

## FROM THE NAIC CONSUMER REPRESENTATIVES

To: Accident and Sickness Insurance Minimum Standards (B) Subgroup  
Jolie Matthews

Date: February 24, 2023

**Re: Comments on Model Regulation to Implement the Accident and Sickness Insurance Minimum Standards Model Act (#171), Section 8, Subsection H**

The undersigned NAIC consumer representatives write to offer comments on the Model Regulation to Implement the Accident and Sickness Insurance Minimum Standards Model Act (#171). The consumer representatives have worked closely with state regulators and interested parties to advise regulators on changes to Model Law 170 since the Subgroup began its work in 2015. We look forward to continuing to engage in this process on Model Regulation 171.

Throughout the process, we have often raised our concerns related to low-quality short-term, limited-duration plans. Acknowledging that this model act is intended to set minimum standards, and that we would encourage states to take further action, we offer the below line edits. We would also encourage the Subgroup to discuss the implications for consumers of short-term plans sold across state lines, as that is not addressed in the current draft.

If you have questions, please contact Lucy Culp at [lucy.culp@lls.org](mailto:lucy.culp@lls.org) or Anna Schwamlein Howard at [anna.howard@cancer.org](mailto:anna.howard@cancer.org).

Sincerely,

Lucy Culp  
Anna Schwamlein Howard  
Carl Schmid  
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Colin Reusch  
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Matthew Smith  
Ashley Blackburn  
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Comments on this draft are being requested on or before Friday, Feb. 24, 2023. Comments should be sent to Jolie Matthews by email only to [jmatthews@naic.org](mailto:jmatthews@naic.org).

## SUBSECTION H—SHORT-TERM, LIMITED-DURATION HEALTH INSURANCE COVERAGE

### H. Short-Term, Limited-Duration Health Insurance Coverage

- (1) “Short-term, limited-duration health insurance” means health insurance coverage offered or provided within the state pursuant to a contract with a health carrier, regardless of the situs of the contract, that has an expiration date specified in the contract that is less than [X days or months] months after the original effective date and, taking into account any extensions that may be elected by the policyholder with or without the carrier’s consent, has a duration no longer than [X days or months] after the original effective date of the contract.

**NOTE TO THE SUBGROUP: THE LANGUAGE IN PARAGRAPH (2)(a) ATTEMPTS TO BE CONSISTENT WITH THE SUBGROUP’S DISCUSSIONS, BUT IT MAY NOT BE CONSISTENT. AS SUCH, THE SUBGROUP SHOULD READ THIS PROVISION AND ALL OF THE OTHER PROVISIONS IN THIS SUBSECTION CLOSELY.**

- (2) (a) A short-term, limited-duration health insurance plan must comply with the benefit and coverage requirements of this state, including, if the state requires, providing benefits and coverage of state-mandated benefits and being subject to the state’s external and internal review requirements.
- (b) A short-term, limited-duration health insurance plan must have:
- (i) An annual or lifetime limit of no less than [\$1,000,000];
  - (ii) A coinsurance requirement of no more than 520% of covered charges; and
  - (iii) A family maximum out-of-pocket limit of not more than [X] per year.

Drafting Note: The annual and lifetime limit and the out-of-pocket limits should vary depending on the specific state interest. For states that have severely limited coverage time frames with limited renewals or extensions, smaller annual and lifetime limits and out-of-pocket maximums should apply. For states allowing coverage up to the federal maximum of three years, states may want to consider different limits.

**NOTE TO THE SUBGROUP: THE SUBGROUP MAY WANT TO ALTER THE ITALIZED LANGUAGE IN THE DRAFTING NOTE ABOVE TO MAKE IT LESS SPECIFIC BECAUSE THE FEDERAL MAXIMUM DURATION OF COVERAGE FOR THIS TYPE OF COVERAGE COULD CHANGE UNDER NEW PROPOSED RULES.**

- (3) Short-term, limited-duration health insurance cannot be issued if it would result in an individual being covered by a short-term, limited duration plan for more than [X] months [in any 12-month period].

- (4) A carrier may not issue a short-term limited duration health insurance plan during the annual open enrollment periods for individual-market health insurance and individual Marketplace plans as established in the state.

