Report of the Disability Income Insurance and Parity for Behavioral Health Conditions Task Force (P.A. 102-0304)

The Disability Income Insurance and Parity for Behavioral Health Conditions Task Force was created in accordance with P.A. 102-0304. The task force was charged with the following:

- Reviewing existing plans and policies for individual and group short-term and long-term disability income insurance issued, delivered, and offered in the State;
- Comparing coverage provided by short-term and long-term disability income insurance policies for behavioral health conditions with coverage provided by such policies for physical conditions and the reasons for differences in coverage;
- Gathering information on the cost of requiring individual and group short-term and long-term disability income insurance to cover behavioral health conditions at parity with physical conditions; and
- Providing recommendations on the economic feasibility and cost-effectiveness of requiring individual and group short-term and long-term disability income insurance to cover behavioral health conditions.

DISABILITY INCOME INSURANCE – OVERALL PRODUCT AND REGULATORY BACKGROUND

Private disability income insurance provides individual with paycheck protection coverage if they become unable to work for a defined period due to an accident, illness, injury, or other disabling condition that makes it difficult or impossible for the individual to perform their normal job duties or other work. Disability income insurance also complements the public safety net provided by the Social Security Disability Income (SSDI) program, which, like private disability income insurance, provides individuals who qualify with income that replaces a limited portion of their salary if they are disabled. Generally, the qualifications to receive SSDI benefits are much stricter than those of private insurance policies.

As defined under the Illinois insurance regulations, *"'disability income protection coverage' is a policy that provides for period payments, weekly or monthly, for a specified period during the continuance of disability resulting from either sickness or injury or a combination of sickness and injury that has a maximum period of time for which it is payable during disability of at least six months. A disability income protection policy may provide for reduction by the amount of Social Security benefits at inception of any claim but not benefit reduction shall be permitted to offset a Social Security benefit increase during a benefit period."*[1]

Disability income insurance is unlike many other accident and health insurance products, including comprehensive health insurance, because the benefits are linked to the insured's ability to generate earnings. Benefits are typically based on a percentage (or for an individual disability income, a fixed amount) of an employee's income to provide the insured with a source of income to help cover basic living expenses. Disability income policies may also provide for training or other rehabilitation assistance needed for the insured to return to work.

[1] 50 Ill Administrative Code 2007.70(b)(6)

As mentioned, disability income policies provide financial or income protection for the insured, if the insured is unable to work due to an unforeseen accident or illness. Disability income insurance does NOT provide coverage for the diagnosis or treatment of medical conditions or injuries, which are covered by comprehensive health insurance. This is an important distinction to highlight between the two types of insurance products.

State and federal law make it clear that disability income insurance is considered an “excepted benefit” plan that is exempt from laws governing comprehensive group and individual health insurance, such as the federal Patient Protection and Affordable Care Act (PPACA) – now known as the Affordable Care Act (ACA), the Health Insurance Portability and Accountability Act (HIPAA), and the Mental Health Parity and Addiction Equity Act (MHPAEA).[2] The parallel Illinois mental health parity statute (215 ILCS 5/370c.1) to MHPAEA also applies only to health insurance even though the Illinois Compiled Statutes define “accident and health insurance” as “insurance against bodily injury, disablement or death by accident or disablement resulting from sickness or old age and every insurance appertaining thereto. 215 ILCS 5/4(b).[3]

Illinois insurance regulations governing required disclosure requirements of disability income insurance also state that disability income coverage is not provided for basic hospital, basic medical-surgical, or major medical expenses.[4]

The Illinois Insurance Code does not contain explicit language mandating disability income insurance coverage for disability caused by a mental health condition.[5] Furthermore, the Illinois Insurance Code specifies in provisions applicable to all insurance companies that for subjects of abuse, a disability income policy is allowed to refuse to insure, refuse to continue to insure, limit the amount, extent, or kind of coverage, or charge a different rate for the same coverage on the basis of an individual’s physical or mental condition regardless of the underlying cause of the condition.[6] The Task Force’s mandate does not encompass placing limits on insurers’ underwriting practices and is focused on coverage as issued.

In addition to the coverage disclosure requirements outlined in the state regulations, disability income insurers may be governed by other federal and state laws and regulations. Private sector employer-sponsored plans are subject to the requirements of the Employee Retirement Income Security Act of 1974 (ERISA). Requirements under ERISA address timeframes for claim decisions, requirements for keeping claimants informed and apprised of claim actions, and the appeal rights afforded claimants

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[2] “Excepted benefits” are defined under 45 § CFR 148.220

[3] Section 352b of the Insurance Code also explicitly exempts excepted benefits, including disability income insurance, from the scope of Article XX regarding Accident & Health Insurance unless it is specified otherwise and Section 370c.1 of the Insurance Code does not explicitly include disability income insurance.

[4] 50 Ill Administrative Code 2007.80(h)

[5] The State of California requires that disability income insurance providing benefits with a duration of two years or less include coverage for severe mental illnesses. Cal. Ins. Code § 10144.55. As discussed later in the report, review of Illinois short-term disability filings indicate that the majority of filings do not have any limitation for mental health.

[6] 215 ILCS 5/155.22a(c). The provisions of that Section 155.22a also prohibit disability income products from denying, refusing to issue, refusing to renew, canceling, terminating, or restricting coverage on an individual because the individual has been subject to abuse or has sought shelter or medical or psychological treatment of abuse.

whose claims are denied. However, ERISA does not encompass provisions that regulate the content of any type of insurance policies. Nor does the federal Americans with Disabilities Act or the Illinois Human Rights Act, although to the extent the Illinois Human Rights Act does address disparate insurance coverage,[7] those provisions would likely be preempted by federal law where ERISA is applicable.[8] However, ERISA does not preempt state laws regulating insurance.[9] Again, though, the Task Force's charges are not to address the comments in this paragraph.

