated that these reasons include the loss of employer based coverage, a waiting period before the effective date of new employer based coverage, missing a special enrollment period, arriving in the United States from another country, moving, divorce, death of a loved one, incarceration, and simply missing the ACA or employer's open enrollment period. Some people may also utilize a short-term medical policy or a series of short-term medical policies as an alternative to COBRA[5] or an ACA-compliant policy. These are all reasons a person may legitimately find themselves in need of a short-term policy or in need of a way to avoid the cost of an ACA-compliant plan.

During the General Assembly session hearings and the MIA's public meeting, carrier and industry representatives stated that some individuals may use a short-term medical policy to "game" the current system in an attempt to avoid the ACA's individual mandate. They argued

[5] COBRA refers to Title X of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, which requires continuation coverage under a group health plan be offered for up to 18 months if elected by an individual leaving that group health plan.

that expanding the short-term market to allow non-admitted carriers to sell these policies would only exacerbate that problem. As a result of the uncertainty about the fate of the federal ACA this summer, the MIA heard extensively from brokers and producers during the six producer outreach meetings the Insurance Commissioner held during this period. Numerous producers suggested that a short-term medical policy was one way an individual may elect to obtain some health insurance coverage, but not be forced to pay the rates offered in the individual market for an ACA-compliant plan. This option seems to be reinforced somewhat by the short-term medical marketing efforts of some carriers. Although short-term medical insurance is designed to be temporary, a review of several websites selling short-term medical plans shows that some are giving the impression to the marketplace that short-term medical coverage can be used as primary coverage and not as a bridge to ACA-compliant coverage. The following marketing examples illustrate that some individuals express this directly in a short-term medical website advertisement. They state as follows:

> "I'm self employed. I needed health insurance and eHealthInsurance.com helped me find an affordable plan."
>
> "I am trying to make a living as an artist. Saving on health insurance helped me focus on my art and business."[6]

In addition, some plans are marketed directly by insurance producers as a viable and an acceptable alternative to ACA-compliant major medical health insurance coverage. For instance this advertisement states the short-term medical is an alternative to traditional health coverage as follows:

> "Short term health insurance in Maryland is ideal for people in between jobs, lay offs, a college student or recent graduate, in a waiting period, while between permanent health plans **or alternative to COBRA or traditional health coverage.** Maryland Short term coverage is available for as little as 30 days and can be kept for up to 6 or 12 months."[7] [emphasis added]

Another advertisement goes even further by stating that short-term medical is an alternative to ACA-compliant coverage. It says:

> Short term health insurance is major medical insurance that is purchased for a defined period of time and generally has a **much lower monthly premium than other forms of major medical health insurance**. There are two **other big advantages of short term health insurance over other forms of major medical insurance such as an Obamacare (ACA)** plan or an employer plan. First, you can use your

[6] Both quotes from the eHealth insurance website short term medical application page: https://www.ehealthinsurance.com/ehi/st/short-term-census?action=changeCensus&census.zipCode; Nov. 28, 2017

[7] http://www.eshorttermhealthinsurance.com/maryland/; Nov, 28, 2017. The term of 6 to 12 months is incorrect. Maryland law limits short term medical policies to a term of no longer than 3 months.

> short term health insurance plan to pay for services from ANY doctor or hospital. Yes you can keep your doctor!...
> Short term health insurance might be right for you if …
>
> - Your preferred doctor or hospital doesn't accept Obamacare or an Obamacare plan isn't available in your area.
> - Like millions of Americans, you simply can't afford Obamacare[8] [emphasis added]

These examples may not be typical. However, they do demonstrate that a portion of the marketplace is promoting short-term medical policies to people who want to avoid the ACA individual mandate and that some are purchasing them as a lower cost alternative. Utilizing short-term medical coverage as an alternative to ACA-compliant or other longer-term major medical coverage is not a recognized need for the product.

II. Assess the Availability of Short-Term Medical Insurance Offered by Admitted Insurers Including Whether that Coverage is Unavailable in Certain Parts of the State

As stated above, there are currently three admitted insurance carriers actively selling short-term medical policies in Maryland. They are Freedom Life, National General, and Standard Security. Each of these companies is approved to, and does, offer short-term medical coverage across the entire State.

The number of short-term medical policies sold by these three carriers since their forms have been approved for use in Maryland is 35,662. A sizeable majority of the policies, 29,962 or 83.88%, have been sold by Standard Security. Independence American, Kaiser, and Madison National have forms approved for sale by the MIA but are currently not selling in Maryland. Independence American has informed the MIA that they intend to market their approved policies in the near future.[9] Freedom Life sells its policy in conjunction with a specified disease policy. As a result, its sales are much lower than the other two carriers actively selling in the State.

