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July 1, 2021

Laura Arp, Co-Chair  
Andrew Schallhorn, 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 Arp and Schallhorn:

On behalf of AHIP<sup>1</sup>, we appreciate the opportunity to offer comments on Sections 1–7 of the staff working draft of NAIC Model 171, the *Model Regulation to Implement the Supplementary and Short-Term Health Insurance Minimum Standards Model Act*.

Please find enclosed AHIP's previous comment letters on Sections 1–5, the pre-existing condition lookback period, and Sections 6–7. These letters include four concepts that we believe the Subgroup must follow in making revisions to the Model Regulation.

### **1. Adhere to the Four Key Principles Established by the Subgroup**

The Subgroup should continue to recognize and adhere to the key principles it previously adopted as guideposts for its ongoing discussion of Model 171 revisions:

- a. We will not reopen or relitigate issues that were already discussed and decided on during the Model 170 revision.
- b. We will acknowledge up front that Model 171 reflects minimum standards. This recognizes that states should have the flexibility to decide whether the minimum standards in Model 171 should be modified if appropriate for their specific markets.
- c. We will exclude details or topics that were not included in Model 170.
- d. We will not introduce changes or new requirements that could be disruptive or lead to diminished consumer access and choice. Supplemental health insurance markets, which have been and continue to be governed by Model 171, are stable and working well and should be allowed to continue to do so.

### **2. Model 171 Should Recognize Differences Between Short-Term Limited Duration Insurance (STLDI) and Supplemental Health Insurance**

The Supplementary and Short-Term Health Insurance Minimum Standards Model Act (Model 170) reflects a clear distinction between standards for short-term limited duration

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<sup>1</sup> AHIP is the national association whose members provide health care coverage, services, and solutions to hundreds of millions of Americans every day. We are committed to market-based solutions and public-private partnerships that make health care better and coverage more affordable and accessible for everyone. Visit [www.ahip.org](http://www.ahip.org) to learn how working together, we are Guiding Greater Health.

health insurance and the supplemental coverages governed under the Model. AHIP strongly urges the Subgroup to maintain this distinction in Model 171.

**3. Focus on Addressing Product Standards Instead of Issues Outside the Scope of the Model 170**

AHIP supports the Subgroup's agreement to ensure that Model 171 continues to reflect minimum insurance product standards only. It is also important to remember that this Model is not intended to address marketing standards, medical loss ratio requirements, or unfair trade practices – there are other NAIC Models that specifically address those issues. As such, we encourage the Subgroup to ensure that provisions or issues that are not relevant to this Model Regulation are not entertained and/or incorporated.

**4. The Pre-existing Condition Limitation Language Should Reflect the Difference between Comprehensive Major Medical Coverage and Supplementary Coverage.**

Supplementary products are substantially different from major medical coverage, a fact that HIPAA, the ACA, several NAIC Model Acts, and subsequent regulations acknowledged by excluding supplemental coverages from many of the requirements, including pre-existing condition provisions, applicable to comprehensive medical coverage. Supplementary health insurance products are not intended to be a substitute for comprehensive major medical 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.

AHIP appreciates the opportunity to provide the Supgroup with our comments. If you have any questions or would like to discuss our comments, please reach out to us via email ([mstringer@ahip.org](mailto:mstringer@ahip.org) or [scoronel@ahip.org](mailto:scoronel@ahip.org)) or contact AHIP consultant Chris Peterson at (202) 247-0316.

Thank you,



Meghan Stringer  
Senior Policy Advisor  
Product and Commercial Policy



Susan Coronel  
Executive Director  
Product Policy



February 7, 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 Sections 6 and 7 of the staff working draft of NAIC Model 171, the *Model Regulation to Implement the Supplementary and Short-Term Health Insurance Minimum Standards Model Act*.

### **General Comments**

AHIP would like to offer the following general comments – applicable to Sections 6 and 7, as well as the remainder of the Model's Sections.

### ***Adhere to the 4 Key Principles Established by the Subgroup***

We believe it is important to recognize and adhere to the four key principles the Subgroup adopted as guideposts for its ongoing discussion of Model 171 revisions:

- We will not reopen or relitigate issues that were already discussed and decided on during the Model 170 revision.
- We will acknowledge up front that Model 171 reflects minimum standards. This recognizes states should have the flexibility to decide whether the minimum standards in Model 171 should be modified if appropriate for their specific markets.
- We will exclude details or topics that were not included in Model 170.
- We will not introduce changes or new requirements that could be disruptive or lead to diminished consumer access and choice. Supplemental health insurance markets, which have been and continue to be governed by Model 171, are stable and working well and should be allowed to continue to do so.