In addition to ERISA, insurers must adhere to state requirements that ensure claims are handled promptly and properly. The National Association of Insurance Commissioners' (NAIC) Unfair Claims Settlement Practices Act ensures that claimants are treated fairly, claims are settled promptly, and clarifies the right of claimants whose claims are denied having their matter reviewed by the state insurance department.[10]

TYPES OF COVERAGE

Group Disability Income Coverage

For illness or injury that would prevent an employee from working for a limited period, an employer may offer sick leave/salary continuation or short-term disability income insurance (or both).Employee sick leave and short-term disability coverage can range from a few days to six months or more. These policies typically include pregnancy leave as a qualifying event for coverage.

Some employers may also offer group long-term disability income coverage, which provides benefits that replace a person's salary if he or she is unable to work for an extended time. Group long-term coverage generally begins after a specified waiting period (also known as "elimination period") after the onset of date of disability, or when the short-term disability income coverage for an employee ends.

Disability benefits from group policies generally continue until 1) the employee reaches either age 65 or retirement age under the Social Security Act; 2) the stated benefit period has lapsed; or 3) the claimant returns to work or dies. A typical policy pays at least 60 percent of a covered person's salary up to a maximum specified amount, for example, $5,000 a month. Group disability benefits coordinate with other disability-related payments such as Social Security or workers' compensation (and only the disability payment), meaning that benefits are reduced by the amount of other benefits the claimant is receiving such that the total benefit paid equals the amount stated in the group disability income policy.

Employers may offer group disability income insurance to their employees at no cost to the employees. As with group insurance, adverse selection is reduced when larger groups are covered or group disability insurance may be offered on a voluntary basis, meaning the employee has the option to purchase coverage under the group plan, but the employee typically pays most or all of the premium for the short-term and/or long-term group disability insurance. The advantage of such an arrangement (i.e. voluntary and paid by the employee) is that the employee's payment of premiums (which are less than if purchased individually) are with after-tax dollars that renders the benefits non-taxable.

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[7] *See, Doe v. Mutual of Omaha Insurance Company,* 179 F.3d 557 (7th Cir. 1999)
[8] ERISA preempts all state laws that "relate to" employee benefit plans. 29 U.S.C. § 1144(a)
[9] 29 U.S.C. § 1144(b)
[10] Article XXVI of the IL Insurance Code governs unfair methods of competition and unfair and deceptive practices. See, 215 ILCS 5/154.6.

Group disability insurance, as with other group insurance products, is not individually underwritten, and unlike the ACA, which requires that medical health insurance be provided to persons with pre-existing conditions, employees with pre-existing conditions may be excluded from receiving benefits if they become disabled (and the pre-existing condition is the reason) within their first year of employment. Any limitations due to pre-existing conditions and the "look back" period(s) are outlined in the policy the employer decides to offer its employees.

Another form of group disability insurance is insurance provided by trade or professional organizations or associations that allow members of the organization to purchase coverage at their own expense.

Individual Disability Income Coverage

Individuals may also purchase short-term disability income policies on their own that cover a qualifying illness or injury for a limited period that is typically less than two years. Policies can vary in terms of length and can be tailored to the individual based on their needs.

Individual long-term disability income policies can also be purchased if an individual lacks group coverage or it can be used to supplement group coverage obtained through an employer. Rather than determining benefits as a percentage of income, the insured typically buys a policy that will pay a fixed monthly dollar amount that is correlated with the insured's income but would remain fixed even if the policyholder's income declined or there is a change in careers.

Unlike group disability income insurance, individual disability income insurance is individually underwritten, and a non-qualifying applicant may be denied coverage due to their health history or may be charged a higher premium; or certain specified conditions may be excluded from coverage while other potential disabilities are covered. As mentioned, individual policies can be tailored to meet a policyholder's needs, so features and benefits can vary from policy to policy. For example, some policies pay benefits when a policyholder is unable to perform the major duties of his or her own occupation. Other policies pay benefits if the policyholder is unable to perform the duties of any occupation for which he or she is reasonably qualified by education, training, and experience. Many policies combine these features, providing "own occupation" coverage for one or two years and "any occupation" coverage after that. Policies also can have different waiting periods (also known as elimination periods) before benefits commence following the onset of disability. Policyholders can lower their premiums by extending the elimination period before benefits commence or other benefit limitations (for example, specifying to have a mental health limitation).

DISABILITY INCOME INSURANCE – NATIONAL AND STATE TRENDS

There is limited data available to determine approximately how many consumers and employees in Illinois are covered by a disability income policy in either the group or individual market and even less data available to determine how many of those insureds are covered by a policy that provides equivalent lengths of coverage for physical and mental health-related disabilities.[11] According to actuary

[11] "Organic" mental health conditions may be covered in the same way as physical conditions under private disability income insurance according to testimony presented by Steve Clayburn, Senior Actuary at ACLI to the Disability Income Insurance Parity Task Force on September 12, 2022. Many policies offer no distinction, however, and apply the limitation for mental health conditions or substance use disorders to any condition catalogued in the *Diagnostic and Statistical Manual of Mental Disorders 5-TR* (American Psychiatric Association) regardless of cause. In addition to the presentation by Dan Jolivet, Ph.D. and Richard Leavitt on November 14, 2022, which established that the mental illness limitation may be applied to conditions such as bipolar disorder or conditions that cannot

Richard Leavitt, who spoke to the Task Force on November 14, 2022, fewer than one percent of policies sold have unlimited mental health coverage, although this comment was not specific to Illinois[12].

Although not specific to Illinois, national data provided by the National Association of Insurance Commissioners (NAIC) through their annual Accident and Health Experience Report does include data breakdowns of disability income products by the number of covered lives in both the group and individual markets on a nationwide basis.

