Supplemental Health

State Filing Challenges

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Notice

The information presented is intended to provide general information and discussion. It is based on filing experiences and should not be relied upon without independent research and consultation with legal counsel. The opinions and positions discussed may not represent LHCA or the people on this panel. It is not a complete list of the 'tough' states.

OVERVIEW OF SESSION

- Products Addressed:
  - Limited /Fixed Indemnity- Hospital, Surgery, Dr. etc.
  - Accident Only- indemnity or expense incurred
  - Critical illness/Specified Disease- Lump Sum
- State Experience
- Q&A

OVERVIEW OF SESSION

Products Not Addressed:

- Although considered supplemental health we will not be addressing
  - Dental
  - Vision
- Typically the following are not considered excepted from the ACA and are not considered supplemental health:
  - "Limited Benefit Plans" expense incurred with low or restricted benefits
  - Blanket Travel expense incurred
  - Short Term Medical
  - Student Plans

BENEFITS NOT SUBJECT TO ACA REQUIREMENTS

As a Refresher: The following benefits are not subject to the ACA requirements

If Offered Separately:

- Limited scope dental or vision benefits
- Long term care, nursing home care, community-based care, or any combination
- Coverage for accident, or disability income insurance

If Offered as Independent, Non-coordinated Benefits:

- Coverage for specified disease or illness
- Hospital indemnity or other fixed indemnity insurance

Other excepted benefits

- Coverage as a supplement to liability insurance
- Workers' compensation
- Automobile medical payment insurance
- Credit-only insurance
- Coverage for on-site medical clinics
- Other similar coverage, specified in regulations, under which benefits for medical care are secondary or incidental to other insurance benefits

If Offered as Separate Insurance Policy

- Medicare supplement, and similar supplemental coverage provided to coverage under a group health plan

SUPPLEMENTAL HEALTH

- For Individual- must supplement other coverage
- For group: must be a separate policy, certificate or contract;
- No coordination of benefits on either

FIXED INDEMNITY- FAQ 7 & 11

Federal guidance was presented in FAQ's

- FAQ 7 Group Fixed Indemnity must be on a per period basis – not per service.
  - Example: $100 a day versus $50 per Dr visit
- FAQ 11 - Individual Fixed Indemnity may be per service and/or per period if include a notice prominently displayed in the plan materials informing policyholders that the coverage does not meet the definition of minimum essential coverage and will not satisfy the individual responsibility requirements of section 5000A of the Code.
- When a Fixed Indemnity plan pays a fixed amount based on a % of expenses or any other similar arrangement it is considered a " health benefit plan" and subject to all state/federal mandates.

ACCIDENTAL ONLY

- ACA exempt only if coverage is for "accident only" medical care
- Can be fixed indemnity or expense incurred or paid as a percentage
- "Accident Only " plans that include wellness or sickness benefits can change the way to the product is viewed- it may be viewed as a health plan subject to the ACA

CRITICAL ILLNESS

- Covers loss due to a covered critical illness
  - Pays lump sum benefit amount
  - Typically 5 major triggers: cancer, heart attack, stroke, ESRD, major organ failure
  - Has multiple payment options: “once and done”, buckets and or max % of face amount

- Make sure the product meets the ACA description of an excepted benefit, i.e. “specified disease” as well as the states definitions of “critical illness” or “specified disease”. They can be different!

NAIC- NEW TOI’S

TOI	Sub- TOI	Description
H22 Student Health Insurance	H22.000 Student Health Insurance	A health insurance contract that covers a class of students as contemplated under ACA.
H23G Group Health - Indemnity Other than Hospital		An insurance contract that pays a fixed dollar amount without regard to the actual expenses incurred as a result of injury, sickness, and/or medical condition. If hospital indemnity, use the TOI of H14G Group Health – Hospital Indemnity.
	H23G.000Accident Only Indemnity	An insurance contract that pays a fixed dollar amount without regard to the actual expenses incurred as a result of an accident only.
H23G.001 Sickness Only Indemnity		An insurance contract that pays a fixed dollar amount without regard to the actual expenses incurred as a result of sickness only.
H23G.002 Accident/Sickness Indemnity		An insurance contract that pays a fixed dollar amount without regard to the actual expenses incurred as a result of an accident or sickness only.
H23G.003 Other Indemnity		An insurance contract that pays a fixed dollar amount without regard to the actual expenses incurred as a result of injury, sickness, and/or medical condition, not specifically described above.
H23I Individual Health - Indemnity Other than Hospital		An insurance contract that pays a fixed dollar amount without regard to the actual expenses incurred as a result of injury, sickness, and/or medical condition. If hospital indemnity, use the TOI of H14I Individual Health – Hospital Indemnity.
H23I.000Accident Only Indemnity		An insurance contract that pays a fixed dollar amount without regard to the actual expenses incurred as a result of an accident only.
H23I.001 Sickness Only Indemnity		An insurance contract that pays a fixed dollar amount without regard to the actual expenses incurred as a result of sickness only.
H23I.002 Accident/Sickness Indemnity		An insurance contract that pays a fixed dollar amount without regard to the actual expenses incurred as a result of an accident or sickness only.

