HEALTH BENEFITS INSTITUTE

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Accident and Sickness Minimum Standards Subgroup
National Association of Insurance Commissioners
444 North Capitol Street NW
Suite 700
Washington, DC 20001
Attention: Jolie Matthews, J.D., Senior Health and Life Policy Counsel

Re: Model 171 Sections 6 and 7

Dear Ms. Matthews:

Thank you for soliciting comments on Section 6 and 7 for Model 171. As a minimum standards model, this model differs significantly from many other NAIC models. The insurers offering this coverage may offer coverage that meets the minimum standard for consumers requesting low cost policies, but most also offer policies that exceed these standards. These coverages allow consumers to fill their particular needs. Our members support consumer choice, strong consumer-friendly disclosures, and consistent minimum standards that will protect consumers and will not limit the availability of coverage to people who can least afford it.

The Health Benefits Institute is policy organization supported by agents, brokers, insurers, employers, benefit platforms and others seeking to protect the ability of consumers to make their own health care financing choices. We support policies that expand consumer choice and control, promote industry standards, educate consumers on their options and foster high quality health outcomes through transparency in health care prices, quality, and the financing mechanisms used to pay for care.

Model 170 and 171 have long history of being a model that regulates “other” coverage. The work of the subgroup has focused on the definition section, and has removed the substantive requirements included. It is generally good drafting not to make substantive regulatory policy in regulatory definitions. However, given the nature of these policies and the model, it may be inevitable that some policy is done through the definition of what the policy is or does. We support the changes thus far and would note that we have comments related to pre-existing condition exclusions filed last month.

This model covers a variety of different products (disability insurance, hospital or other fixed indemnity insurance, specified disease, and short-term limited-duration health insurance) that operate very differently. While there are commonalities, this section allows regulators to look at some specifics. It is important to note that regulators should tread carefully in defining the products by the minimum standards too narrowly as evidenced by need for an additional model

on long-term care insurance. In short, Model 171 should include flexibility for insurers to design new products without regulators being forced to ban the product (due to the product not meeting any regulatory definition) or leaving the product without any regulatory oversight.

Specific Comments

Section 6

Policy Dividends

The section on policy dividends may be confusing for many legislators and regulators since the policy provisions are rare in the products offered. In essence, the below section requires insurers to offer consumers the cash value of any dividend as an alternative to a policy extension. Our members are not aware, based on the policies covered by this proposed model, if this provision would generally apply. We would recommend deletion with an insertion of a drafting note since states will likely already have these provisions in their life insurance laws and regulations.

~~B. (1) A policy or rider for additional coverage may not be issued as a dividend unless an equivalent cash payment is offered as an alternative to the dividend policy or rider. A dividend policy or rider for additional coverage shall not be issued for an initial term of less than six (6) months.~~

~~(2) The initial renewal subsequent to the issuance of a policy or rider as a dividend shall clearly disclose that the policyholder is renewing the coverage that was provided as a dividend for the previous term and that the renewal is optional.~~

Drafting Note: Rarely, insurers may offer consumers policy dividends as a benefit. These provisions are more common in life insurance policies. If policy dividends are available on policies covered by this model in your state, you should look to the treatment of dividends in life insurance. Generally, consumers should be allowed to take the policy dividend as a cash payment but insurers may offer the consumer additional policy benefits in lieu of a cash payment at the option of the consumer.

Exclusions

This section delineates what insurers are allowed to exclude from coverage. Consumers have a strong interest in genetic testing, as the success of companies like 23andMe indicate. While these commercial genetic tests can help some consumers to understand their risks for certain conditions, it is not medical treatment. This generalized testing does not typically qualify as a medical expense and is not covered under most insurance plans. We would suggest the addition of the following exclusion to allow insurers to limit coverage when genetic tests are medically necessary:

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

(13) Genetic testing not ordered by a medical provider, and not used to diagnose or treat a disease.

Section 7

B. Hospital Indemnity or Other Fixed Indemnity Coverage

We would suggest one minor change to this section. In the current model the minimum amount is bracketed but the number of days is not. The Institute suggests that adding brackets to the minimum number of days adds to state flexibility and therefore should be included in this model.

(1) "Hospital confinement indemnity or other fixed indemnity coverage" is a policy of supplementary health insurance that provides daily benefits for hospital confinement on an indemnity basis in an amount not less than [$40] per day and not less than **[thirty-one (31) days]** during each period of confinement for each person insured under the policy.

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

Short-term limited duration health insurance coverage is important coverage for hundreds of thousands of consumers across the U.S. It fills an important need for consumers who need to fill coverage gaps and who lack affordable alternatives. The model law generally struck an important balance that reflects a reasonable approach and allows state flexibility, and it is important for the subgroup not to continually re-litigate issues that have been decided. The Institute and its members have worked to create an appropriate level of standards for all states, but we understand the upcoming disclosure section will be equally important. As minimum standards, the Institute would suggest the following concepts are important:

Definition

The model law does not define the standards for short term, limited duration health insurance and does not take a position on limiting the time frame of coverage. To be perfectly clear, the Institute supports a model standard based on the federal rule which permits contracts of up to 364 days and renewals of up to three years. However, we have all agreed with the principle that settled issues should not be relitigated. To that end, we suggest the following definition:

"Short Term, Limited Duration Health Insurance Plan" means a policy of health insurance that provides hospital, medical and surgical expense coverage for a fixed period of time defined in [state law].

Covered services

As the subgroup has discussed in the past, short term plans do not typically provide coverage for all of the ACA's 10 categories. The intent of the plans is to provide flexible coverage tailored to what individuals need during a gap, and given the nature of the coverage, it is unlikely the additional services would meet underwriting standards. The Institute supports the proposed NCOIL model definition of mandatory coverage categories:

(1) Ambulatory patient services;

(2) Hospitalization;

(3) Emergency services; and

(4) Laboratory services

These services are already covered by the typical short-term plans and are what a consumer should expect from a short-term plan.

Benefits

Consumers should be able to expect a minimum standard of benefits for short-term plans that differentiate them from fixed indemnity coverage. We would propose that the requirements below as minimum standards for short term health insurance and that are meet by most insurers are providing in the market:

1. Annual or lifetime limit of [$500,000]
2. Coinsurance of no more than 50% of covered charges
3. Family out-of-pocket maximum of not more than [x] per year.

Drafting Note: The annual and lifetime limit and out-of-pocket limits should vary depending on the specific state interests. For states that have severely limited coverage time frames with limited renewals/extensions, smaller annual and out-of-pocket maximums should apply. For states allowing coverage up to the federal maximum of three years, states may want to consider different limits.

Pre-existing conditions / Underwriting

The group has had extensive discussions on the use of pre-existing condition exclusions. We would suggest the proposed model adopt the following standards for short-term plans.

Short term health insurance plans may provide a look back period for underwriting purposes of not more than 2 years.

After issuance of a short term insurance plan, the insurer may not require underwriting until all renewal periods elected for that coverage have ended;

Network Standards

Some short term health insurance plans offer coverage through preferred provider plans, and in some areas the short term health insurers provide access to broader networks than the individual market plans. While it makes little sense to require ACA standards to these plans, regulators need an appropriate standard. The Institute would suggest inclusion of the following language:

Any preferred provider plan is sufficient in number and types of providers to assure covered individuals' access to all covered health care services without unreasonable delay.

We hope you find these comments helpful. Please do not hesitate to contact me if you have further questions at jpwieske@thehealthbenefitsinstitute.org or (920) 784-4486.

Sincerely

JP Wieske
Executive Director