### ***Recognize Differences Between Short-Term Limited Duration Insurance (STLDI) and Supplemental Health Insurance***

The *Supplementary and Short-Term Health Insurance Minimum Standards Model Act* (Model 170) reflects a clear distinction between standards for short-term limited duration health insurance and the supplemental coverages governed under the Model. AHIP strongly urges the Subgroup to maintain

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this distinction in the revised Model 171. This means that distinct minimum standards for supplemental health insurance and STLDI should be incorporated into Model 171 as separate sections (recommended section additions and renumbering below):

- Section 6. Prohibited Policy Provisions for Supplementary Health Insurance
- Section 7. Prohibited Policy Provisions for Short-Term Health Insurance
- Section 8. Supplementary Health Insurance Minimum Standards for Benefits
- Section 9. Short-Term Health Insurance Minimum Standards for Benefits

This would continue through the remainder of the Model as follows; however, for purposes of this letter, we will focus on the Sections above.

- *Section 10. Required Disclosure Provisions for Supplementary Health Insurance*
- *Section 11. Required Disclosure Provisions for Short-Term Health Insurance*
- *Section 12. Requirements for Replacement of Individual Supplementary Health Insurance*
- *Section 13. Requirements for Replacement of Individual Short-Term Health Insurance*
- *Section 14. Separability*

Separating the sections will address key issues, such as any given section not defining to what product any given provision would apply. As we've noted previously, not all the provisions in each section reasonably pertain to supplemental products. Some are relevant only for expense-incurred products. For example, STLDI is not a HIPAA-excepted benefit. It is intended to serve as a substitute for major medical. As such, it should not be lumped in with HIPAA-excepted supplemental coverages intended to supplement comprehensive medical coverage.

While STLDI is significantly different from supplemental health insurance products, in some ways it is also distinct from ACA coverages. These products serve different yet important purposes, particularly bridging a gap in coverage for some individuals or serving as an affordable alternative for individuals who are unsubsidized or uninsured and cannot afford ACA coverage. We encourage the Subgroup to recognize that subjecting STLDI plans to requirements applicable to ACA plans would increase premiums for these plans.

### ***Focus on Addressing Product Standards Instead of Issues Outside the Scope of the Model Act and Regulation***

AHIP supports the Subgroup's agreement to ensure that Model 171 continues to reflect minimum insurance product standards only. It is also important to remember that this Model is not intended to address marketing standards, medical loss ratio requirements, or unfair trade practices – there are other NAIC Models that specifically address those issues. As such, we encourage the Subgroup to ensure that provisions or issues that are not relevant to this Model Regulation are not entertained and/or incorporated.

### **Technical Comments**

While we strongly recommend the Subgroup separate and renumber the Sections as they are listed above, for ease of reference, our technical comments are organized based on the current Sections 6 and 7.

### ***Section 6 Comments***

- Remove all references to “short-term health insurance” (except as a citation for the title of the Model) as those products would be addressed under the new Section 7.
- Retain (in subsection C) a 12-month pre-existing condition period for supplemental products to avoid adverse selection issues.
- Include (in subsection D) an additional product allowance for “return of premium” or “cash value” options.
- Maintain (in subsection F) the list of allowable exclusions to avoid adverse selection risk and resulting premium increases. We recommend the Subgroup maintain “incarceration” in the list of allowable exclusions for disability income protection policies because incarceration precludes the operation of key policy provisions (e.g., return-to-work provisions). We also recommend clarification as to whether “aviation” connotes non-commercial or recreational aviation.

### ***Section 7 Comments***

- Remove all references to “short-term health insurance” (except as a citation for the title of the Model) as those products would be addressed under the new Section 9.
- Remove “or certificate” from the first paragraph; otherwise, the Model creates a burdensome requirement that state insurance departments must review each certificate issued to a group member under a policy.
- Clarify under subsection A(6) that if cancellation is due to non-payment of premium, the pregnancy trigger requirement does not apply.
- Modify the minimum time period of a disability income policy under subsection C(3) from 6 months to 3 months. The 3-month option is popular in the states that allow it.
- Remove the dollar amounts under subsection B(1), D, E(3)(a) and (b), E(4), E(5), E(6), and F and replace them with brackets [X] so that states can update the amounts according to cost factors in their area.
- Do not include the phrase “other health care professional,” particularly as it relates to specified disease, in subsections E(3) and (4). While we recognize a definition was added for “health care professionals,” it is unclear what is intended beyond that definition and whether those “other” professionals should be providing treatment for specified diseases.

