



January 8, 2020

Commissioner Glen Mulready, Co-Chair  
Melinda Domzalski-Hansen, Co-Chair  
Accident and Sickness Insurance Minimum Standards (B) Subgroup  
National Association of Insurance Commissioners  
444 North Capitol Street, NW, Suite 700  
Washington, DC 20001

Via e-mail: [jmatthews@naic.org](mailto:jmatthews@naic.org)

Dear Co-Chairs Mulready and Domzalski-Hansen:

On behalf of America's Health Insurance Plans (AHIP),<sup>1</sup> we offer the following comments on the definition of "preexisting condition" and how/why it is used related to the products to which Model 171, the *Model Regulation to Implement the Supplementary and Short-Term Health Insurance Minimum Standards Model Act*, applies. While we take no position on the appropriate lookback period for short-term limited duration insurance (STLDI) policies, we do strongly urge the Subgroup to create separate definitions for STLDI policies and supplemental health insurance products, retaining the definition and lookback period in the current version of Model 171 for the latter.

### **Preexisting Condition Lookback Period**

The Subgroup received a recommendation from the NAIC consumer representatives to shorten the preexisting condition lookback period from the 2-year period in the current version of Model 171 to a 6-month period. The change is intended to align the definition of preexisting condition with the requirements under the Affordable Care Act (ACA). While this may be a reasonable consideration for a comprehensive health insurance policy, it is inappropriate for supplemental health insurance products. These products are substantially different from major medical coverage, a fact that the ACA and subsequent regulations acknowledged by excluding supplemental coverages from many of the requirements applicable to comprehensive medical coverage.

Supplemental health insurance products are not intended to be a substitute for ACA-type coverage. These products provide valuable benefits with low-premium cost because insurers can underwrite appropriate to the expected selection. If supplemental coverages were subjected to a 6-month lookback period, the potential for adverse selection increases significantly, which would result in increased premiums for consumers. For example, an individual who knows he or she will need certain services and/or who has a condition/illness for which supplemental coverage could provide substantial benefits, would likely put off care until they can purchase such coverage (adverse selection). This would be particularly true if an individual had to wait only 6 months as opposed to a longer period of time. These products, unlike ACA-type coverage, are more susceptible to

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<sup>1</sup> AHIP is the national association whose members provide coverage for health care and related services to hundreds of millions of Americans every day. Through these offerings, we improve and protect the health and financial security of consumers, families, businesses, communities, and the nation. We are committed to market-based solutions and public-private partnerships that improve affordability, value, access, and well-being for consumers. Visit [www.ahip.org](http://www.ahip.org) for more information.

individuals purchasing coverage when they know they will need it to collect the benefits they need and then drop the coverage. This could have a significant impact on the cost and availability of supplemental products.

In response to the question of whether/how Section 7 in Model 170 applies to the definition of “preexisting condition” under Model 171, we would argue there is no discrepancy. NAIC minimum standards have traditionally set a different lookback period for specified disease than other types of supplemental benefits, which is why the Subgroup decided to retain a different standard during Model 170 discussions. We do not believe this is at odds with retaining the 2-year period for all other supplemental health insurance products as currently allowed in Model 171.

***Recommendation***

As noted above, we strongly recommend separate definitions of “preexisting condition” for STLDI and supplemental health insurance. The lookback period for supplemental health insurance products would require no change; however, the definition for STLDI could be modified to reflect a shorter period as appropriate for major medical coverage to address consumer representatives’ concerns. If the definition is not broken out by product, we strongly recommend using X-brackets for the period of time and including a drafting note that allows state flexibility to set their own lookback periods.

**“Prudent Person” Language**

The current definition in Model 171 for “preexisting condition” includes a reference to the “prudent person” standard, which the Subgroup has discussed in quite a bit of detail. Because we do have plans that still rely on and include a “prudent person” standard in their policies, we recommend retaining that reference in Model 171.

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We appreciate the opportunity to respond to your request for comments. If you have any questions, or would like to discuss any of these comments, please contact us at (202) 861-1497 or contact AHIP consultant Chris Petersen at (202) 247-0316.

Sincerely,



Heather E. Jerbi  
Executive Director, Product Policy



Winthrop Cashdollar  
Executive Director, Product Policy