NAIC- NEW TOI'S

H23I.003 Other Indemnity		An insurance contract that pays a fixed dollar amount without regard to the actual expenses incurred as a result of injury, sickness, and/or medical condition, not specifically described above.
H24G Group Health – Limited Wraparound Coverage		Coverage designed/intended to comply with federal regulations defining excepted limited wraparound coverage such as 45 CFR 146.145, or as permitted by the state.
H24G.001 Any Size Group		Coverage designed/intended to comply with federal regulations defining excepted limited wraparound coverage such as 45 CFR 146.145, or as permitted by the state that may be issued to any size group.
H24G.002 Large Group Only		Coverage designed/intended to comply with federal regulations defining excepted limited wraparound coverage such as 45 CFR 146.145, or as permitted by the state that may be issued to "large groups" as that term is defined in the state in which the contract will be delivered.
	H24G.003 Small Group Only	Coverage designed/intended to comply with federal regulations defining excepted limited wraparound coverage such as 45 CFR 146.145, or as permitted by the state that may be issued to "small groups" as that term is defined in the state in which the contract will be delivered.
H24I Individual Health - Limited Wraparound Coverage	H24I.000 Individual Health - Limited Wraparound Coverage	Coverage designed/intended to comply with federal regulations defining excepted limited wraparound coverage such as 45 CFR 146.145, or as permitted by the state.

BEST PRACTICES

1. Make sure your benefit is truly indemnity, accident only or supplemental as the states define it
2. Use the correct TOI- many filings are bounced for the wrong TOI
3. Critical Illness- Physician: many states object to having the diagnosis be made by a specialist or board certified physician

BEST PRACTICES

4. Use the required ACA or state Disclosure- see handout

5. Explain all variability in detail

4. Provide copies of prior approvals when applicable- particularly for ACA updates: AK, ID, IN, KS, LA, MD, MO, NC, NM, OH, OR UT and VA

5. Explain your marketing- the intent of marketing and how it will be sold

STATE CHALLENGES

General State Observations:

- These states have many non-standard provisions or specific objections: *California, Florida, Louisiana, Maryland, Minnesota, Missouri, New Hampshire, North Carolina, South Carolina, Washington, and Wisconsin.*
- Face Page Disclosures: Most states require a disclosure based on FAQ #11. Example (see also handout):

THIS IS A SUPPLEMENT TO HEALTH INSURANCE AND IS NOT A SUBSTITUTE FOR MAJOR MEDICAL COVERAGE. LACK OF MAJOR MEDICAL COVERAGE (OR OTHER MINIMUM ESSENTIAL COVERAGE) MAY RESULT IN AN ADDITIONAL PAYMENT WITH YOUR TAXES

- Explanation of Variables must be detailed and specific
- Combing other indemnity benefits such as accident, HIP and even wellness benefits are not permitted in some states and must be filed separately { CT, NJ, are sensitive to this}

STATE CHALLENGES

General State Observations:

- Accident: Travel; lodging and meals have been objected to in states like CA, WA
- Critical Illness- Physician: many states object to having the diagnosis be made by a specialist or board certified physician
- Critical Illness- First diagnosis -some states take position the "first diagnosis" trigger would never cover a pre-existing condition which is in violation of their law. They may allow a waiting period, but the "first diagnosis", "first ever" or similar terms requirements must be deleted. [NJ, DC- check, VA]
- For CI: A benefit trigger related to ADL's my require compliance with LTC requirements

STATE CHALLENGES

CALIFORNIA

All Products

- Use CA uniform policy provisions or explain why you have not.
- CA relies on 10291.5(a) to reject language that the department deems to be not ' readily understood and interpreted' - very subjective in its use
- May not ask about HIV testing or test for HIV. Very particular about application questions in general
- Explicit statement of variability
- Objected to one list of exclusions and stated the exclusion should appear with the benefit (C. § 10320(e).)

