

From the NAIC Consumer Representatives

To: Commissioner Mulready, Chair, Commissioner Gillespie, Vice Chair, and members of the Regulatory Framework (B) Task Force

Date: November 4, 2024

Re: Comments on Model Regulation to Implement the Supplementary and Short-Term Health Insurance Minimum Standards Model Act (#171)

On behalf of the undersigned Consumer Representatives to the National Association of Insurance Commissioners (NAIC), we thank you for the opportunity to comment on the adoption of proposed revisions to Model #171.

The consumer representatives have worked closely with state regulators and interested parties throughout the process of updating Model Law 170 and Model Act 171. We want to acknowledge and thank the Co-Chairs, staff, and members of the Accident and Sickness Insurance Minimum Standards (B) Subgroup for their collaboration and open, transparent efforts over the years to revise the model.

Unfortunately, we cannot recommend that the Task Force adopt the model as currently written. Throughout the process, we have often raised our concerns related to the limited value some of these plans offer to consumers. We have found that in most instances, the committee came to a reasoned compromise between the needs of consumers and industry. However, as we have conveyed numerous times in letters to and meetings with the Subgroup, we strongly object to the inclusion of “mental or emotional disorders, alcoholism and drug addiction” and “suicide (sane or insane), attempted suicide or intentionally self-inflicted injury” as allowable exceptions for any type of supplemental or short-term policies.

Continuing to include this language in the model regulation is not only out-of-step with advances in the mental health field but is also at odds with the NAIC’s commitment to mental health parity and meaningful response to the opioid crisis. This language also perpetuates stigma against people with these health conditions and stands in stark contrast to NAIC’s diversity, equity, and inclusion efforts. Furthermore, the existing data suggests there is limited to no actuarial rationale for imposing more stringent limits and exclusions for consumers with mental and behavioral health needs than are imposed on physical health needs. Finally, because the ACA’s section 1557 nondiscrimination protections apply to any excepted benefits carriers that receive federal financial assistance (directly or through a parent company), this type of exclusion is also likely illegal for a subset of these products under federal law. We urge the Regulatory Framework Task Force to remove this exception before adopting the revised model.

Evidence compiled by Illinois and Massachusetts through task forces established by these states to evaluate the disability income replacement market indicates that the actuarial justifications behind these types of limitations may not be accurate. Moreover, experts involved in the task forces questioned whether mental health claims were qualitatively different from other claims to justify exclusion.

In 2009, the Vermont Department of Banking, Insurance, Securities, and Health Care Administration issued a Bulletin prohibiting disability income replacement policies from discriminating against individuals disabled because of a mental health condition. The Bulletin

specifically prohibits these policies from limiting or excluding coverage for disabilities resulting from a mental health condition, including conditions and disorders that involve alcohol or substance use. Evidence compiled after the Bulletin went into effect indicates that contrary to industry outcry at the time, premiums for these products did not go up (see DOL brief below from Mental Health Legal Advisors Committee in Massachusetts).

Mental health providers and advocates have also asked the federal Department of Labor (DOL) to apply mental health parity protections to disability income replacement policies, arguing that such an interpretation of ERISA non-discrimination provisions is consistent with the DOL's enforcement of parity in health benefits. The Mental Health Legal Advisors Committee, an agency under the Massachusetts Supreme Judicial Court that provides information and advice on mental health legal matters, submitted comments to DOL strongly urging the department to protect consumers from discriminatory and devastating exclusions and limitations for mental health coverage in disability replacement income policies. The comments cite the successful markets for disability policies offered with mental health parity, arguing that without an actuarial justification, these types of exclusions and limitations are based solely on stigma.

In December 2023, the Advisory Council on Employee Welfare and Pension Benefit Plans, usually referred to as the ERISA Advisory Council issued a report to the Department of Labor, concluding that the treatment and diagnosis of mental health conditions have advanced sufficiently to mitigate concerns of fraud that are often offered as rationale for mental health or substance use exceptions in plan design. Their report urges lawmakers to apply insurance parity requirements to long-term disability policies. Their report also specifically recommends that NAIC "eliminate duration limits on MH/SUD disabilities from its Model Policy 171" to address the blatantly discriminatory treatment of people with mental health and substance use disorders.

Thank you for your consideration. We urge the Task Force to revisit this section and adopt a minimum standard to protect consumers and align with the values states and the NAIC share regarding mental health parity.

Sincerely,

Kellan Baker
Stephani Becker
Ashley Blackburn
Bonnie Burns
Jalisa Clark
Laura Colbert
Brenda Cude
Lucy Culp
Deborah Darcy
Shamus Durac
Adam Fox
Stephanie Hengst
Claire Heyison

Kara Nett Hinkley
Anna Hyde
Janay Johnson
Amy Killelea
Erin Miller
Jennifer Snow
Carl Schmid
Deborah Steinberg
Christa Stevens
Harry Ting
Wayne Turner
Caitlin Westerson
Silvia Yee

CC: Accident and Sickness Insurance Minimum Standards (B) Working Group Co-Chairs
Rachel Bowden and Andrew Schallhorn, and Jolie Matthews