
May 26, 2022

Laura Arp, Co-Chair
Andrew Schallhorn, Co-Chair
NAIC Accident and Sickness Insurance Minimum Standards (B) Subgroup

Re: Draft Indemnity Language

Dear Ms. Arp and Mr. Schallhorn:

I am writing to comment on the proposed language relating to indemnity products which I presume to be a reaction to Sidecar Health products. I agree with the sentiment that insurance products should not be developed to exploit legal loopholes, such as the one opened in the *Central United Life v. Burwell* decision. However, I'm concerned that in singling out this one product and one loophole, the Subgroup is overlooking more serious dangers to consumers from indemnity products, most of which arise from products sold as "short term health insurance."

The greatest danger to consumers from indemnity products is that the payment amount is inadequate to assure access to care and protection from ruinous medical debt. Such dangers are not unique to fixed indemnity amounts, as indemnity payments set by an insurer as "usual, customary and reasonable" can also leave a considerable balance below a provider's charges. But "short term" products with unrealistically low indemnity amounts, or low per-occurrence maximums that constitute *de facto* fixed indemnities—such as \$2,500 for surgery, as described in this article—are the most problematic: <https://www.propublica.org/article/junk-insurance>

Sidecar Health was kind enough to furnish me some information about their business model and answer questions. Inasmuch as they also sell ACA-compliant and employer coverage in addition to the product that raised regulators' eyebrows, I do not believe their business model exists solely to exploit the *Central United Life* loophole. They report that their indemnity amounts are sufficient to cover a bill in 60 percent of cases. I do not know the magnitude of balances left for consumers to pay in the other 40 percent. I think that this is the kind of inquiry that regulators need to make when such products are filed with your departments. The opacity surrounding how their indemnity amounts are set is concerning.

Consumers have become accustomed to health insurance products with provider networks. Indemnity products can be more confusing and less convenient for patients and require close monitoring by regulators. However, network contracting has not kept provider prices down to realistic levels, and insurers need some latitude to experiment with alternative models such as reference pricing.

I have written a commentary expanding on these considerations, which is currently under editorial review. I will share it with the Subgroup as soon as it is published. Thank you for your consideration of our views.

Respectfully submitted,

Jackson Williams
Vice President, Public Policy and
NAIC Funded Consumer Representative