SUPPLEMENTAL HEALTH

CALIFORNIA, continued

All Products

- Seniors: if marketing to persons over age 65, must comply with rules for senior insurance (Section 785). Rules prohibit overloading: It shall be presumed that the sale of *disability* insurance sold to a person aged 65 years or older, is "overloading".–If the insured is already covered by Medicare Parts A and B as well as one MedSupp policy, certificate, or contract and coverage for excess charges under Part B. Loss ratio of 60% for individual and 75% for group.

SUPPLEMENTAL HEALTH

CALIFORNIA, continued

<u>Critical Illness</u>

- CA requires ‘**very specific, highly visible** disclosures ‘ about exclusions, such as those excluding non-life-threatening cancer, or localized non-invasive tumors showing only early malignant changes, or non-invasive cancer in situ.
- Also rejected the use of the phrase ‘in situ’ as CA residents would not understand it. Requested it be replaced with “ invasive” and non-invasive” cancer.
- Must have underlying health insurance in order to purchase
  - **IF ENROLLING FOR CRITICAL ILLNESS INSURANCE, A PERSON MUST BE COVERED BY AN INDIVIDUAL OR GROUP POLICY OR CONTRACT THAT ARRANGES OR PROVIDES MEDICAL, HOSPITAL, AND SURGICAL COVERAGE NOT DESIGNED TO SUPPLEMENT OTHER PRIVATE OR GOVERNMENTAL PLANS** [*10198.62(b)]*
  - CA wanted an explanation of how the carrier would comply

SUPPLEMENTAL HEALTH

CALIFORNIA, continued

- Critical Illness and "Accident and Sickness" Fixed Indemnity – Special annual certification rules (does not apply when accident only)
- On or before March 1st, provide a summary description of each applicable policy or certificate described in this section, including the average annual premium rates, or range of premium rates in cases where premiums vary by age, gender, or other factors, charged for the policies and certificates issued or delivered in California.
- For Cancer or Specified disease plans CA requires a $10,000 min benefit (10 CCR § 2220.24)

STATE CHALLENGES

COLORADO

- Rate reviews are ugly with a lot of justification
- Hospital Indemnity: "Hospital Indemnity" policies cannot include medical expense, out-patient surgical benefits, X-Rays and Labs, RX drug, ambulance benefits, office visits or other coverage's that DO NOT meet the definition of coverage while "hospitalized".
- Colorado questioned the TOI- select it carefully to avoid Notes to Filer. See definition of Hosp. Indemnity @ CO amended Reg 4-2-11 Section 4 M. DOI stated only wellness or well baby care can be included in a HIP plan if fully disclosed and labeled on the face page.

STATE CHALLENGES

COLORADO, continued

- Accident only may not have a sickness benefit – even by endorsement
- Accident and HIP - no wellness benefits
- AD&D: similarly an AD&D product could only include accident related medical coverages. Related benefits such as tuition, day care, repatriation of remains need to be filed separately under a different line of business.
- For example: A common carrier benefit included with AD&D was viewed as Travel and required to be filed separately

STATE CHALLENGES

CONNECTICUT

Accident Only

- No probationary/elimination period
- Include mandates for ambulance benefits (38a-525) and accidental ingestion of controlled substances
- No wellness benefits
- No sickness benefits – even if added by endorsement

Hospital Indemnity

- Include mandates for ambulance benefits (38a-525) and accidental ingestion of controlled substances

STATE CHALLENGES

CONNECTICUT, continued

<u>Critical Illness</u>

- Follow requirements in 38a-513-1 (group); 38a-505-13 explicitly (individual)
- 30 day free look – group and individual
- Probationary period limited to 30 days
- No reduction in benefits at age 65

STATE CHALLENGES

GEORGIA

- General: Who is the intended market, and how are you presenting the plan? Questions on whether the indemnity plan would be offered along side another in an attempt to meet the ACA requirements.

Critical Illness

- Has very few laws/regulations for critical illness policies, but does have specific internal memoranda dated 5/20/1998; 7/23/2003; and 8/1/2003 that are not published but may be obtained from the department (copies provided).
- Group and individual critical illness is a very difficult review. Must file group and individual forms as considered 'new'; i.e. developed after 1972 exemption;
- Must have underlying health insurance

STATE CHALLENGES

GEORGIA, continued

<u>CRITICAL ILLNESS</u>

- No reduction due to age
- No limitation for a pre-existing condition
- Premium refund for diagnosis during probationary period
- Must cover heart attack, stroke, life threatening cancer, coronary artery bypass surgery, and major organ transplant

STATE CHALLENGES

GEORGIA, continued

CRITICAL ILLNESS

- May cover coronary angioplasty, cancer in situ, Alzheimer's disease, MS, renal failure, paralysis, blindness, deafness, and ALS
- No first occurrence language or survival period
- May not impose time limits when determining whether a benefit will be payable

