

## Maine Comments on Model # 171 Policy Definitions

July 2, 2021

Apparently, nobody, including me, has ever noticed that our provision on defining preexisting conditions says the opposite of what we mean it to say. It begins: “‘Preexisting condition’ shall not be defined more restrictively than the following: ....” But what we actually mean is that “preexisting condition” shall not be defined more broadly than the Regulation’s safe harbor language. A more restrictive definition means that fewer conditions are deemed by the policy to be “preexisting,” and more conditions are covered, and that’s what we want to permit. For example, a one-year lookback is more restrictive than a two-year lookback, so the company is more restricted when it comes to what claims the company is allowed to deny.

Another thing to consider is allowing companies to address these questions in the substantive terms of the policies rather than in the definitions. In other words, shouldn’t it be acceptable for a company to define “preexisting condition” the way a native English speaker would define the term, as long as they don’t purport to say that all preexisting conditions are excluded, but only preexisting conditions “that would cause an ordinarily prudent person to seek diagnosis, care or treatment” or “for which medical advice or treatment was recommended by a physician or received from a physician” within a lookback period that is no longer than two years, or whatever other maximum we end up specifying?

And why is the lookback tied to the effective date of coverage rather than the application date? This would allow the company to exclude a condition that is unknown to anyone at the time of application and first manifests after the application is complete, and perhaps even after the company approved the issuance of the policy.

Finally, the definition of “Medicare” does not belong in Section 5. This should be in a separate section, because it is a traditional definition explaining what the term means when we use it in the Regulation, not a restriction on how a company is allowed to define it in the policy. “Mental health condition or substance use disorder” might be intended to serve the same purpose, but if it is, we also need to conform the older terminology we use elsewhere. Are there other terms we need to define as used in the Regulation? (As opposed to standards for definitions as used in the policy.)

In addition to the definitions, Section 6 has been a source of confusion in Maine, because if read literally, it applies only to waiting periods “during which no coverage is provided under the policy” of any kind. Thus, they could avoid the application of the entire section, and impose any kind of waiting period they want, as long as they make some *de minimis* benefit available as soon as the policy takes effect. This is not just hypothetical – we did have a company argue that a 6-month waiting period for their “wellness benefit” was acceptable, even though it is not one of the 6-month conditions specified. Because the waiting period only applied to a portion of the policy, the company argued that it was not a period during which no coverage is provided under the policy. The existing language also a confusing cross-reference to the clause regulating the definition of “preexisting condition.” A first draft of a possible fix to current 6(A) follows (folding in current 6(C) with revisions), but I’m sure it needs more work:

## Section 6. Prohibited Policy Provisions

- A. Except as provided in ~~this sSection 5K~~ subsection, a policy shall not contain provisions establishing a probationary or waiting period during which ~~no coverage is provided~~ under the policy is excluded or restricted.
- ~~(1); -A policy, other than an accident policy, shall may not exclude coverage for a loss due to a preexisting condition, as defined in compliance with Section 5\*\*, for a period not to exceed greater than twelve (12) months following the issuance of the policy or certificate. The twelve-month limitation is not required if the condition was disclosed where during the application or enrollment form for the insurance does not seek disclosure of prior illness, disease or physical process conditions or prior medical care and treatment and the preexisting condition is noand t specifically excluded by the terms of the policy or certificate, or when the insured knowingly made a material misrepresentation during the application or enrollment process.~~
- ~~(2) -subject to the further exception that aA policy, other than an accident policy, may specify a probationary or waiting period not to exceed six (6) months for specified diseases or conditions and losses resulting from disease or condition related to hernia, disorder of the reproductionve organs, varicose veins, adenoids, appendix and tonsils, except when -. However, the permissible six month exception shall not be applicable where the specified diseases or conditions are treated on an emergency basis. -Accident policies shall not contain probationary or waiting periods.~~
- 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.
- C. ~~A policy shall not exclude coverage for a loss due to a preexisting condition for a period greater than twelve (12) months following the issuance of the policy or certificate where the application or enrollment form for the insurance does not seek disclosure of prior illness, disease or physical conditions or prior medical care and treatment and the preexisting condition is not specifically excluded by the terms of the policy or certificate. <<moved up to A(1) and revised>>~~