Admitted carrier policies are available for issue to those who can meet the policy eligibility and underwriting requirements. The separate eligibility guidelines and underwriting guidelines provided by National General demonstrate that the company does not issue to those individuals with certain common medical conditions, including obesity for example, or a history of certain medical conditions including things like heart disease, cancer, substance abuse, and mental illness. Standard Security did not provide the MIA with any such written guidelines, but a review of the company's approved policy form shows that to be eligible for coverage, an individual must be insurable per the underwriting guidelines. A review of the Standard Security online application process demonstrates that the existing conditions and health history requirements are essentially the same as National General.

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[8] https://www.agilehealthinsurance.com/short-term-health-insurance-quotes; Nov. 28, 2017

[9] Independence America has also recently filed a new short-term medical policy form for approval for use in the State. This policy as, filed, appears to be different than its currently approved product because it offers the applicant an option to pay additional premium and eliminate the pre-existing condition exclusion from the policy.

In response to the MIA's request for information regarding the number of policies sold and declined, National General reported that in total it has sold 5,652 policies and declined 790 applications. Standard Security reported that it has sold a total of 29,912 policies and declined 250 applications. In response to the MIA's request for information Freedom Life reported that it does not currently use any eligibility or underwriting guidelines because it sells short-term medical as a rider. But Freedom Life's approved policy form does allow for the use of eligibility or underwriting guidelines if the company decides to do so.

For these reasons, the MIA concludes that short-term medical policies are available to individuals who live in all parts of the State, if they have not had a prior medical history that would disqualify them based on each carrier's eligibility and underwriting guidelines.

III. Determine Whether Short-Term Medical Policies are Being Sold Online and Whether They Are Being Sold by Licensed Maryland Insurance Producers

Short-term medical polices are being sold in Maryland by Maryland licensed insurance producers as well as online without the involvement or assistance of an insurance producer. National General and Standard Security Life are selling individual short-term medical policies to Maryland residents online. National General and Standard Security utilize an online application process which asks applicants for certain information about the coverage requested and health-related information. Freedom Life sells exclusively through insurance producers. National General also sells policies through insurance producers.

All 29,912 of the short-term medical policies sold by Standard Security were sold on a direct response basis over the internet. Freedom Life has sold 98 policies, all through insurance producers. National General has sold a total of 5,652 policies through both methods. The majority of its sales, 4,388 policies, were sold via direct response basis over the internet and 1,264 policies were sold through a producer.

IV. Compare Admitted vs. Non-Admitted Carriers' Short-Term Medical Policies

There are some differences in the coverage options and the underwriting practices of the admitted carriers' policies and the surplus lines coverage sold by Petersen submitted for review.[10] Unlike the surplus lines coverage, the coverage, benefits, and other policy provisions of the admitted carriers have all been filed with, reviewed, and approved by the MIA. All of the required standard sickness, bodily injury, outpatient, ambulance, and mandated benefits are provided in each admitted carrier policy. These benefits include some level of coverage for medically necessary expenses incurred as a result of inpatient room and board, hospital care, intensive care, emergency room care, surgical care, diagnostic services, outpatient treatments, and doctor visits. Mandated benefits in Maryland include coverage for preventive care

[10] No other surplus lines organization participated in the MIA meeting or submitted information for review. One law firm did submit a letter in support of several unnamed clients supporting the sale of short-term medical products but did not specifically advocate for an expansion of authority to sell short-term medical insurance as surplus lines insurance.

screenings, habilitative services, mental health and substance misuse, and other services that the legislature has determined should be provided to Maryland residents.

Short-term medical policies that are currently offered for sale in the United States but not in Maryland also typically cover these types of benefits. The Peterson products cover the same types of coverage but do not provide benefits for any general or routine examinations. It is also important to note that even though the Petersen coverage possesses some standard policy characteristics, it is impossible to anticipate what other non-admitted companies might offer if the State allowed but did not regulate short-term medical sold as surplus lines insurance.

Cost-Sharing

One significant difference between the coverage provided by an admitted carrier and the coverage provided by a Petersen policy is the insured's financial responsibility. Policies sold by the admitted carriers utilize different methods of cost-sharing including, coinsurance, copays, and deductibles. A review of the cost sharing methods used by the two top selling admitted carriers in Maryland, National General and Standard Security, and the Petersen policy that could potentially be sold in Maryland,[11] reveals differing cost-sharing methods, as further described below. That same review also reveals that the most important cost-sharing method in a short-term medical policy is the deducible.