- (54) Short-term, limited-duration health insurance, including individual policies and group certificates:
- (a) May not be marketed as guaranteed renewable;

- (b) Must be marketed as either nonrenewable, or renewable without re-underwriting at the option of the policyholder or insured person, if the insured person contributes to the premium;
  - (c) Must clearly state the duration of the initial term and the total maximum duration, including any renewal options;
  - (d) May not be modified after the date of issuance, except by signed acceptance of the policyholder or the insured person, if the insured person contributes to the premium; and
  - (e) If the coverage is renewable, the individual policy or group certificate must:
    - (i) Include a statement that the insured has a right to continue the coverage in force by timely payment of premiums for the number of terms listed;
    - (ii) Include a statement that the carrier will not increase premium rates or make changes in provisions in the policy or certificate on renewal based on individual health status;
    - ~~(iii) If applicable, include a statement that the carrier retains the right, at the time of policy renewal, to make changes to premium rates by class; and~~
    - (iv) Include a statement that the carrier, at the time of renewal, may not deny renewal based on individual health status.
- ~~(65)~~ A short-term, limited-duration health insurance carrier may not include a waiting period or a probationary period. The effective date of the plan when benefits and coverage under the plan are in effect.
- ~~(76)~~ A carrier may not rescind a short-term limited duration health insurance plan during the coverage period except if the insured intentionally fails to disclose a prior diagnosis of a health condition or if the insured intentionally fails to disclose the insured was covered under a short-term limited duration health insurance plan. If the plan is rescinded, the carrier must refund to the insured all payments less claims paid up to the total premium amount made by or on behalf of the insured prior to the rescission date or the expiration date of the short-term limited duration health insurance.

**Drafting Note:** States should be aware that the language in paragraph (6) concerning an insured's failure to disclose prior coverage under a short-term, limited-duration health insurance plan will need to be tailored to the state's laws and regulations concerning such disclosures of prior coverage. Also, with respect to language in paragraph (6) concerning the amount that should be refunded to the insured in the event of a rescission, the expectation is that the carrier does not bill the insured for the difference in the amount between the claims paid and the premium paid in the situation where the amount of the claims paid exceeds the amount paid in premium.

**NOTE TO THE SUBGROUP: THE SUBGROUP AGREED TO PRELIMINARILY INCLUDE PARAGRAPH (7) BELOW IN THE WORKING DRAFT SUBJECT TO REVISING THAT DECISION DEPENDING ON THE NUMBER OF STATES THAT ALREADY HAVE SUCH LANGUAGE IN THEIR LAWS AND REGULATIONS ESTABLISHING GENERAL CANCELLATION REQUIREMENTS FOR ALL COVERAGES, INCLUDING STLD PLAN COVERAGE.**

- ~~(87)~~ A carrier may not cancel a short-term, limited-duration health insurance plan during the coverage period except in the following circumstances:
- (a) Nonpayment of premium;
  - (b) Violation of the carrier's published policies approved by the commissioner;

- (c) An insured's commitment of fraudulent acts as to the carrier;
  - (d) An insured's material breach of the health plan; or
  - (e) A change or implementation of a federal or a state law (*or regulation*) that no longer permits the continuing offering of the coverage.
- (98) In the event of a cancellation or rescission of a short-term, limited-duration health insurance plan, the carrier must notify the insured in writing [~~twentythree~~ (320) days] prior to the cancellation or rescission date.

**Drafting Note:** The timeframe for notifying the insured of a cancellation or rescission is bracketed because states may have different timeframes for such notices.

**Drafting Note:** Subsection H does not include a potential maximum length of coverage for short-term, limited-duration insurance. Some states have prohibited the sale of such products, while others have set the maximum duration of coverage at less than 12 months, such as establishing a three-month maximum. In addition, some states provide that such coverage may not be renewed or extended beyond the established term, or have otherwise limited total duration, while other states have no such provisions regarding renewal or extension. *Federal regulations limit short-term, limited-duration insurance plans to less than 12 months and, considering renewals or extensions, to a maximum duration of no longer than 36 months in total. States should carefully examine their health insurance markets to determine the appropriate maximum term and duration for such plans and whether additional definitions or standards may be needed.*

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