

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

From: NAIC Consumer Representatives

Date: May 27, 2022

Re: **Comments on Model Regulation #171 – Definition of Disability Income Protection Coverage and Proposed Indemnity Language**

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The undersigned consumer representatives thank you for the opportunity to provide written comment on the Model #171 revisions to the definition of Disability Income Protection Coverage and the Workgroup’s proposed indemnity language.<sup>1</sup>

### **Disability Income Protection Coverage**

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 to an individual’s eligibility for full Social Security retirement benefits – not their eligibility for early retirement benefits. While individuals may be eligible for early retirement benefits (as early as age 62), electing to receive early Social Security benefits results in a lifetime of lower benefits, which can be as much as a 20 to 30 percent reduction for the primary worker (25 to 35 percent reduction for the worker’s spouse).<sup>2</sup>

Allowing disability income protection policies to reduce benefits starting at age 62 directly encourages individuals to apply for early Social Security benefits, which will have a negative lifetime impact on an individual’s financial security and would be particularly harmful to women and people of color. Women are more likely to have longer life expectancies than men and represent 63.9 percent of beneficiaries age 85 and older.<sup>3</sup> More women depend heavily on Social Security benefits as a source of retirement income with 46 percent of unmarried women over 65 relying on Social Security for 90 percent or more for their income.<sup>4</sup> In addition, people of color rely more heavily on Social Security income in retirement. For individuals age 65 and older, Social Security is the sole source of income for 40 percent of Hispanics,

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<sup>1</sup> The redlined comments offered by the consumer representatives appear in green text. The red text was language suggested by the Workgroup.

<sup>2</sup> Social Security Administration. Social Security Benefits: Benefit Reduction for Early Retirement. Available at <https://www.ssa.gov/OACT/quickcalc/earlyretire.html>.

<sup>3</sup> Social Security Administration. Fact Sheet: Social Security is important to women. January 2021. Available at <https://www.ssa.gov/news/press/factsheets/women-alt.pdf>.

<sup>4</sup> National Academy of Social Insurance. Women’s Stake in Social Security. Available at <https://www.nasi.org/learn/social-security/womens-stake-in-social-security/>.

33 percent of African Americans, and 26 percent of Asian Pacific Islanders, compared to 18 percent of whites.<sup>5</sup>

### 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 ~~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%20age%20is,are%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.

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<sup>5</sup> National Academy of Social Insurance. Social Security and People of Color. Available at <https://www.nasi.org/learn/social-security/social-security-and-people-of-color/#:~:text=Because%20people%20of%20color%20generally,earnings%20for%20low%2Dwage%20workers.>

## Proposed Indemnity Language

### B. Hospital Confinement Indemnity or Other Fixed Indemnity Coverage

(~~2~~ 3) Coverage shall not be excluded due to a preexisting condition for a period greater than ~~twelve (12)~~ six (6) months following the effective date of coverage of an insured person unless the preexisting condition is specifically and expressly excluded.

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**Drafting Note:** For indemnity products that are triggered by a variety of health events and provide a variety of daily benefit dollar amounts, regulators should examine the amount payable per day and the total amount payable per year or lifetime to determine whether consumers could reasonably perceive an indemnity product's benefits resemble comprehensive major medical coverage. Indemnity products should not be developed, marketed, or sold as a replacement for major medical coverage.

**Drafting Note:** In setting the minimum daily or lump sum benefit amounts, states should examine the extent to which the benefit amount is in line with a reasonable expectation of a consumer's out-of-pocket costs. State regulators should also examine these benefit amounts to determine whether they could reasonably be construed as violating the state's Unfair Trade Practices Act [Model #880].

Thank you for the opportunity to submit comments. If you have any questions, please contact Anna Schwamlein Howard at [Anna.Howard@cancer.org](mailto:Anna.Howard@cancer.org).

Sincerely,

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