Copays

National General and Standard Security both require an insured individual to pay a $50 copay for a provider office visit. In contrast, the short-term medical coverage offered through the Petersen plan does not require an office visit copay.[12] Tom Petersen provided testimony at the legislative hearing as well as the public meeting this summer, along with documentation stating that the policy Petersen sells does not have any copays or coinsurance requirements and is simpler in design. Petersen's marketing material submitted to the MIA states the following:

> The Short Term Medical Plan is set up to be as simple as possible – no copay & no coinsurance. Policy Maximum and deductible are per person, per policy period. There is a choice of $100, $250, $500, $1,000, $2,500, or $5,000 deductible.

The copay amounts used by the admitted carriers are not insignificant, but are not so high as to appear to prevent individuals insured under a short-term medical policy from seeking needed care.

[11] The MIA received information for 3 types of short-term medical policies from Petersen. Two of the three policies are already available to individuals whose needs for a short-term medical health policy are the result of travel to or from the United States within 30 days of the effective date of coverage. This type of short-term medical coverage is already allowed to be sold on a surplus lines basis pursuant to § 3.302(c) of the Insurance Article. All of the Petersen submissions were reviewed, but for the purposes of this study the primary focus was the Petersen coverage which is not travel contingent. This is the coverage which could be sold to Marylanders if the eligibility for a short-term medical policy was expanded under State law to include anyone not eligible for coverage under the federal Affordable Care Act, as proposed in 2017.

[12] As mentioned previously, routine and general examinations are not covered.

Coinsurance

These same two carriers both utilize coinsurance as a way to help manage plan costs. Standard Security offers 20% and 50% coinsurance options on its "Secure Lite" coverage. The 20% coinsurance percentage plan option corresponds with a lower out of pocket maximum the insured is required to meet, from $2,000-$4,000. The higher 50% coinsurance option raises the out-of-pocket limit to the $5,000-$10,000 range. The Secure Lite coverage has a lower policy coverage maximum of $750,000. The Standard Security "Secure STM" plan offers three coinsurance options, 20%, 30% and 50%. The coinsurance percentage options again correspond with the same out-of-pocket maximum the insured is required to meet. This particular plan has a higher policy coverage maximum of $2,000,000.

The National General plan options provide for coinsurance amounts that are 20%, 50%, and 100%.[13] The 20% and 50% plans options have lower out-of-pocket limits ($1,500 - $3,750) than the Standard Security plans. The policy benefit maximum for National General's 50% coinsurance plans is $250,000, with the 20% coinsurance plan policy maximums increasing to $1,000,000. The 100% coinsurance plans all have $1,000,000 policy maximums.

An admitted carrier's coinsurance obligations placed on insureds can be substantial depending on the cost of the care provided and the care actually required. However, a carrier's payment obligations are not triggered until after the insured's deductible has been satisfied.

Deductibles

Any cost-sharing obligation of the insured must be considered in conjunction with the deductible amount. All of the admitted carrier plans and the Petersen plan employ deductibles to help manage costs. The amount of these deductibles has a direct and substantial impact on plan premiums.

Except for a few select benefits under the admitted carriers' policies where Maryland law prohibits a deductible, no benefits are provided under any of the short-term medical policies reviewed for this study until the deductible is satisfied. Since short-term medical policies are limited to 90 days, any such deductible amount must be paid by the insured or insureds in a period of less than 90 days.[14] This is why the deductible is the most important cost-sharing obligation on a short-term medical policy.

Although the Petersen policy does not require copays or coinsurance, it does utilize deductible amounts as low as $100 and as high as $10,000. Once the deductible is satisfied by the insured, this policy pays 100% of covered expenses. Not surprisingly, the pricing chart for the Petersen plans demonstrates that the plans' premiums go down as the deductible amount elected by the applicant goes up. For instance, a 19-29 year old who chooses a policy with a $100 deductible pays $230 a month, but pays $99 a month when he or she elects a $10,000

[13] 100% coinsurance paid by the carrier after satisfaction of the insured's deductible.

[14] Although the short-term medical policies are not allowed to be renewed, a new application can be taken and a new policy issued after expiration of the original policy.

deductible. The prices for a 50-59 year old person who chooses these same two deductible options are $459 and $198 a month respectively.

