

From the NAIC Consumer Representatives

**To: Accident and Sickness Insurance Minimum Standards (B) Working Group Co-Chairs
Rachel Bowden and Andrew Schallhorn, members of the Working Group, and Jolie Matthews**

Date: December 1, 2023

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 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. Throughout the process, we have often raised our concerns related to the limited value some of these plans offer to consumers. Unfortunately, the process of working from the old model has limited the ability of the working group to take a larger view of the purpose of these products and how they function in the market, making it challenging to establish a regulatory structure that protects consumers and promotes value. We continue to believe that while updating the older model, per the workgroup's process, is necessary, it is not sufficient to truly protect consumers.

The below comments primarily address the Subgroup's request to receive comments on drafting inconsistencies and items that are still awaiting review. However, 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.

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.¹ Moreover, experts involved in the task forces questioned whether mental health claims were qualitatively different from other claims as to justify exclusion. In 2009, the Vermont Department of Financial Regulation 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.² Evidence compiled after the Bulletin went into effect indicates

¹<https://www.ilga.gov/reports/ReportsSubmitted/3738RSGAEmail7569RSGAAttachReport%20of%20the%20Disability%20Income%20Insurance%20and%20Parity%20for%20Behavioral%20Health%20Conditions%20Task%20Force.pdf>

² <https://dfr.vermont.gov/reg-bul-ord/discrimination-against-disability-due-mental-health-condition-prohibited-disability>

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.³

We urge the working group to revisit this section and adopt a minimum standard that will protect consumers and align with the values that states and the NAIC share as it relates to mental health parity.

Additional comments on drafting inconsistencies and items that are still awaiting review are as follows.

Section 6. Policy Definitions

B. "Convalescent nursing home," "extended care facility," or "skilled nursing facility," "assisted living facility" or "continued care retirement community" means in relation to its status, facility and available services.

We recommend removing the word "home" throughout this definition and replace with "facility" as this is outdated language no longer used to refer to these types of facilities.

(1) A definition of the home or facility shall not be more restrictive than one requiring that it:

...

(c) Be primarily engaged in providing, in addition to room and board accommodations, skilled nursing care under the supervision of a duly licensed physician;

(d) Provide continuous twenty-four-hour-a-day nursing service by or under the supervision of a registered nurse; and

These parts describe a level of care that is inconsistent with the terms they are defining above. For example, many continued care retirement communities do not provide 24-hour nursing, meaning this definition is unnecessarily restrictive. Recommend revisiting these definitions or changing the "and" at the end of (d) to an "or".

C. "Hospital"

³ Comments submitted to DOL on August 24, 2023, available at <https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/about-us/erisa-advisory-council/2023-long-term-disability-benefits-and-mental-health-disparity-yousuf-written-statement-08-29.pdf>

Recommend deleting part (2) (d) as this unnecessarily allows for coverage exclusions for members of the military or veterans.

H. "Partial disability"

...

(2) Is in fact engaged in work for wage or profit, including for goods or services.

We recommend including goods and services in this definition to account for care providers who may be partially or fully compensated through housing.

I. "Physician"

We recommend the working group examine part (2) of this definition to ensure it intended to create such a broad exclusion. The way we interpret this definition now, it would seem that these policies could exclude care delivered to a hospital employee that they might receive at the facility in which they work or from care delivered by a family member.

J. "Pre-existing Condition"

We recommend using one definition across plan types - deleting part (2) and removing the exception for short-term plans from part (1).

M. "Total disability"

(1) A general definition of total disability shall not be more restrictive than one requiring that the individual who is totally disabled not be engaged in any employment or occupation for which he or she is or becomes qualified by reason of education, training or experience; and is not in fact engaged in any employment or occupation for wage or profits, including for goods or services.

We recommend including goods and services in this definition to account for care providers who may be partially or fully compensated through housing.

(2) Total disability may be defined in relation to the inability of the person to perform duties but may not be based solely upon an individual's inability to:

We note that the use of "may" the first time in part (2) is inaccurate and should be changed to "shall" to align with part (1).

Section 7. Prohibited Policy Provisions

D. A policy shall not limit or exclude coverage by type of illness, accident, treatment or medical condition, except as follows:

As stated at the beginning of this letter we are deeply concerned by the allowable exclusions for mental health related conditions. As such we recommend the deletion of parts (2) and (4)(b).

(4) (d) With respect to short-term nonrenewable policies, interscholastic sports; and

This appears to be out-dated language that is no longer necessary with the inclusion of short-term limited-duration insurance into this rule and the definition the workgroup has adopted. We recommend deleting part.

(5) Cosmetic surgery, except that “cosmetic surgery” shall not include reconstructive surgery when the service is incidental to or follows surgery resulting from trauma, infection or other diseases of the involved part, and reconstructive surgery because of congenital disease, to improve the function of a malformed body part or anomaly of a covered dependent child that has resulted in a functional defect ;

The word “malformed” is unnecessary and we recommend its removal.

(10) Eye glasses, hearing aids and examination for the prescription or fitting of them;

Similar to what the working group adopted for dental care above, we recommend this include an exception for medically necessity.

E. This regulation shall not impair or limit the use of waivers to exclude, limit or reduce coverage or benefits for specifically named or described preexisting diseases, physical condition or extra hazardous activity. Where waivers are required as a condition of issuance, renewal or reinstatement, signed acceptance by the insured is required unless on initial issuance the full text of the waiver is contained either on the first page or specification page.

We continue to recommend that this section be deleted. We find this section both unnecessary and at odds with the purpose of this working group. As stated in the drafting note above, some of these exclusions are unnecessary or conflict with existing law, meaning states will need to review this list carefully when determining how to update their regulations. Rather than go through the effort of adopting minimum standards, only to allow them to be waived, states should adopt minimum standards and hold plans accountable to that minimum.

Section 8. Supplementary and Short-Term Health Insurance Minimum Standards for Benefits

A. General Rules

We recommend replacing the word “spouse” with “spouse or domestic partner” throughout the subsection.

C. Disability Income Protection Coverage

Drafting Note: The elimination period cannot exceed 50% of the benefit period.

We recommend that the drafting note after part (2)(c) be incorporated into the standards for the elimination period to provide clarity and offer better value to consumers.

(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.

We also recommend that the workgroup revisit the first sentence of part (3). The discussion around this provision was quite confusing when addressed the first time and we believe has inadvertently become less protective for consumers, rather than more so.

E. Specified Disease Coverage

(1) "Specified disease coverage" pays benefits for the diagnosis and treatment of a specifically named disease or diseases. A specified disease policy must meet the following rules in Paragraph (2) and one of the following sets of minimum standards for benefits:

We recommend the inclusion of the paragraph in which the rules are found to further clarify this definition and to be consistent with subparts (a) and (b) that follow.

H. Short-Term, Limited-Duration Health Insurance Coverage

We strongly support the inclusion of paragraph (7) as it is an important and necessary consumer protection to ensure plans cannot be canceled for arbitrary reasons or those outside the control of the consumer.

Lastly, we want to alert the working group that while this model rule applies to vision and dental coverage there is no minimum standards section for either. We strongly recommend that these new subsections be added to Section 8.

We thank the working group for its attention to these important matters. If you have questions, please contact Lucy Culp at lucy.culp@lls.org or Anna Schwamlein Howard at anna.howard@cancer.org.

Sincerely,

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