According to the aggregated data for the 2020, the number of covered lives as of December 31, 2020 in disability income insurance plans broken down by group and individual was as follows:[13]

- Group Disability Income - Short-Term: 32,336,986 or 9.8% of the total US population
- Group Disability Income - Long-Term: 49,031,597 or 15% of the total US population
- Individual Disability Income - Short-Term: 3,489,926 or 1.05% of the total US population
- Individual Disability Income - Long-Term: 2,841,520 or 0.9% of the total US population[14]

The NAIC has since published a 2021 report, which shows erosion – presumably due in large part to the employment trends resulting from the COVID-19 pandemic - in the number of covered lives as of December 31, 2021 in both disability income products in the group and individual markets as follows:[15]

- Group Disability Income - Short-Term: 25,029,106 or 7.5% of the total US population
- Group Disability Income - Long-Term: 31,390,215 or 9.5% of the total US population
- Individual Disability Income - Short-Term: 1,283,701 or 0.4% of the total US population
- Individual Disability Income - Long-Term: 2,311,707 or 0.70% of the total US population[16]
- The Illinois Department of Insurance provided data regarding the number of covered lives in a disability income policy in the state at the end of 2021. While these figures were broken down by group and individual markets, they did not distinguish between long-term and short-term products. The Department reported the figures as follows: Group Disability Income Products – 4,647,414 or 36.7% of the total state population
- Individual Disability Income Products – 242,819 or 1.9% of the total state population[17]

Massachusetts Report on Disability Income Insurance

The IL Disability Income Insurance Task Force also attempted to extrapolate trends in the disability income coverage market via the 2011 report by the Massachusetts (MA) Division of Insurance. The

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be definitively diagnosed. Kristin Medica and Jennifer Worstell also presented personal experiences regarding the impact of these limitations during the task force meeting on September 12, 2022.

[12] Richard Leavitt later provided follow-up information related to this comment, noting that "there is no good public source of data on the prevalence of unlimited or limited M&N (mental & nervous) provisions in the US Group LTD (long-term disability) market." Dr. Leavitt goes on to explain that he used two sources to determine that figure: Society of Actuaries claims data gathered from a 2019 group long-term disability income experience study and a proprietary source that pools long-term disability income quotes provided to group prospects: 96.8% of which selected the 24-month limitation and 1.1% selected the "unlimited" provision.

[13] NAIC Accident and Health Policy Experience Report for 2020 previously accessed at NAIC website prior to 2021 report publication, pg. 92 – 98 (individual market) and pg. 190 – 195 (group market)

[14] US population estimates reported by the US Census Bureau for 2020.

[15] NAIC Accident and Health Policy Experience Report for 2021 accessed at: publication-ahp-lr-accident-health-report.pdf (naic.org), pg. 76 – 82 (individual market) and pg. 169-174 (group market)

[16] US population estimates reported by the US Census Bureau for 2021

[17] Census Data reported for Illinois in 2021

report provided a summary of the current disability income coverage market at that time, and consumer trends based on 2009 data collected through a survey of disability income carriers in that state. The survey covers data and trends related to both the individual and group markets as they relate to short-term and long-term disability income coverage, including comparisons to data at the national level at that time, based on the report of 61 companies in the individual market and 54 companies responding in the group market.[18]

While the survey does not specifically cover benefit trends as they relate to mental health and substance use disorders, the older data summarized does highlight trends that might be considered in ongoing discussions and considerations of the Task Force.

As indicated in the report, individual policies include those that are sold directly to individuals, as well as those policies sold through an employment-based association or trust. Group policies refer to those written through an employer-based policy. Short-term disability income coverage – both at the individual and group levels – represents coverage marketed to provide benefits based on disability for a period of less than 2 years, while long-term disability income coverage (individual or group) was marketed to provide benefits for a period lasting 2 years or more.

Most disability income policies written in MA were in the group market (89%). Market penetration for long-term disability income policies appears higher than short-term disability income policies, with 18% of the state's employed population covered by a short-term disability income policy and 35% under a long-term disability income policy. The trends in coverage at the state level do not vary substantially from the national averages reported at that time with 88% of U.S. residents with coverage in group plans.[19]

2007-2009 Trends – Enrollment in Long-Term and Short-Term Disability Income Products

- Enrollment in group and individual long-term disability income insurance both trended downward during this time in a way that did not necessarily correlate with premiums (group long-term disability income premiums were on average slightly lower in 2008, but higher in 2007 and individual long-term disability income premiums were at their lowest point in 2009 vs. 2008 and 2007).
- Enrollment in group and individual short-term disability income insurance both trended upward during this time. For Individual short-term disability income products, the average premium in 2009 was slightly lower than 2007 and 2008. Group short-term disability income premiums, however, were slightly higher in 2009 vs. 2008 and 2007.

2007-2009 Trends – Long-Term and Short-Term Disability Income Benefit Periods (Individual Market)

- For short-term disability income benefits, a 6-month benefit period (over 40%) was the most selected by individual consumers for these policies after the eligibility and waiting period rules were met, followed by 13 or 26 weeks (over 20%), one-year (20%) and then less than 2 years

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[18] As noted throughout the report, responding carriers did not always have data to provide as they had either stopped offering coverage or did not provide relevant information. The MA report also notes that group DI plans in MA at the time of the report are not subject to state laws or regulations requiring filing be submitted for review by the Division of Insurance prior to use in the state.
[19] National membership totals as reported by those MA-certified carriers that either sold policies in the state in 2009 or had closed blocks of business in the DI market.

(less than 10%). However, the market trends show that benefit periods of 6-months, one-year, and less than 2 years declined between 2007-2009 while benefit periods of 13 or 26 weeks increased during that same period.