The admitted carriers also utilize deductibles. Freedom Life has a $1,000 deductible, National General has deductibles of $1,000, $2,500, $5,000, $10,000, and $25,000, and Standard Security has deductibles options ranging from $500 to $5,000. Just like the Petersen plan, in the admitted carrier plans, a lower deductible amounts means higher premium amounts. With the admitted carriers, there are also other cost-sharing trade-offs in the form of a higher out-of-pocket maximum or lower policy benefit maximum.

Pre-Existing Conditions

In addition to cost-sharing, there are other potential barriers to coverage under short- term medical policies. The admitted carrier and Petersen policies all have "Pre-Existing Condition" clauses which prevent the payment of benefits for these conditions. Pre-existing conditions are conditions for which medical advice, care, diagnosis, treatment, consultation, or medication was recommended by or received from a doctor, or for which a reasonably prudent person would have sought or received treatment, within the 12 months before applying. Unlike the Petersen coverage the admitted carrier policies being sold recognize a new insured individual's creditable coverage from a prior policy when applying a pre-existing condition at time of claim.[15]

It is significant to note that one admitted carrier, Independence American, has recently filed a new policy form for approval which would not exclude coverage for any pre-existing conditions for an increased premium amount.

Exclusions and Limitations

Further coverage limitations are found in all of the reviewed policies' exclusions and limitations sections, which in each policy are extensive. Each admitted carriers' list of exclusions and/or limitations is almost two pages in length. However, these policies have been reviewed and approved by the MIA which ensures that all state mandated coverages are required. The most significant benefits which are provided by the admitted carriers but are not under the Petersen plan are those for general or routine examinations, preventive care screenings, and benefits for mental or nervous disorders or substance abuse.

Policy Provisions

There are certain policy provisions which admitted carriers use which are different than the non-admitted Petersen coverage reviewed. Each of the admitted carrier policies and the Peterson plan offer some type of financial benefits for utilizing an in-network provider.

Several admitted carrier plans also require that an inpatient hospital stay be pre-authorized. Denial of a request for authorization is an adverse decision which can be appealed to

[15] This requirement was previously part of the § 15-508.1 of the Insurance Article but was repealed as part of ACA conformity measures in 2016. The MIA recommends the reinstatement of this consumer protection be reconsidered in 2018.

the MIA by the insured, the provider, or an insured's representative on a standard or an expedited basis.

The admitted carriers are required to have an Extension of Benefits coverage clause. If a claim is in process at the time the policy terminates, the carrier must continue to provide coverage for up to 90 days as needed.

Underwriting Practices

As stated previously, the admitted carriers currently selling this product underwrite and do not issue to individuals with certain existing medical conditions or a history of certain medical conditions. Peterson states that it can offer and provide its coverage via a simpler application process than the admitted carriers. Tom Peterson stated at the public meeting that the product his agency sells is a guaranteed issue product that does not prevent the coverage from being issued as a result of a person's medical history. In response to the MIA's request for information about the Petersen plans he stated as follows:

> Our product is issued on a "guaranteed issue" basis which allows those who were declined by admitted Short-Term Medical carriers to obtain coverage. Because the product is issued on a "guaranteed issue" basis, there are no eligibility or underwriting standards used to deny policy issuance. We do deny specific benefits through the use of the preexisting condition clause contained within the policy, but anyone who applies is eligible to obtain coverage.

Prospective insureds would be subject to the same pre-existing condition exclusion under a Petersen policy as under a policy issued by an admitted carrier. Petersen also provided documentation to the MIA from the admitted carriers' websites which shows that those companies do utilize eligibility and/or underwriting requirements. National General does have a guaranteed issue product option but is not currently marketing that plan.

Pricing

Short-term medical policies have traditionally been priced lower than a standard major medical policy. This remains the case in Maryland when various price comparisons are done. For purposes of the comparisons the MIA looked at short-term medical plans for a single male approximately age 40.[16] The results were as follows:

- Freedom Life reported to the MIA that for a 42 year old male its lowest cost plan is one with a $10,000 deductible, an 80/20 coinsurance split, and costs $322.55 a month. For the same male its highest cost plan has a $1,000 deductible, has no coinsurance obligation for the insured, and costs $660.88 a month. The company's most popular plan for the same 42 year old male is one that has a $4,000 deductible, has no coinsurance obligation for the insured, and costs $470.79 a month.

[16] Based on the way the different plans rate the age assumption may be adjusted a few years.