We recognize that once broken down into separate sections, some of the language in Sections 6 and 8 (for supplemental products) would be repeated in Sections 7 and 9 (for STLDI), but it is the best approach to ensure clarity regarding the necessary and disparate treatment of supplemental coverages and STLDI. We would remind members of the Subgroup that Model 171 is intended to reflect minimum standards; otherwise, we will defer to regulators to determine the appropriate provisions to include in the STLDI sections.

In addition to all of the comments provided, we look forward to the opportunity to spend some time discussing options for more robust disclosures so that consumers can make informed decisions regarding their coverage options.

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February 7, 2020

Page 4 of 4

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,

A handwritten signature in black ink, appearing to read "H. Jerbi".

Heather E. Jerbi  
Executive Director, Product Policy

A handwritten signature in black ink, appearing to read "Winthrop S. Cashdollar".

Winthrop Cashdollar  
Executive Director, Product Policy



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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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



July 30, 2019

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  
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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), we offer the following comments on Sections 1 through 5 of the staff working draft of NAIC Model 171, the *Model Regulation to Implement the Supplementary and Short-Term Health Insurance Minimum Standards Model Act*.

AHIP is the national association whose members provide coverage for health care and related services. 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. Our members are committed to providing consumers with affordable products that offer a broad range of robust provider networks of quality, cost-efficient providers.

### **General Comments**

In addition to acknowledging the four key principles the Task Force has adopted as guideposts for its ongoing discussion of Model 171 revisions, AHIP would like to offer the following general comments – applicable to Sections 1 through 5, as well as the remainder of the Model's Sections.

### ***Short-Term Limited Duration Insurance (STLDI) and Supplemental Coverages***

The *Supplementary and Short-Term Health Insurance Minimum Standards Model Act* (Model 170) reflects a clear distinction between standards for short-term limited duration health insurance and the supplemental coverages governed under the Model. AHIP strongly urges the Subgroup to maintain this distinction in the revised Model 171.

Consider that several of the definitions in the Model, as well as those that have been recommended for addition, may apply to STLDI but have no applicability to supplemental coverages. For example, recommended changes to the definition of "preexisting condition" are intended to align the definition with the requirements under the Affordable Care Act (ACA), which is applicable to comprehensive major medical coverage but not to supplemental health insurance (or HIPAA-excepted benefits). As such, a 6-month lookback period would not be appropriate for most supplemental insurance products. In this case, the definition section would need to specify one lookback period for STLDI and indicate a separate definition for supplemental health insurance (see recommendations below). Similarly, the definition of "rescission" could mean different things for supplemental health insurance than for STLDI or comprehensive medical coverage.

***Focus on Addressing Product Standards Instead of Issues Outside the Scope of the Model Act and Regulation***

AHIP supports the Subgroup’s agreement to ensure that Model 171 continues to reflect minimum insurance product standards only. It is also important to remember that this Model is not intended to address marketing standards, medical loss ratio requirements, or unfair trade practices – there are other NAIC Models that specifically address those issues. As such, we encourage the Subgroup to ensure that provisions or issues that are not relevant to this Model Regulation are not entertained and/or incorporated.

**Technical Comments**

- Section 5(D)(2), definition of “hospital”: We recommend adding “(e) facilities existing primarily to provide psychiatric services” to the list facilities that would not be included in the definition of “hospital.” Given concerns about moving to an overly broad definition of hospital in general, we would also recommend considering the addition of a drafting note that would provide states with the flexibility to establish their own definition of “hospital.” As we have seen from several plans, states already vary widely in the terminology used to define “hospital.”
- Section 5(K), definition of “preexisting condition”: As noted in our general comments above, we strongly recommend separate definitions for STLDI and supplemental health insurance. The lookback period for supplemental health insurance products would require no change; however, the definition for STLDI could reflect a shorter period as appropriate for major medical coverage. If the definition is not broken out by product, we strongly recommend using X-brackets for the period of time and include a drafting note that allows state flexibility to set their own lookback periods.
- Section 5(K), drafting note under “preexisting condition.” We have significant concerns with expanding the drafting note to require providing notice to the prospective insured about what services are not covered. Obviously, it is difficult and impractical to provide an exhaustive list, particularly for supplemental health insurance.

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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



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Executive Director, Product Policy