- For long-term disability income benefits, benefits up to age 65, to age 70, to Social Security Normal Retirement age, and lifetime benefit periods were among the most selected (over 80%), followed by 5 years (over 10%), and 2 years (less than 10%). The uptake in long-term disability income policies with a benefit period of "retirement age" or "lifetime" increased to almost 90% in 2009 while the lesser benefit periods of 5 or 2 years experienced a decline in popularity in 2009.
- The average income of an individual associated with the purchase of an individual short-term disability income policy in 2009 was lower than that of an individual purchasing a lower-income long-term disability income policy ($42,307 vs. $51,800) while the average income of an individual purchasing a higher-income long-term disability income policy was $239,226.
- The average income of an individual typically purchasing a disability income policy is important to consideration of average premiums ($1,439.57 for long-term disability income in 2009 vs. $648.64 for short-term disability income in 2009). As noted in the report, MA's average premiums were slightly higher than the national averages.

2007-2009 Trends – Long-Term and Short-Term Disability Income Benefit Periods (Group Market)

- For short-term disability income benefits, over 50% of employers selected a benefit period of 6 months in 2007 and 2008, but that dropped to just more than 30% in 2009. This trend corresponded with a sharp increase in the number of group short-term disability income policies opting for a benefit period of 13 or 26 weeks, increasing from just slightly less than 40% in 2007-2008 to more than 60% in 2009. Less than 5% of short-term disability income policies in this market have a benefit period of one-year.
- For long-term disability income benefits, 90% of employers in 2009 selected a benefit period providing benefits up to age 65, to age 70, to Social Security Normal Retirement age, and lifetime benefits periods. This benefit period experienced a slight decline in popularity from its height in 2007 where almost 95% of those policies offered a "retirement age" or "lifetime" benefit. Policies that had a benefit period of 2 years increased slightly in 2008 and 2009 over 2007 from less than 5% to approximately 5%. Group long-term disability income benefit periods of 3 years and 5 years were among the lowest percentage represented respectively although both benefit periods experienced a slight increase in 2008 and 2009 over 2007.
- The average annual income of an applicant for a group short-term disability income policy was less than the average annual income of an applicant for a group policy in 2009 ($47,955 vs. $57,875).
- Group disability income premiums for both the short-term disability income and long-term disability income are much less than the average annual premiums for these products in the individual market ($278.46 for short-term disability income vs. $243.04 for long-term disability income in 2009). As noted in the report, MA's average group premiums were in line with national averages for these two disability income products.

Other Trends of Note:

- The MA report noted a wide variation in definitions and benefits, such as typical exclusions and limitations. For example, there is no standard in place regarding the definition of what constitutes a “total disability” vs. a “partial disability” or a “residual disability.” The vast majority of individual and group short-term disability income and long-term disability income products also used an “own occupation” definition to trigger eligibility for stated disability income benefits in the policy.,

  - 76.3% of individual short-term disability income and 43.5% of individual long-term disability income products and 68.9% of group short-term disability income and 72% of group long-term disability income specified a definition of “partial disability” to identify reduced benefits.[20]
  - Nearly 57% of group long-term disability income benefits included a separate “residual disability” when the employee can return to work. Only 39.1% of individual long-term disability income policies contained this benefit option while less than 0.2% of individual short-term disability income policies provided that benefit. Nearly 41% of group short-term disability income products contained some sort of “residual disability” benefit option.

- With respect to variation in pre-existing condition limitations, 98.8% of individual short-term disability income policies had some sort of limitation while only 18.3% of group short-term disability income policies had a limitation. For long-term disability income policies, 89.6% of individual long-term disability income policies had a pre-existing limitation while 77.4% of group long-term disability income policies reported a limitation.
- Variation also existed on the elimination periods (the time in which the individual/employee must wait before short-term disability income or long-term disability income benefits take effect.
  - Over 40% of group and individual short-term disability income policies had an elimination period ranging from 0 – 7 days; over 50% of group short-term disability income policies and 30% of individual short-term disability income policies reported an elimination period ranging between 8 – 60 days.
  - 40% of group long-term disability income policies had an elimination period of 61-120 days and 40% of group long-term disability income policies reported an elimination period between 121-180 days. Over 70% of individual long-term disability income policies had an elimination period of 61-120 days followed by approximately 18% of individual long-term disability income policies reporting a 121–180-day elimination period range.

IL Disability Income Insurance Policy Filings

The task force also reviewed Illinois disability income insurance policy filings approved for marketing and sales in the state in both the individual and group markets based on SERFF filing data provided by the Illinois Department of Insurance. According to the SERFF filing data provided, there were 12 companies approved to sell individual long-term and/or short-term disability income policies and 35 companies approved to sell group long-term and/or short-term disability income policies.

Policy filings generally demonstrate wide range of variability in benefit options that would be left to the contract holder to decide, including the individual, employer, union, or Association. Several policy filings included in the filings are specific to certain employers and associations, such as the National Basketball

[20] Variation existed in the individual and group markets as to what constituted a “partial disability” (e.g. reduced duties, some level of reduced income, reduction in hours.)

Association (NBA), the American Dental Association (ADA), and the American Association of Independent Contractors (AAIC). However, it should be noted that the filings do not specify the type of benefits individuals, employers, unions or associations chose to include in their disability income policies.

Long-term disability income policies available to access in the SERFF filing data often included bracketed options for individual/employer/union/association-directed terms with respect to benefit period limitations for mental illness and/or substance use. These limitations included a selection of options ranging from 6 months, 12 months, 24 months, 36 months, or no limitation.

Other exclusions may apply to the policy at the discretion of the policyholder, including limitations on self-reported conditions such as disabilities due to pain or fatigue of unknown cause, and could even include conditions such as migraine headaches. However, such limitations can be difficult to apply;[21] and that issue is outside the scope of the Task Force's mandate.