- National General reported to the MIA that for a 44 year old male electing a plan with a $5,000 deductible and an 80/20 coinsurance split, the monthly plan cost is $79.34 a month.
- Standard Security reported that for a 40-44 year old male, its highest cost plan has a $250 deductible, a $5,000 out of pocket maximum, and 80/20% coinsurance split, and costs $691.34 a month. For the same person the company's lowest priced plan option is the Security Lite prepay plan that has a $5,000 deductible, a $20,000 out of pocket maximum, a 50/50% coinsurance split, and costs only $13.20 a month. For 40-44 year old males who have actually purchased, Standard Security's most popular plan is the Security Lite plan with a $2,500 deductible, a $10,000 out of pocket maximum, an 80/20% coinsurance split, which costs $47.68 a month.
- If it was allowed to be sold in Maryland currently, the Peterson plan for a 40-49 year old would cost $352 with a $100 deductible elected. That price drops to $282 a month when a $1,000 deductible is elected by the insured, and further to $202 a month with a $5,000 deductible.

These examples demonstrate that the cost of an underwritten short-term medical plan depends on the various cost-sharing options chosen by the insured applicant, particularly the deductible and coinsurance options. But there are options available for as low as $47.68 and $79.34 a month depending on the level of cost-sharing an individual will accept. If surplus lines sales for short-term medical were expanded outside of travel related instances, there would be at least one plan without underwriting, coinsurance, or copays available to individuals in the marketplace at a cost between $202 and $282 depending on the deductible amount an individual will accept. These plans would be cheaper than a plan which is ACA-compliant and can be found in the Maryland individual market.

A search of the Maryland Health Benefit Exchange ("Exchange") reveals that the lowest priced qualified health plan option on Exchange in 2018 for a 40 year old individual living in Baltimore County, not-qualifying for an advanced premium tax credit, utilizes an HMO network[17] and costs $314.34 a month.[18] That plan has a $6,200 deductible, an 80/20 coinsurance split, and an out of pocket maximum of $6,200. The second lowest cost option for that person would cost $325.80 a month, but has a 60/40 coinsurance split. These plan costs do not change if the resident lives in the Frederick area where the same plans are available. They do change some if the individual resides in Wicomico County where there is only one available carrier. There the lowest cost plan is $387.29 a month, with no coinsurance or primary care co-pay and a $6,550 deductible. These differences in cost are magnified if the comparisons are done assuming family coverage for 4 people.

Therefore, a comparison of all of the reviewed short-term medical products and ACA individual market prices reveals that expanding surplus lines authority to allow non-admitted carriers who may offer a guaranteed issue product at a lower monthly premium, and with lower cost-sharing, could be used as a lower cost ACA market alternative by some consumers.

[17] Only the Carefirst PPO plans on the Exchange are not limited by HMO network requirements for 2018.
[18] That price goes to $1,005 a month for a family of 4 with two 40 year old parents, and children ages 12 and 10.

V. Assess the Impact on the Admitted Market and Consumers of Authorizing Non-Admitted Insurers to Offer Short-Term Medical Insurance as a Surplus Line to individuals 1. Who Are Unable to Obtain Health Coverage for Failure to Enroll During an Open Enrollment Period or 2. Who Drop Coverage Obtained Under the Affordable Care Act

Impact on Admitted Markets

The addition of non-admitted insurers would have some negative effect on the admitted market and consumers if the surplus lines law is expanded to those who are unable to obtain coverage due to a failure to enroll during an open enrollment period.

First, the MIA questions the underlying premise of the request to address effects of short-term medical surplus lines coverage if it is allowed to be sold to those who are unable to obtain coverage during open enrollment. With the exception of an extremely small number of people, all people have the ability to enroll during open enrollment. The legislature and MIA both heard from producers that they have clients who miss open enrollment for a variety of reasons and MIA recognizes there are clearly some people who do legitimately miss open enrollment. However, the Commissioner does not view the majority of the testimony and the reasons put forward sufficiently compelling to conclude this merits submitting the admitted market to unregulated and or unfair competition from the surplus lines market.

The federally required individual mandate for all individuals to have qualified health insurance under the ACA has been a very public issue since that law's passage in 2010. The open enrollment period is a concept that the public has been made aware of due to extensive promotional campaigns and outreach by the State, and in particular the Maryland Health Benefit Exchange, since the fall of 2013. It is hard to imagine members of the public not knowing that open enrollment as an important window of time during which citizens must affirmatively act, much like filing taxes each year by April 15th. The producers who testified on behalf of expanding surplus lines authority for short-term medical cited moving residences, death in the family, physical or mental challenges, divorce or legal troubles including incarceration, tax issues, traveling, and language barriers as reasons. Only a severe and/or prolonged physical or mental illness or incarceration can justifiably prevent an individual from being able to enroll.

