***Disability Income Protection Provision Suggested Revisions***

Comments on NAIC Consumer Representatives’ Initial Suggested Revisions

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| **C. Disability Income Protection Coverage**  **“Disability income protection coverage” is a policy that provides for periodic payments, weekly or monthly, for a specified period during the continuance of disability resulting from either sickness or injury or a combination of them that:**  **(1) Provides that periodic payments that are payable at ages after sixty-two (62) and reduced solely on the basis of age are at least fifty percent (50%) of amounts payable immediately prior to sixty-two (62);**  **(2) Contains an elimination period no greater than: (a) Ninety (90) days in the case of a coverage providing a benefit of one year or less; (b) One hundred and eighty (180) days in the case of coverage providing a benefit of more than one year but not greater than two (2) years; or (c) Three hundred sixty five (365) days in all other cases during the continuance of disability resulting from sickness or injury;**  **(3) Has a maximum period of time for which it is payable during disability of at least six (6) months except in the case of a policy covering disability arising out of pregnancy, childbirth or miscarriage in which case the period for the disability may be one month. No reduction in benefits shall be put into effect because of an increase in Social Security or similar benefits during a benefit period;**  **(4) Where a policy provides total disability benefits and partial disability benefits, only one elimination period may be required.** | |
| **ACLI** | **Section 8(C)(1) Payments After Age 62**  ACLI recommends preserving this provision because some individuals choose to take partial social security benefits at age 62. When this occurs, some carriers will reduce the benefit payments to reflect the income replacement they are receiving from social security when they take leave. This avoids duplicate or inappropriate wage replacement amounts.  **Section 8(C)(2) Elimination Periods**  These standards were originally intended to apply only to individual products and having them apply to both group and individual creates some issues as outlined below.  ACLI recommends leaving the elimination periods as is. These elimination periods as a minimum standard allow insurers the ability to offer the choice of products with different elimination periods which can translate into lower premiums.  For groups specifically, the elimination period should be flexible to allow the employer to customize a plan that is the most appropriate and that considers the employer’s paid sick leave, paid time off, paid family or medical leave, salary continuation plans, and/or whether the employer offers short term disability coverage. This highlights a key difference between individual and group policies: that group policies must take into account all other employee benefits, which will vary widely from employer to employer.  As a **specific illustration** of wording for the model regulation to provide for the flexibility requested above, **we suggest the following**: *“Longer elimination periods are permissible if the insured is in receipt of income replacement benefits prior to the start of disability benefits or if the design of the long-term disability plan is selected by a group policyholder on behalf of the members of the group.”*  The proposed changes would create an overly restrictive minimum standard for group policies more so than any state currently requires.  Additionally, longer elimination periods can be used in underwriting as an option for consumers should an underwritable condition or circumstance be discovered during the medical underwriting phase. The longer elimination period allows insurers to offer some level of coverage instead of declining coverage outright. Consumers often choose this option to lower the cost of premium.  **Section 8(C)(3) Benefit Duration**  ACLI requests clarification on the intent of the change from one month to three months for disabilities arising out of pregnancy, childbirth, or miscarriage because this is typically treated the same as other conditions and as illness. The proposed change would imply that the maximum benefit duration for short term disability plans would become three months. There are some group plans with shorter benefit durations that would need to be increased as a result. ACLI is unsure if this was the intent and, if so, would recommend against the change to keep the lower-cost option available for those employers who have chosen it and any who may choose it in the future.  ACLI recommends clarifying that short term disability plans are exempt from the requirement for disability plans to have a maximum benefit duration of six months. Two of the most popular short term maximum payment durations requested by employers are 13 weeks and 26 weeks, which coordinate with 90-day and 180-day elimination periods respectively. Insurers would appreciate a clarification that these types of plans comply with the minimum standards. |
| **AHIP** | **Section 8 (C) (1)** states that disability income protection coverage:  *(1) Provides that periodic payments that are payable at ages after sixty-two (62) and reduced solely on the basis of age are at least fifty percent (50%) of amounts payable immediately prior to sixty-two (62);*  AHIP supports the current language that references age sixty-two (62), which is the earliest time one may choose to receive Social Security retirement benefits. The NAIC Subgroup is asking for specific comments regarding the age a policy could lower the benefit payment amount. Given that this minimum age may change in the future, AHIP would also support revising the specific age of 62 to a more flexible reference such as “*the Social Security retirement age.”*  **Section 8 (C) (2)** recognizes the need for different elimination periods for different levels of benefits that disability income protection policies offer. We support the current elimination periods outlined in this section.  The NAIC Subgroup is asking for specific comments on the “appropriate” elimination period for policies providing benefits at various lengths of coverage. AHIP would like to note that the Texas Department of Insurance has suggested that this provision be simplified and modified “to provide that an elimination period cannot exceed 50% of the benefit period.” AHIP would also support this suggested change.  **Section 8 (C) (3)** requires a minimum benefit duration of three (3) months2 payable after a disability and allows a one month minimum for a disability arising out of pregnancy, childbirth or miscarriage.  The NAIC Subgroup is asking for specific comments on why there is a separate provision for a disability arising out of pregnancy, childbirth or miscarriage. AHIP believes that all disabilities, including pregnancy, childbirth or miscarriage should be treated equally as other disabilities, as mandated by the Pregnancy Discrimination Act of Title VII of the Civil Rights Act. A separate reference for disability arising out of pregnancy, childbirth or miscarriage, is unnecessary. Our suggested redlined edit follows:  (3) *Has a maximum period of time for which it is payable during disability of at least three (3) months. No reduction in benefits shall be put into effect because of an increase in Social Security or similar benefits during a benefit period.* |
| **Health Benefits Institute (HBI)** | **Section 8 (C) (1).**  We believe the language is intended to reflect the fact that insurers are obligated to provide coverage to reflect that the insurer should pay the maximum benefit (i.e. the number of days, months, or years of coverage) until the consumer’s normal retirement age. Insurers will not actually reduce the amount of periodic payments contracted for, but rather stop making payments at the retirement age. This should reflect current disability policy.  We would suggest the following language to clarify the issue:  (1) Provides that periodic payments that are payable at ages after sixty-two (62) as calculated by the Age Discrimination in Employment Act schedule I or schedule II or until social security normal retirement age (SSNRA) as determined by the policy;  **Drafting Note:** The intent of this section is to ensure that disabled employees who are covered under a disability policy are covered under their maximum time benefit or until their social security normal retirement age (specifically when the disabled employee is able to claim 100% of their social security benefits). Some employer plans may be covered under the Age Discrimination in Employment Act which may require a different benefit schedule.  **Section 8 (C) (2).**  The current language includes significant employer flexibility surrounding the elimination period of benefits. We believe preserving this language is vital.  We urge the committee not to reduce consumer options in purchasing elimination periods. We agree with the general comments that support the affordability of coverage – ensuring that consumers can continue to afford this coverage. More importantly is the impact on employer benefits. Shortening elimination time frames will lead to employers reducing employee benefits like sick leave and PTO which typically pay 100% of salary for an insured benefit which provides less than 100% of salary.  **Section 8 (C) (3).**  It is our understanding that current disability policies cover disability arising from pregnancy the same as any other disability. As a result, we believe this section can be deleted. |
| **NAIC consumer representatives** | After hearing the conversation at the Working Group’s meeting on May 9, we would like to offer an **amended version** of our previous comments (first offered in June of 2019). We strongly believe that with respect to the definition of disability income protection, any reduction in benefits related to a person’s age should be tied an individual’s eligibility for full Social Security retirement benefits – not their eligibility for early retirement benefits.  **Amended Suggested Revisions:**  “Disability income protection coverage” is a policy that provides for periodic payments, weekly or monthly, for a specified period during the continuance of disability resulting from either sickness or injury or a combination of them that:  (1) Provides that a plan is prohibited from reducing periodic payments based on age, except that a plan may reduce periodic payments provided that reductions not take place until the individual has reached their full retirement age to receive Social Security benefits, and those payments are at least 50% of amounts payable prior to their reaching that age ~~periodic payments that are payable at ages after sixty‐~~ ~~two (62) and reduced solely on the basis of age are at least fifty percent (50%) of amounts payable~~ ~~immediately prior to sixty‐two (62)~~;  **Drafting Note**: States should be aware that the term “full retirement age” is the age at which an individual will start receiving full retirement benefit amounts from Social Security. The full retirement age will differ depending on the age of the individual. The full retirement age is 66 for individuals born between 1943 and 1954. The full retirement age increases gradually for individuals born between 1955 and 1960, until it reaches 67. For individuals born after 1960, their full retirement age is 67. More information is available at [https://www.ssa.gov/benefits/retirement/learn.html#:~:text=The%20full%20retirement%2](http://www.ssa.gov/benefits/retirement/learn.html#%3A%7E%3Atext%3DThe%20full%20retirement%20age%20is%2Car)0[age%20is,ar](http://www.ssa.gov/benefits/retirement/learn.html#%3A%7E%3Atext%3DThe%20full%20retirement%20age%20is%2Car) e%20payable%20at%20age%2067.  (2) Contains an elimination period no greater than: (a) ~~Ninety (90)~~Thirty (30) days in the case of a coverage providing a benefit of one year or less; (b) ~~One hundred and eighty (180)~~Ninety (90) days in the case of coverage providing a benefit of more than one year but not greater than two (2) years; or (c) ~~Three hundred sixty five (365)~~One hundred and eighty (180) days in all other cases during the continuance of disability resulting from sickness and/or injury;  (3) Has a maximum period of time for which it is payable during disability ~~of at least six (6) months except~~ ~~in the case of a policy covering disability arising out of pregnancy, childbirth or miscarriage in which case the~~ ~~period for the disability may be one month~~. No reduction in benefits shall be put into effect because of an increase in Social Security or similar benefits during a benefit period;  (4) Where a policy provides both total disability benefits and partial disability benefits, only one elimination period may be required. |