Long-term disability income policy filings also vary with respect to the duration of disability payments. Some policies end benefits at age 65, age 70, Social Security Normal Retirement Age, or continue benefits for the insured's lifetime. The benefit periods could also be limited based on age of the insured when the disability is incurred.

Short-term disability income policy filings did not typically identify a limitation explicit to mental health and/or substance use. There were, however, instances where policies had the option to exclude mental health and/or substance use as a covered disability altogether. The filings also demonstrate a variety of benefit periods offered under the plan, including options to select a 6-month, 12-month, or 26-week benefit period for the short-term disability.

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[21] According to *Weitzenkamp v. Unum Life Ins. Co.,* 661 F.3d 323, 330-31 (7th Cir. 2011),

[T]he self-reported symptoms limitation applies to disabling illnesses or injuries that are *diagnosed* primarily based on self-reported symptoms rather than to all illnesses or injuries for which the *disabling symptoms* are self-reported. The contrary interpretation advanced by Unum would sweep within the limitation virtually all diseases, leaving only a small subset for coverage beyond that time period. For most illnesses or injuries, the disabling aspect is not the disease itself, but the pain, weakness, or fatigue caused by that illness or injury. Even diseases that are extremely likely to cause an inability to work, such as stage IV cancer or advanced heart disease, are disabling because of the pain, weakness or fatigue. Under Unum's interpretation, however, those diseases would fall within the twenty-four-month limitation because pain, weakness and fatigue are self-reported symptoms that are difficult if not impossible to verify using objective medical evidence. In fact, at oral argument, Unum conceded that under its interpretation the provision would limit coverage for all conditions in which the disabling symptom is pain. Unum even maintained this was true regardless of the etiology of the pain, so that even if the underlying condition were highly likely to cause pain, the limitation would apply because the pain itself is self-reported and not verifiable.

COST CONSIDERATIONS IN DISABILITY INCOME INSURANCE

There are many considerations that factor into the price of an insurance product, but all insurance products regardless of line of business must develop pricing models that abide by Actuarial Standards of Practice when it comes to assessing the risk dynamics associated with the product. According to the American Society of Actuaries "[t]he risk dynamics of the typical medical product are significantly different than the risk dynamics for disability."[22]

The American Society of Actuaries further notes that the "most fundamental risk in disability products is the chance that actual claim frequency and/or severity become materially worse than predicted in pricing and loss ratios exceed the expected level. . . Companies manage disability risk through experience monitoring, coverage design, underwriting, policy and claim administration, original pricing margins, and pricing revisions."[23]

The pricing considerations and risk dynamics associated with disability income products differ between the group market and the individual market. "Individual disability has a greater risk of claim frequency deterioration than group disability because coverage is generally guaranteed to continue, often to the insured's age 65."[24]

As Steve Clayburn, Senior Actuary, Health Insurance & Reinsurance for ACLI, noted in his testimony to the task force on September 12, "[a]s a basic premise to costs to the consumer (be it an employer or individual) – an increase in costs, which would occur if there is no limitation on mental health parity would equate to an increase in price for an extended period of time for disability." During their testimony to the task force on November 14, Richard Leavitt and Dan Jolivet, Ph.D. stated that the pricing implications of removal of the mental illness limitations is unknown but acknowledged that coverage without limitation for disabilities due to behavioral health conditions would likely result in a premium increase. Mr. Leavitt stated that "the publicly filed long-term disability (LTD) manual rates list factors generally ranging from a 10% to 25% load for removing the limit, with the average being about 17%" but through his work with the Society of Actuaries (SOA) estimates the impact of the limit would more likely be "between 4% and 6%. Dr. Jolivet also noted that the passage of mental health parity requirements in health insurance was anticipated to increase premium costs by 11% but turned out to only increase premiums by 1%, although, for the reasons stated above, a comparison between health and disability insurance may be inapt. However, testimony given on August 14, 2022, by Phil Keller, formerly of the Vermont Department of Insurance, indicated that the State of Vermont, which issued HCA Bulletin 127 prohibiting discrimination in disability insurance based on mental health conditions as of November 1, 2009, has not seen any rise in premiums for disability income insurance since that date, although Vermont's experience may not necessarily be representative of the rest of the country.[25]

Pricing Impact of Unlimited Mental Health

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[22] *Report of the Disability Income Risk-Based Capital Work Group to the NAIC Health Risk-Based Capital Working Group* prepared by the American Academy of Actuaries, March 2001; pg. 1; [Disability Income RBC Work Group March 2001 Report (actuary.org)]

[23] Id; pg. 28

[24] Id.

[25] Steve Clayburn also noted in his September 12 testimony that he was aware of several disability income insurance companies who are members of ACLI chose not to write disability income insurance business in VT as a result of the Department's bulletin.

While there were no rate filings included in any of the provided IL SERFF filings to demonstrate premium as it relates to specific policy provisions, one filing provided by Hartford Life and Accident Insurance Company (HARL-122065830) did include their rate certification filing guidelines outlining factors that would impact premium rate variability depending on various underwriting factors, benefit selections, limitations, exclusions, etc. from which a policyholder could select.

These premium rate factors noted an increased impact to the premium as mental health limitations were increased in length of time.[26]

Other plan design variables and covered population demographics that could impact the premium included: employee population covered (how many lives); % of salary covered; benefit period; elimination period; age; gender; and industry covered based on SIC codes; benefit definitions including the definition of a disability; exclusions and limitations; funding of the plan; collective bargaining; and additional optional benefits such as survivor benefits, extended earnings benefit, business protection benefit, infections/contagious diseases benefit, quarantine rider, rehabilitation completion bonus, and continuation of coverage during leave, layoff or furlough.