Until this year, there was a 90-day window of time to enroll in ACA coverage. That period was shortened to 45-days this year, and the Maryland Health Benefit Exchange extended the period an extra week to 52-days. Fifty two days is sufficient time for most people to enroll. However, a shortened window of time could offer some an excuse to opt out of the ACA marketplace and search for alternate coverage options like short-term medical. Allowing non-admitted carrier plan options that start coverage at any time during the year without underwriting might provide some people a convenient excuse to opt out of enrolling in ACA plans with the knowledge that there is always some coverage option available to them.

Second, it is without question that the current individual health insurance market situation in Maryland is troublesome. The two carriers that still offer ACA-compliant qualified health plans on the Maryland Health Benefit Exchange are set to increase premiums substantially in

2018, which will make that coverage simply too expensive for some people. This is just an additional reason people may consciously elect to not enroll in ACA-compliant coverage.

It is not hard to imagine that for these and other reasons many additional people will now be "unable" to enroll during open the ACA open enrollment, or if they do actually enroll, elect to later drop that coverage for a cheaper alternative. In order to compete in a more competitive space, a non-admitted carrier could alter its marketing, plan design, and pricing to distinguish itself and take advantage of those market conditions. This can further negatively impact the larger individual market.

The most likely people to drop out of the existing individual insurance market and not purchase ACA-compliant coverage are those who are younger and generally healthier people. These people tend to believe that they are at less risk of needing health care services due to their overall health, health history, and that they can afford to have less coverage if coverage is ever needed. Many applicants may figure that in 2018 they could save money buying a short-term plan that they know covers less, but allows them to pay less in premiums or pay only for what they feel they really need. Unfortunately, these younger healthier lives are the ones that help provide balance in the individual market as a contrast to the generally sicker segment of the individual market population. By allowing additional, unregulated short-term policies to be sold in this market, the State could inadvertently threaten both the admitted short-term medical and individual major medical markets.

Third, adding non-admitted insurers into the market to compete with admitted carriers who have complied with Maryland law creates uneven competition in the market. Admitted carriers sell policies that are designed and rated to comply with state law. Admitted carriers also are required to comply with the State's solvency requirements. While a surplus lines policy may appear similar to a policy sold by an admitted carrier, it does not by its terms have to be similar or even substantially similar. This could create advantages for non-admitted insurers selling in the short-term medical market.

In contrast, non-admitted surplus lines carriers would not be subject to solvency requirements or have to satisfy state policy filing or operational requirements, including those for mandated benefits, continuation of benefits, appeals and grievances, or network adequacy requirements. These State requirements have costs associated which directly impact premiums. Non-admitted carriers have no such additional claims or operational costs to account for, which could allow them to price their products at lower than the admitted market. Although non-admitted carriers would only be permitted to sell surplus lines coverage after an applicant has received three declinations from the admitted carriers[19], lower prices could well encourage applicants to actively seek to acquire the three declinations.

Fourth, the current short-term medical market is functioning and getting more competitive. The number of short-term medical policies sold this in the past few years and this year, 7,737, indicates that there is a substantial demand for this type of coverage. People who need short-term medical insurance only need it for a short period of time. Admitted insurers

[19] See § 3.306.1(a) of the Insurance Article, Annotated Code of Maryland.

have designed policies that meet those needs and use pricing and cost controls that allow for the payment of a selected set of benefits.

The MIA has received notice that additional competition is coming to the Maryland short-term medical market. Independence American has told the MIA that it intends to begin actively marketing its approved coverage in the near future, possibly with an applicant option to purchase some level of a pre-existing condition waiver.

VI. Impact on Consumers, Including Individuals Who Are Unable to Obtain Health Coverage for Failure to Enroll During an Open Enrollment Period or Who Drop Coverage Obtained Under the Affordable Care Act

If short-term medical policies are allowed to be purchased as surplus lines, individuals denied coverage as a result of underwriting in the admitted market will be able to obtain coverage due to missing the ACA open enrollment or dropping ACA-compliant coverage. The information reported to the MIA shows that of 36,702 applications submitted to the admitted carriers, 1,040 individual applications were denied as a result of the underwriting eligibility and/or underwriting guidelines in use by the admitted carriers using them. Petersen would have issued coverage all of these denied applicants. So it seems clear that if the market is opened up to surplus lines carriers and brokers more people will end up being issued policies and covered by short-term insurance. As stated previously, that may have negative impacts on several markets. More people with coverage logically translates to some increased amount of benefits paid for expenses incurred by those who otherwise would have to pay out-of-pocket the full costs for any treatments or services received.

