

Cindy Goff, Vice President, Supplemental Benefits and Group Insurance

May 27, 2022

Laura Arp, Chair and Andy Schallhorn, Chair
NAIC Model 171 Minimum Standards Regulations Working Group
Via email to: jmatthews@naic.org

RE: Comments regarding Model 171 Proposed Changes to Section 8 (Disability Income) and Proposed Language Defining Fixed Indemnity

Dear Ms. Arp and Mr. Schallhorn,

I am writing on behalf of the American Council of Life Insurers and our member companies that create and sell Supplemental Benefits products. ACLI is the leading trade association representing the life insurance industry in the United States. Financial security is ACLI members' core business. 90 million families rely on the life insurance industry for financial protection and retirement security. We very much appreciate the robust and thoughtful process the Model 171 Working Group has created to update the existing minimum standards model regulations, and we are especially grateful for the open process of taking comments and suggestions.

Definition of "fixed indemnity":

ACLI appreciates the effort put into the drafting of this definition and we largely support it. We have two suggested revisions to reflect how these types of policies are typically designed and to allow for inclusion of popular benefits. Many of the plans in the market have 31 days as a maximum duration with a limit of 10 days per confinement. ACLI recommends using these periods.

In order to allow for important and popular benefits such as outpatient procedures and diagnostic testing and to allow for percentages to be used to give consumers a higher benefit amount in certain situations, ACLI suggests the following revision: "hospital indemnity or other fixed indemnity coverage" may include but is not limited to ~~provides a benefit~~ for hospital confinement or another health-related events based on a fixed dollar amount or fixed percentage . . ."

Section 3(A) Applicability and Scope

ACLI suggests the following revision to clarify that the standards in the Model apply to certificates to a policy issued and delivered in the regulating state so there is no confusion as to whether the applicability provision extends to certificates issued under a policy situated in another states: This regulation applies to all individual and group insurance policies and certificates thereunder providing . . ."

Section 6(F) Policy Exclusions:

American Council of Life Insurers | 101 Constitution Ave, NW, Suite 700 | Washington, DC 20001-2133

The American Council of Life Insurers (ACLI) is the leading trade association driving public policy and advocacy on behalf of the life insurance industry. 90 million American families rely on the life insurance industry for financial protection and retirement security. ACLI's member companies are dedicated to protecting consumers' financial wellbeing through life insurance, annuities, retirement plans, long-term care insurance, disability income insurance, reinsurance, and dental, vision and other supplemental benefits. ACLI's 280 member companies represent 94 percent of industry assets in the United States.

Many states allow for more exclusions typical in the market and ACLI suggests adding these to give states the option of inclusion in their list of permissible exclusions as well as the option to include additional exclusions approved by the department or commissioner. We recommend including:

- voluntary use, by any means, of:
 - any drug, medication, or sedative, unless it is:
 - taken or used as prescribed by a Physician; or
 - an “over the counter” drug, medication, or sedative taken as directed;
 - alcohol in combination with any drug, medication, or sedative; or
 - poison, gas, or fumes;
- for accident coverage: operation of a motor vehicle while intoxicated; driving any motor-driven vehicle in a race, stunt show, or speed test; participating in any semi-professional or professional dangerous/hazardous avocations (e.g. bungee jumping, base jumping, hang gliding, para-kiting, sail-gliding, scuba diving deeper than 130 feet, spelunking, or mountaineering including rock climbing using ropes and any other climbing equipment; and
- additional exclusions as may be approved by the insurance department or commissioner.

Disability Income Proposed Changes:

Section 8(C)(1) Payments After Age 62

ACLI recommends preserving this provision because some individuals choose to take partial social security benefits at age 62. When this occurs, some carriers will reduce the benefit payments to reflect the income replacement they are receiving from social security when they take leave. This avoids duplicate or inappropriate wage replacement amounts.

Section 8(C)(2) Elimination Periods

These standards were originally intended to apply only to individual products and having them apply to both group and individual creates some issues as outlined below.

ACLI recommends leaving the elimination periods as is. These elimination periods as a minimum standard allow insurers the ability to offer the choice of products with different elimination periods which can translate into lower premiums. The elimination period is a period of continuous days of disability which begins on the first day of the insured’s disability. The insured’s disability must continue through the elimination period before benefits become payable. For example, the cost savings to go from a 180-day elimination period to a 365-day elimination period is significant – typically higher than ten percent. Substantial savings are also seen between 90-day and a 180-day elimination periods. Further, individuals could be covered for 26 weeks by an employer’s short term disability plan or a state disability plan. Without the ability to choose a longer elimination period at a lower cost, those individuals would essentially be forced to pay for double coverage during the overlapping time period. Many consumers would rather enjoy the savings in cost than have a shorter elimination period and consumers should retain the ability to make that choice.

For groups specifically, the elimination period should be flexible to allow the employer to customize a plan that is the most appropriate and that considers the employer’s paid sick leave, paid time off, paid family or medical leave, salary continuation plans, and/or whether the employer offers short

term disability coverage. This highlights a key difference between individual and group policies: that group policies must take into account all other employee benefits, which will vary widely from employer to employer. Another example is the ability to offer wrap around twelve-month plans that gives additional coverage after a year of paid leave. Insurers would not be able to offer these wrap-around plans without resulting in over-insurance since a twelve-month elimination period allows the 12-month policy to expire before the wrap-around benefit is required to start. As a specific illustration of wording for the model regulation to provide for the flexibility requested above, we suggest the following: "Longer elimination periods are permissible if the insured is in receipt of income replacement benefits prior to the start of disability benefits or if the design of the long-term disability plan is selected by a group policyholder on behalf of the members of the group."

The proposed changes would create an overly restrictive minimum standard for group policies more so than any state currently requires. Most states allow the employer to choose the appropriate elimination period for their plan that best fits their group's needs. The states recognize the need for flexibility in elimination periods for group policies and may hesitate to enact a restrictive minimum standard that limits the flexibility and significantly deviates from their current law.

Additionally, longer elimination periods can be used in underwriting as an option for consumers should an underwritable condition or circumstance be discovered during the medical underwriting phase. The longer elimination period allows insurers to offer some level of coverage instead of declining coverage outright. Consumers often choose this option to lower the cost of premium.

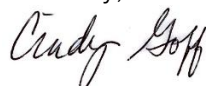
Section 8(C)(3) Benefit Duration

ACLI requests clarification on the intent of the change from one month to three months for disabilities arising out of pregnancy, childbirth, or miscarriage because this is typically treated the same as other conditions and as illness. The proposed change would imply that the maximum benefit duration for short term disability plans would become three months. There are some group plans with shorter benefit durations that would need to be increased as a result. ACLI is unsure if this was the intent and, if so, would recommend against the change to keep the lower-cost option available for those employers who have chosen it and any who may choose it in the future.

ACLI recommends clarifying that short term disability plans are exempt from the requirement for disability plans to have a maximum benefit duration of six months. Two of the most popular short term maximum payment durations requested by employers are 13 weeks and 26 weeks, which coordinate with 90-day and 180-day elimination periods respectively. Insurers would appreciate a clarification that these types of plans comply with the minimum standards.

Thank you again for this excellent process and I look forward to our continued participation in this important work.

Sincerely,



Cindy Goff
(612) 242-3390