Other adjustments impacting the overall cost of the disability income policy noted in the filing certification guide included:

- Significant change in exposure (addition or deletion of subsidiaries)
- Substantial change in demographics – high or low employee turnover
- Favorable or unfavorable claims patterns
- Other voluntary coverages by same company

Task Force member Senator Dave Syverson also provided three anecdotal pricing samples of individual disability income policies with no limitation applied to mental health that demonstrated a 15% to 21% increase in risk exposure (price) over a policy with a 24-month limitation. Senator Syverson noted in his communication to members of the task force that the pricing samples were before medical underwriting, which could either increase or decrease the price depending on the individual's medical history, age, sex, job type, and personal activities that may impact risk exposure (such as scuba diving or sky diving). Task Force member Mark DeBofsky anecdotally related the experience of his own law firm's disability insurance coverage. When switching from one group insurer that had a limitation for mental health conditions to another that did not, premiums **decreased.**

As noted previously by the American Society of Actuaries, risk dynamics and how products are priced in the individual and group markets depend on different underwriting factors. The group underwriting considerations are outlined above in the rate certification guide provided under SERFF filing number HARL-122065830.

Task Force member Laura Minzer representing the Illinois Life & Health Insurance Council (ILHIC) also requested information regarding the pricing impact of providing disability income insurance benefits for mental health conditions without a limitation on duration. One carrier who provides group voluntary disability income insurance to groups of public school employees reported the addition of an unlimited

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[26] The rate certification guide notes the following rating factor impact for mental illness limitation: 0.99 for a 1-year limit, 1.00 for a 2-year limit, and 1.20 for same as any other condition). Substance use limitation rating factors were also noted: 0.99 for a 1-year limit, 1.00 for a 2-year limit, and 1.04 for same as any other condition.

duration for mental health disorders would increase the price of the product by 15% “in order to maintain the financial sustainability of the offering.”[27]

The Task Force also discussed the pricing impact of Vermont’s Revised Bulletin 127 prohibiting discrimination against disability due to a mental health condition in disability income replacement products that was first published on October 22, 2008. The Bulletin, which applied to individual and group disability income insurance products issued or renewed on or after November 1, 2009 in VT prohibited insurers from applying a 24-month limitation on disabilities from or due to mental health conditions unless the limitation also applied to other disabilities.

While it was difficult to discern data and pricing information on the impact of the bulletin on disability income products offered in that state after the bulletin took effect, ACLI noted that carriers did exit the market and “if the costs increased from claims, then group insurance price would have increased.”[28] Furthermore, guaranteed renewable individual disability income insurance would have also had to price the product appropriately to ensure that they could absorb the increased risk exposure while also meeting the long-term financial obligations to the customer.[29]

ADDITIONAL CONSIDERATIONS

Testimony from Mr. Leavitt informed the Task Force that he was unable to find a historic actuarial basis for mental illness limitations in disability insurance. Mr. Leavitt and Dr. Jolivet added that mental illness claims comprise fewer than 10% of all disability benefit claims and that proportion in comparison to overall disability claims has fallen from 1997 to 2017. Moreover, it is rare for any such claim to have a duration in excess of one year due to more effective treatment and better claim management. He further suggested that maintaining the limitation could have a perverse effect of limiting more effective claim management if benefits are automatically going to be terminated after two years.

Both Mr. Leavitt and Dr. Jolivet further pointed out that mental health claims are not qualitatively different from other claims and are often presented by claimants who have multiple co-morbidities, which make it different to differentiate physical from mental disabilities.

Testimony provided to the Task Force on October 17, 2022 by Steven Rothke, Ph.D. and Henry Conroe, M.D. informed the committee that examination techniques and psychological testing are able to verify disability accurately and to detect potential fraud, thus addressing a concern that one reason for having a limitation specific to mental health disorders is that disabilities for such conditions cannot be assessed as accurately as with other conditions. Both also confirmed improvements in treatment that have shortened the duration of work absence due to mental health disorders.

The largest disability benefit program in the world, the Social Security disability benefit program, does not make a distinction between physical and mental conditions and pays equal benefits for both. However, eligibility under the Social Security disability benefit program is strictly defined and limited to

[27] Group voluntary disability income insurance products are offered as a group plan, but the benefit is left to the discretion of the employee to “opt in” to coverage, which typically means the employee pays most if not all the monthly premium associated with that additional benefit option. The carrier noted that their most popular long-term disability income plans have a two-year limitation on select Mental & Nervous conditions while offering unlimited benefits for organic Mental & Nervous conditions.

[28] Task Force testimony provided by Steve Clayburn, Senior Actuary, Health Insurance & Reinsurance for ACLI; September 12, 2022.

[29] Id.

those individuals who have a long-term disability that will leave them unable to work for a one-year or longer (partial and short-term disabilities do not qualify). Additionally, eligibility for Social Security disability benefits is also limited to those who have worked for a certain length of time and contributed to the Social Security trust fund in the form of Social Security taxes received under either the Federal Insurance Contributions Act for employees or the Self-Employment Contributions Act for the self-employed. Unlike private disability income insurance, which could be a voluntary payroll deduction, if the employer is subject to the Federal Insurance Contributions Act, then eligible employees must have a portion of their payroll taxes deducted for these purposes.