However, it is important to recognize that while these individuals will be able to secure coverage, they may not be entitled to receive treatment, benefits, or assistance like they would under an admitted carrier policy. The most important question asked by consumers who incur expenses for health care treatments or services is "will my claims be paid?" As stated previously, the use of the pre-existing condition exclusions and cost-sharing mechanisms by the admitted carriers prevents many initial expenses from being paid.

In contrast, and as an example of a potential surplus lines option, the Petersen policy does not have coinsurance or copay obligations. It does utilize a pre-existing condition exclusion and require payment of a deductible. All of the short-term medical policies exclude coverage for pre-existing conditions. These policies also require that the deductible be satisfied before benefits are actually payable. The significance of these two restrictions is more pronounced in a short-term policy. Deductibles must be satisfied for each 3 month policy period, so the insured's likelihood of exceeding the required amount before the policy expires is reduced.

Individuals who purchase an admitted carrier policy can file a complaint about claims or other issues arising under the policy. The policy is subject to all of Maryland's laws for health insurance policies outside of the ACA. The MIA Complaints section and the Appeals & Grievance unit both handle consumer and provider complaints for those covered under policies governed by the laws of the State of Maryland. The MIA has the authority to review claims practices under § 27-303 of the Insurance Article for surplus lines policies; however, this limits

most claims reviews for health insurance to determining whether a denial was arbitrary or capricious, or whether the insurer misrepresented facts related to the claim or policy.

All admitted and non-admitted short-term medical policies restrict payment to treatment, services, supplies, and equipment that are medically necessary. Although the Petersen coverage does not appear to require any pre-certification or prior authorization for an inpatient hospital stay or certain procedures, other non-admitted policies if allowed to be sold might. These inpatient services may not require prior authorization, and they could still be reviewed for medical necessity after the costs have been incurred and the claim submitted. Maryland law requires the admitted carriers to have procedures to handle coverage decisions and appeals, including those for urgent medical conditions. The law also requires procedures for handling requests for things such as preauthorization of medically necessary procedures, preauthorization for inpatient admissions, and for handing adverse decisions and grievances filed in the event of a proposed or denied health care service. Admitted carriers are also required to have procedures to handle adverse decisions and grievances filed by the insured or provider as a complaint, including an expedited complaint, with the MIA.

The MIA believes these to be extremely valuable consumer protections that help ensure consumers' rights. An insured covered by a non-admitted carrier policy who finds him or herself in a situation where a preauthorization is denied due to a non-admitted carrier's determination that the service or procedure is not medically necessary, potentially involving an urgent condition or need, would be unable to receive assistance from the MIA.

It is important to see the bigger picture when considering admitted market and consumer impacts as a result of those people who are unable to obtain health insurance under the ACA as a result of not enrolling during open enrollment or dropping coverage. People who can pass underwriting for a short-term medical policy may already have left or are considering leaving the individual ACA market for a policy or series of short-term medical policies in order to avoid that market. One broker stated at the public meeting that this is already happening and several producers at the MIA producer outreach meetings said short-term medical is an option they will recommend to people who cannot afford individual major medical coverage. Allowing surplus lines brokers to sell non-admitted carrier policies that will not require underwriting can further accelerate or intensify the effects of people leaving the larger individual market.

A simple cost-benefit analysis is simple and also instructive. Allowing short-term medical sales through surplus lines coverage could provide some limited financial relief to a small number of Maryland consumers. That relief in the form of reduced premiums in many instances may well be offset by the lack of covered services, policy exclusions, pre-existing condition exclusions, and the nature of the policy which requires all terms to reset every three months. Also, the additional harm to the already problematic individual market hurts the finances of the carriers selling ACA plans in the individual market, and increases premiums for the individuals continuing to purchase ACA-compliant coverage. As such, the Commissioner does not recommend giving carriers that are sustaining losses for participating in the individual ACA market any additional reason to question their commitment to that market. The benefits of allowing unregulated carriers and policies in to Maryland are extremely limited in comparison.

VII. Review and Provide Information About Consumer Complaints and Enforcement Actions Relating to Short-Term Medical Insurance Policies

Per National Association of Insurance Commissioners' (NAIC) guidelines, the Administration codes consumer complaints according to the type of insurance. From December 2014 through December 31, 2016, the Administration received 23 consumer complaints regarding short-term limited duration policies. Of the admitted carriers, there were 7 consumer complaints against Standard Security and 1 against National General.

