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April 14, 2022

Jolie Matthews
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Comments on the Draft Supplementary Health Insurance Model Regulation 171

Dear Jolie:

I am writing on my own behalf to submit comments on the draft Model 171 entitled the "Model Regulation to Implement the Supplementary and Short-Term Health Insurance Minimum Standards Model Act". My comments relate solely to suggest amendments to the standards for "Hospital Indemnity or Other Fixed Indemnity Coverage" included in the draft.

The first suggestion amends the definition for "hospital indemnity or other fixed indemnity" insurance based upon the definition in NAIC Model 170 and adds further interpretation based upon the federal excepted benefits statutory conditions that have existed unchanged in the federal PHSA sections 2721(c), and 2971(c) since enactment of the 1996 HIPAA.

Second, I am suggesting an amendment to require a carrier to annually certify to the state insurance department that hospital indemnity or other fixed indemnity products are not offered or marketed as major medical health insurance coverage or as an alternative or substitute for major medical health insurance coverage.

Finally, I am suggesting an amendment to add a requirement for a prominent disclosure statement in the application above the applicant's signature line. This placement provides certainty that the offer is clearly understood to be for hospital indemnity or other fixed indemnity health insurance coverage and not for major medical health insurance coverage.

Thank you for your consideration of these comments and these suggested changes.

Sincerely,



William G. Schiffbauer, Esq.
Attachment

Possible Amendment to NAIC Model 171 - Definitions

On page [12] add the following new subparagraph B(1):

[1]. "Hospital indemnity or other fixed indemnity" is a policy of health insurance offered under a separate and independent policy or certificate of coverage that pays benefits as a fixed dollar amount on an indemnity basis (per day or other period, or per service) with respect to specified events (related to hospitalization and any other healthcare items or services) without regard to the actual expense incurred and without regard to whether benefits are provided with respect to such events under any other health insurance coverage; and there is no coordination [correlation] between the provision of such benefits and any exclusion of benefits under any other health insurance coverage.

Note: Federal law uses the term "coordination" not as an insurance "term of art" (i.e. coordination-of-benefits) but rather in the plain meaning of two separate items that work together ("correlate"). The intent is to prevent a health plan from carving out certain benefits to avoid regulation by placing the benefits in a separate supplemental insurance plan. Separately, hospital indemnity or other fixed indemnity coverage is not permitted to reduce benefits under the NAIC Coordination of Benefits Model Regulation.

Explanation

1. Adds a definition for "hospital indemnity or other fixed indemnity" insurance based upon the definition in NAIC Model 170 with further interpretation based upon the federal excepted benefits statutory conditions that have been in the federal PHSA sections 2721(c), and 2971(c) since enactment of the 1996 HIPAA.
2. The phrase "without regard" means that benefits are paid even though benefits are paid for healthcare "events" under a separate major medical health plan or insurance policy and will always be paid regardless of any other coverage that the policyholder may have because there will be no coordination-of-benefits.
3. The phrase "fixed dollar amount" means that benefits are not paid as a percent of the actual expenses incurred by the policyholder so that the coverage is not mistaken as major medical health insurance. The benefits are paid as a fixed dollar amount without regard to medical expenses incurred and the benefits can be used for any purpose.
4. Adds the federal law condition that a hospital indemnity or other fixed indemnity insurance policy cannot work together with a separate major medical health plan or insurance policy to provide benefits for items and services expressly excluded in the separate major medical health plan or insurance policy.

Possible Amendments to NAIC Model 171 - Marketing

1. Proposed Amendment to NAIC Model 171 - Section 8 - Benefits

Offer and Marketing of Hospital Indemnity or Other Fixed Indemnity Health Insurance.

On page [13], add a new subsection "B(3)" and renumber the subsections that follow accordingly. Insert the following new subsection "B(3)":

[3]. A carrier offering a hospital indemnity or other fixed indemnity health insurance product shall certify annually to the Commissioner that the product is not offered or marketed as major medical health insurance coverage or as an alternative to, or substitute for, major medical health insurance coverage. A violation of this subsection is a violation of this regulation and a violation of the Unfair Trade Practices Act [citation].

2. Proposed Amendment to NAIC Model 171 - Section 8 - Disclosure

Application Disclosure for Hospital Indemnity or Other Fixed Indemnity Health Insurance

On page [13], add a new subsection "B(4)" and renumber the subsections that follow accordingly. Insert the following new section "B(4)":

[4]. Any hospital indemnity or other fixed indemnity health insurance product shall include in the application for coverage a prominent notice above the applicant signature line that the coverage is not offered or marketed as major medical health insurance coverage or as an alternative to, or substitute for, major medical health insurance coverage. A violation of this subsection is a violation of this regulation and a violation of the Unfair Trade Practices Act [citation].

Explanation

1. Adds a requirement to the standards requiring a carrier to certify that hospital indemnity or other fixed indemnity products are not offered or marketed as major medical health insurance coverage or as an alternative or substitute for major medical health insurance coverage.
2. The federal HIPAA standards established the exception from group health and individual major medical health insurance for "excepted benefits" coverage because the coverage listed as "excepted benefits" is not offered or marketed as major medical health insurance.
3. Adds a prominent disclosure statement in the application above the applicant's signature line to provide certainty that the offer is clearly understood to be for hospital indemnity or other fixed indemnity health insurance coverage and not for major medical health insurance coverage.
4. Provides that a violation of the marketing and disclosure requirements is not only a violation of the supplementary health insurance standards and reiterates that it is also a violation of the Unfair Trade Practices law of the state.