TASK FORCE CONSIDERATIONS AND RECOMMENDATIONS

Maintaining Choice in Disability Products Position

1) Data does not support mandating all disability income policies offered in Illinois cover mental health conditions without limitations without risk of market disruption.
    - **a.** Based on the variability of options presented in the IL SERFF filings and the information presented by the sample quotes provided by Senator Syverson, including Mark Debofsky's relayed experience of his own law firm's disability insurance coverage, consumers and employers already have the option to purchase a disability income policy that provides for coverage of a mental health condition without limitation. Mandating that all coverage adheres to the same limitations eliminates that choice for consumers.
    - **b.** Additionally, examples and data presented to the task force does demonstrate the additional mandate could result in a higher priced disability income products that consumers (groups and individuals) may ultimately reject leaving more individuals without <u>income protection</u> in the event a physical or mental health disability prevents them from working.
    - **c.** Requiring additional disability income benefits such as "unlimited" mental health creates greater risk of exposure for companies, which in turn, as noted by the American Academy of Actuaries, means adjusting the pricing model to adequately absorb that risk to meet the long-term financial obligations and protections of the product for all consumers. It would therefore follow that while pricing considerations may be felt more acutely in one market segment over another (individual vs. employer), prices could still increase because claims could increase over time.
2) Disability income insurance is inherently different than comprehensive health insurance and the actuarial experience of applying federal and state health insurance-related mental health and substance use parity laws is not indicative of the potential impact borne on the private disability income insurance market.
    - **a.** Private disability income insurance, unlike health insurance, is a voluntary insurance product.[30] Additionally, these insurance products face inequivalent variables impacting costs, including, but not limited to underwriting factors, benefits, claims, and utilization.

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[30] The ACA requires employers with more than 50 full-time equivalent employees to offer affordable minimum essential coverage or be subject to an "employer shared responsibility penalty." Individuals are also required to obtain health insurance, although Congress zeroed out the tax penalty associated with the individual mandate in 2017. No equivalent mandate law exists for excepted benefits, including disability income insurance.

Health insurance benefits – whether group or individual- are typically renewed on an annual basis and claims paid for treatment and medical expenses- including ongoing treatment- are typically paid out for any given enrollee over a shorter period. Disability income insurance claims, however, may be paid over a period of months, years, and even decades, which necessitates a different actuarial assessment of costs to ensure the premiums received support the benefits paid out.

b. Given the much smaller uptake in the voluntary disability income insurance market, the total risk pool an insurer must balance claims against suggests that any benefit a state would mandate, such as unlimited mental health, may increase the number of long-term claims paid out and necessitate an increase in cost, as noted several times previously in this report.

c. While industry does not dispute the idea that there is an opportunity to educate employers and consumers on the options that exist to protect their income against unforeseen circumstances, as discussed below, policymakers who opt for a mandated approach to unlimited mental health in disability income insurance run the risk of dissuading existing customers and future customers from purchase the voluntary product altogether. This ultimately leaves self-employed individuals and employees without any protection of their income due to the loss of work because of any illness or injury.[31]

3) Low uptake in disability income products overall presents an opportunity for Illinois to consider greater education and awareness of the value of the income protection (and perhaps explore other options).

a. Based on the NAIC data presented, if the national trends were to be extracted and applied to Illinois, it would track that less than 15% of the employed population is protected by a short-term or long-term disability income policy. Since disability income insurance is a voluntary product for both individuals and employers, there is potentially an opportunity to increase awareness of the importance of protecting one's income if he or she finds themselves unable to work due to a physical or mental health disability. While somewhat outside of the scope of this working group's focus, policymakers may want to explore other ways to enhance income protections for consumers through other means (Paid Family Medical Leave, tax incentives for income protection products – HB 4214 (Vella) and HB 4965 (Vella), for example).

b. Disability income coverage helps employees return to work and reduces burdens on public programs. Disability management programs that are a part of private disability income coverage give workers the tools, resources, and support needed to get back on the job. These programs help individuals return to work faster, improve their quality of life, resume their earning potential, and move forward with their career. Positive return-to-work outcomes reduce burdens on the Social Security Disability Insurance (SSDI) program and other public assistance programs, potentially saving the federal

[31] While the Social Security benefits program may offer protection as noted previously in this report, benefits are dependent on eligibility, which can be much stricter than that of private disability income insurance. Furthermore, this also runs the risk of shifting a greater financial burden on the publicly-funded Social Security Disability Income Insurance program.

government as much as $25 billion over 10 years according to Charles Rivers Associates.[32]

c. Effective claim management by disability insurers has also produced a sound return on investment according to Dr. Dan Jolivet since it reduces benefit costs to insurers and returns employees to productive employment more quickly.

Mandating Coverage Options in Disability Income Position

1. Societal trends and public policy favor the removal of limitations for mental health conditions. The federal mental health parity law has been in existence for more than a decade, and Illinois' passage of a parallel law has clearly established a public policy favoring equality in health insurance coverage for treatment of mental health conditions, including substance use disorders. Consistent with that public policy, eliminating disparate inferior coverage for behavioral health conditions is just as necessary in disability income insurance as it was in health insurance and promotes de-stigmatization of mental illness and recognition of such illnesses as having equal legitimacy as physical impairments. Even if elimination of mental illness limitations in disability income policies may lead to a modest increase in premiums, that argument was overridden when mental health parity in health insurance became the law of the United States and the State of Illinois; and predictions of increased premium costs turned out to have been unwarranted. No one knows if or when they might suffer a job-impacting disability; and certainly, no one can predict the cause of a disability they experience. Persons who experience disability due to a mental health disorder lasting more than two years are no less disabled than someone with a heart condition such as cardiomyopathy or a neurological disorder such as multiple sclerosis. Maintaining the mental illness limitation is not only archaic and unfair; it is discriminatory and unfairly limits the economic protection promised by disability income insurance coverage.

2. If there was ever an actuarial justification for imposing limits on disability coverage for mental illnesses (as opposed to an insurer's carrier's ability to underwrite risk and exclude or rate applicants with a history of mental illness), there is no longer such as justification in view of the relatively low incidence of behavioral health disability claims and the usually short duration of such claims due to improved treatment. Moreover, mental health disability claims can be evaluated objectively, which reduces the perceived fear of the potential for fraudulent claims.