After January 1, 2017, the Administration received 27 consumer complaints regarding short-term limited duration policies. Of the carriers currently offering short-term medical policies in Maryland, there were 7 consumer complaints against Standard Security, 8 against National General, and 4 against Freedom Life.[20]

The complaints filed with the MIA generally fall into one of three major areas. Confusing or misrepresentative marketing material is a consistent source of consumer complaints. One of the admitted carriers is currently subject to an examination by the MIA's Market Conduct Unit for its advertising as a result of one such complaint.

Many complaints regarding short-term medical insurance are related to claims denied based on a preexisting condition or delays due to a pre-existing condition investigation. Even if claims are eventually processed according to the policy and paid, there can be substantial delays as the carrier obtains medical records from multiple providers to determine whether the claim is related to an excluded pre-existing condition. Consumers may not understand what counts as a pre-existing condition, or what an investigation of a claim for a pre-existing condition will entail. Consumers may also be confused as to whether pre-existing conditions are permitted under their policies if they fail to understand the differences between short-term medical and ACA-compliant policies.

Rescissions occur when a short-term medical carrier discovers a misrepresentation on an application after the policy is issued. In a rescission, the policy is retroactively terminated at inception and premiums are returned to the consumer. Rescission complaints and pre-existing condition complaints are often linked. Prior to January 1, 2017, the Administration received 3 consumer complaints regarding rescissions of short-term limited duration policies. Of the carriers currently offering short-term medical policies in Maryland, there was 1 consumer complaint against Standard Security. The Administration did not receive any consumer complaints regarding rescissions after January 1, 2017.

VIII. Recommend the Following:

1. Whether Limitations in Current Law on the Offering of Short-Term Medical Insurance by a Non-Admitted Insurer as a Surplus Line Should be Altered to Address Any Barriers to Health Coverage Access Encountered by Individuals in the State

[20] The remaining complaints arose out of travel related short-term medical policies.

For the reasons already stated, it is the opinion of the Commissioner and the MIA that the current limitations on offering short-term medical should not be altered. Health care coverage is available to all individuals in the State via a variety of options, including through the Maryland Health Benefit Exchange. The vast majority of people have no problem actually obtaining coverage, but the cost of coverage continues to be an issue of increasing concern for many. However, it is not advisable under the current market conditions to relax the limitations in the current law.

Surplus lines coverage should be limited to those instances where there are not options available in the admitted market. In this case, the admitted market does have carriers offering coverage, and there are additional carriers who are approved but not yet marketing. This includes one that has stated plans to begin marketing in the very near future with expanded coverage options. These are indications that the admitted carriers are responding to the demonstrated needs of the marketplace.

2. <u>The Adoption of Any Disclosures or Consumer Protections That May Be Needed a) For Short-Term Medical Insurance Procured From an Admitted Insurers, and b) For Short-Term Medical Insurance Procured From Non-admitted Insurers as a Surplus Line If Offering the Insurance is Authorized for Circumstances in Addition to Those Permitted Under Current Law</u>

For admitted market, the current disclosure for short-term medical insurance is required to state the following: "THIS IS NOT QUALIFYING HEALTH COVERAGE ("MIMIMUM ESSENTIAL COVERAGE") THAT SATISFIES THE HEALTH COVERAGE REQUIREMENT OF THE AFFORDABLE CARE ACT. IF YOU DON'T HAVE MINIMUM ESSENTIAL COVERAGE, YOU MAY OWE AN ADDITIONAL PAYMENT WITH YOUR TAXES." There are additional disclosures currently required at the time of the sale of a short-term medical surplus lines policy for travel related purposes. These disclosures must be provided in writing and also: 1) state that coverage may be available under the ACA without medical underwriting; 2) provide contact information for the Exchange; 3) state that short-term medical may be available from an admitted insurer; 4) state that short-term medical may be available from an admitted insurer offering travel insurance; and 5) display prominently in the application and contract in at least 14 point type the disclosure quoted above.

The MIA believes that each of these disclosures is sufficient to ensure that a consumer understands the type of policy and the extent of coverage that the consumer is purchasing or attempting to purchase.

<u>Conclusion</u>

Surplus lines coverage should be limited to those instances where there are not options available in the admitted market. The admitted short-term medical market does have carriers currently offering coverage. There are also carriers who are approved but not yet marketing. This includes one that has stated plans to begin marketing in the very near future with an expanded coverage options. These are indications that the admitted carries are responding to the demonstrated needs of the marketplace. In addition, expanding the current surplus lines

authority to short-term medical policies not issued within thirty days of international travel will negatively impact the admitted markets. Accordingly, for these and the other reasons stated within this report, the Commissioner recommends that the General Assembly not expand the current surplus lines authority for short-term medical policies.