STATE CHALLENGES

GEORGIA, continued

Critical Illness

- No buckets or categories of CI's permitted
- Maximum benefit $250,000

STATE CHALLENGES

MARYLAND

All products

- Explicit statement of variability
- Benefits are payable to the Maryland Department of Health and Mental Hygiene if the carrier is notified the person is on Medicaid.
- Except for ADD and Disability Income benefits, may not exclude losses due to intoxication, drug use, illegal occupation, or felonies

STATE CHALLENGES

MARYLAND, continued

- If impose medical necessity, include utilization review standards - must provide certified or credentialed review agent information
- Critical Illness – 75% loss ratio for group; 60% for individual
- Other products – 60% for group

STATE CHALLENGES

MASSACHUSETTS

<u>Group</u>

- Generally group insurance not filed except upon request of commissioner (175 Section 110)

- HOWEVER, any accident and sickness product that is considered managed care (i.e. includes a medical necessity standard) is considered a healthcare plan and must be filed with the Managed Care Unit

STATE CHALLENGES

MASSACHUSETTS, continued

- Also, prior to 3/1/15, any hospital indemnity program with a daily benefit that exceeded $500 per day was considered hospital expense and had to be filed.
- Effective 3/1/15, the rules changed to read: 'Hospital indemnity insurance policies that provide a benefit to be paid on the basis of a hospitalization of the insured that are sold as a supplement and not as a substitute for a health benefit plan and that meet any requirements set by the commissioner by regulation is not considered a healthcare plan.'
- Clarifying rules are not out.

STATE CHALLENGES

MASSACHUSETTS, continued

Group

- Specified Disease rules (211 CMR 146.00) apply to all business except what is employment based; must disclose whether the policy is non-cancelable or guaranteed renewable, and whether it is being issued on other than an individual basis (non-employer group)

STATE CHALLENGES

MASSACHUSETTS, continued

<u>Individual</u>

- Accident only – non-cancellable for life; no premium increase
- Specified Disease (Critical Illness); 6/6 PEC; no age reduction; guaranteed renewable or non-cancellable
- Fixed Indemnity- hospital daily benefit only – up to $500 or consider health care and filed with managed care area

STATE CHALLENGES

MISSOURI

All Products

- If charge a premium during a probationary period, must pay some level of benefit

- Hospital Indemnity – all benefits must be tied to hospitalization – in-hospital physician visit approved; physician office visit rejected

STATE CHALLENGES

MONTANA

<u>All Products</u>

- Must have one un-bracketed benefit that is always issued. For bracketed benefits, our experience has been the MT wants all optional or bracketed benefits to be pulled from base forms and added as riders.
- MT prohibits use of discretionary language
- Requires the ACA Disclosure and Medicare disclosure on face page
- Prohibits discretionary group trusts

STATE CHALLENGES

NEW HAMPSHIRE

<u>All Products</u>

- Eligible groups limited to employer, a qualified association trust or a licensed purchasing alliance

<u>Accident only</u>

- No COB
- No sickness benefits, even by endorsement, or wellness benefits

STATE CHALLENGES

NEW HAMPSHIRE, continued

Accident only

- May not be expense based;
- Benefits based on occurrence of an event; Nothing may be 'treatment based'. Ex: an injury benefit being tied to receiving treatment within X days mot permitted.
- May not be assignable
- No limits on pre-existing conditions

STATE CHALLENGES

NEW HAMPSHIRE, continued

Critical Illness

- Wellness benefits acceptable but only if tied to a critical illness
- Benefits related to accident are not critical illnesses
- No first ever occurrence language, subject to PEC limits

STATE CHALLENGES

NEW HAMPSHIRE, continued

Critical Illness

- Benefits based on a diagnosis – not procedure recommendation
- Issue NAIC Shopper's Guide to Cancer Insurance when cover cancer
- Probationary period limited to 30 days

STATE CHALLENGES

NEW JERSEY

- Hospital Indemnity – limited to $250 per day or coupled with other fixed indemnity benefits, subject to mandated benefits and portability requirements (Bulletin 06-02) (daily limit does not apply to accident only indemnity benefits)
- Critical Illness – no benefit waiting period permitted; no age based reduction; must have underlying medical coverage; benefits paid based on diagnosis, not procedure

STATE CHALLENGES

NEW JERSEY, continued

- Critical Illness – no benefit waiting period permitted; no age based reduction; must have underlying medical coverage; benefits paid based on diagnosis, not procedure; once satisfy pre-existing condition limit, may not impose additional time periods for additional benefit payouts or require 'first diagnosis or first occurrence'