3. The threat of increased premium costs if the mental illness limitation is eliminated is hypothetical and unknown, although the experience in Vermont does offer an example showing that concerns about increased costs are unwarranted. Likewise, the failure of anticipated premium increases to appear following the passage of the federal Mental Health Parity and Addiction Equity Act may be predictive of what would occur if parity of coverage were to be mandated for disability income insurance. But even if costs were to rise by 4% as estimated by Mr. Leavitt, premiums for individual disability insurance average 1-3% of the insured's salary[33] and group long-term disability premiums average $0.65 per $100 of salary per month.[34] Thus, for an insured earning $100,000, premium costs

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[32] *"Expanding Private Disability Insurance Coverage to Help the SSDI Program"* Babel and Meyer – funded by ACLI and America's Health Insurance Plans (AHIP)

[33] See https://www.policygenius.com/disability-insurance/learn/how-much-does-long-term-disability-insurance-cost/

[34] See https://www.bcbsil.com/ancillary/pdf/admin-guides/IL-How-to-Calculate-Ancillary-Premium-Broker-Employer-Flier.pdf

might increase from $3,000 per year to $3,120 per year (or $250 per month to $260 per month), while monthly premiums for long-term disability insurance would increase from $65.00 per month to $67.60 per month, which are modest amounts.

4. The potential availability of unlimited coverage for mental health conditions is a mirage since fewer than 1% of the policies sold in the U.S. offer such coverage. Mr. Leavitt suggested the reason fewer policies with unlimited coverage are sold is because most insurers price the coverage in a manner that is not consistent with claims experience or as a punitive measure to deter employers from selecting such coverage. Nor is the potential availability of unlimited coverage a legitimate argument for maintaining the status quo. Just as health insurance had to be mandated to include parity in mental health coverage (and the Illinois Insurance Code and Affordable Care Act mandate the inclusion of certain benefits in health insurance), disability insurance, like health insurance, is complex and consumers may be guided only by financial considerations to choose the lowest cost product rather than purchasing a disability income policy that affords comprehensive protection against possible homelessness and poverty and the potential need for public assistance in the event disability insurance payments cease after a limited benefit period.

5. The industry's concern about a lower "uptake" rate of disability income insurance purchases is not a justifiable reason to perpetuate discrimination against and stigmatization of mental illness. Employers offer their employees a robust menu of employee benefits as a means of recruiting and retaining employees, thus lessening the fear that employers will eliminate coverage if costs increase. That fear is lessened even further when disability coverage is voluntary, and premiums are paid entirely by employees. According to the life insurance industry,[35]

- If you're under age 35, chances are one in three that you will be disabled for at least six months during the course of your career.
- Men have a 43% chance of becoming seriously disabled during their working years.
- Women have a 54% chance.
- At age 42, it is four times more likely that you will become seriously disabled than that you will die during your working years.
- Three in 10 workers entering the workforce today will become disabled before retiring.
  – Social Security Administration, Fact Sheet January 31, 2007
- An illness or accident will keep 1 in 5 workers out of work for at least a year before the age of 65.
  – Life and Health Insurance Foundation for Education, November 2005
- One in 7 workers can expect to be disabled for five years or more before retirement.
  – "Commissioners Disability Table, 1998," Health Insurance Association of America, the New York Times, February 2000
- 71% of American employees live from paycheck to paycheck.
  – American Payroll Association, "Getting Paid in America" Survey, 2008
- Disability causes nearly 50% of all mortgage foreclosures, 2% are caused by death.
  – Health Affairs, the Policy Journal of the Health Sphere, 2 February 2005
- Close to 90% of disabling accidents and illnesses are not work related.
  – National Safety Council, Injury Facts 2008 Ed.

[35] See https://www.lifeinsure.com/disability-facts-and-statistics/

- Less than half – 39% – of the 2.1 million workers who applied for SSDI benefits in 2005 were approved.
  – Social Security Administration, Office of Disability and Income Security Program
- Over 51 million Americans are classified as disabled, representing 18 percent of the population.
  – U.S. Census Bureau, Public Information Office, November 2008
- In the U.S., a disabling injury occurs every 1 second, a fatal injury occurs every 4 minutes.
  National Safety Council, Injury Facts 2008 Ed
- Unexpected illnesses and injuries cause 350,000 personal bankruptcies each year.
  – "Illness and Injury as Contributors to Bankruptcy," Health Affairs, February 2, 2005
- In the last 10 minutes, 498 Americans became disabled.
  – National Safety Council, Injury Facts 2008 Ed
- The average long-term disability absence lasts 2.5 years.
  – Commissioner's Individual Disability Table A
- 70% of the private sector workforce has no long-term disability insurance.
  – Social Security Administration, Fact Sheet January 31, 2007

Educating consumers and employers about these facts and the need to maintain disability income protection is the responsibility of insurance companies' marketing departments; ameliorating discrimination and protecting consumers through insurance regulation has historically been and remains the responsibility of lawmakers and regulators.

6. If a mandate requiring unlimited mental health disability coverage existed, it would avoid the problem that Richard Leavitt pointed to – no insurance company wants to be the first one to offer unlimited coverage because it would attract adverse selection by individuals or employers who might be at higher risk of incurring mental health disability claims. However, if all of the insurance companies had to act on an even playing field, as they do with health insurance, the specter of discrimination would be eliminated, and no single insurer would be exposed to adverse selection risk.

7. Mandating unlimited coverage would also incentivize insurers to work proactively to return claimants to work by making appropriate treatment referrals and encouraging compliance with treatment recommendations. It would also incentivize employees applying for disability benefits to disclose and obtain appropriate treatment for their mental health conditions that are impeding a return to work without fear of concealing such impairments due to stigmatization and fear of loss of benefits if disability persists beyond two years.