STATE CHALLENGES

NEW YORK

All Products

- The only exclusions permitted are pursuant to Reg 62
- Group and Individual Accident and Fixed Indemnity – daily hospital benefits limited to $240 (NY metropolitan area) and $165 (upstate) for combined hospital confinements (Ex: Hospital plus ICU) otherwise considered hospital expense policy;
- For accident and sickness – only hospital indemnity and ICU permitted; accident only additional benefits permitted

STATE CHALLENGES

NEW YORK, continued

Critical Illness

- Loss ratios for Specified Disease: 60% for individual insurance under age 65; 65% for individual insurance age 65+; 65% if one rate charged for both age groups; and 70% for group insurance
- Must have underlying hospital/medical insurance when enroll; carrier must ask 30 days after effective date if person still so covered
- May only be covered for 7 specified diseases under all policies

STATE CHALLENGES

NEW YORK, continued

Critical Illness

- Specified Diseases must be life-threatening
- Cover all forms of a disease, for example, cannot exclude skin cancer. May pay reduced benefit
- Once satisfy pre-existing condition limit, may not impose additional time periods for additional benefit payouts

STATE CHALLENGES

UTAH

- Hospital Indemnity may not be less that $50 a day and not less that 31 days during each period of confinement for each insured person UAC Rule R590-126-7 (4)
- Specified Disease includes critical illness coverages. All must meet minimum standards R590-126-7(8) (b), (c) or (d)

STATE CHALLENGES

VERMONT

<u>All Products</u>

- Since April 1, 2015, the DOI has been requiring all filers of supplemental health insurance to submit a signed certificate of compliance attesting that they have read the Department's list of recurring issues and conformed the filing to the requirements of that list. (See website and SERFF Instructions)

- Very difficult review. For group other than employers, labor unions, or professional trade associations, review Regulation 80.

- If impose medical necessity, include utilization review standards

STATE CHALLENGES

VERMONT, continued

- Mental health parity – applies to all supplemental and blanket products. May not exclude mental illness; include sane or insane in any suicide or self-inflicted injury exclusion; or exclude facilities for alcoholism or drug addition in definition of hospital
- VT rejecting portability based on change in law
- Accident Only - no wellness benefit; no probationary period for accidental injury

STATE CHALLENGES

VERMONT, continued

- Hospital Indemnity – include continuation provision in group plans (does not apply to accident only or specified disease)
- Hospital Indemnity – objection from VT indicates that additional benefits for accident and sickness hospital indemnity policies may be considered mini-meds or limited medical form (SEE NEXT SLIDE)

STATE CHALLENGES

VERMONT, continued

'Despite the disclaimer on the cover page, this policy appears to be intended to provide reimbursement for hospital and medical expenses incurred by an insured, not reimbursement of an insured's incidental expenses such as transportation and lodging. This conclusion is based on the following facts:

(1)benefits are paid only when specific medical services are rendered;

(2) payment amounts vary based upon the specific medical service provided;

(3) policyholders can purchase indemnity benefits that vastly exceed their likely incidental expenses (e.g., $500 per day for a hospital admission); and

(4) benefits are provided for some services that are highly unlikely to result in incidental expenses for the insured (e.g., in hospital physician benefits).

Since the policy provides medical coverage, the Department will not consider approving it until your company provides evidence that the coverage amounts set forth in the schedule of benefits are realistic estimates of the medical expenses that an insured who is hospitalized for a covered condition might expect to encounter. Absent evidence that the amounts set forth in the schedule of benefits are adequate, the Department will consider the policy a mini-med policy and disapprove it under the provisions of 8 V.S.A. Section 4062 that require the Commissioner to disapprove a policy if it is misleading or does not promote quality care or access to care. '

STATE CHALLENGES

VERMONT, continued

- In response to objection in previous slide, limited hospital indemnity policy to benefits related to hospitalization and other incidental benefits like transportation; range of benefits were made to reflect incidental rather than robust benefit amounts.

STATE CHALLENGES

WASHINGTON

<u>All Products</u>

- Very tough rate review; the more bracketing, the more justification required as DOI will ask for justification for all bracketed combinations and ranges

- 75% loss ratio for group specified disease; all other group and blanket, loss ratio ranges from 60% (under 10 lives) to (80% if over 100 lives); wiggle room for low frequency/high severity (ADD) but must be justified

STATE CHALLENGES

WASHINGTON, continued

- Individual loss ratio – at least 60% to be considered 'reasonable'
- Time period between accident and loss – 365 days

Questions

Thank you!