Insurance Circular Letter No. 18 (2017)
October 20, 2017

TO: All Insurers Authorized to Write Accident and Health Insurance in New York State

RE: Benefits in Individual, Group, and Blanket Accident Policies and Disability Income Insurance Policies

STATUTORY AND REGULATORY REFERENCES: N.Y. Insurance Law §§ 1113, 3201, 3216, 3217, 3240, 4235, 4237 and 11 NYCRR 52 (Insurance Regulation 62)

I. Introduction

The Department of Financial Services ("Department") has received questions as to the benefits that may be covered in accident policies and disability income insurance policies. The Department recognizes that benefits continue to evolve in response to market forces. The purpose of this circular letter is to provide guidance to insurers authorized to write accident and health insurance in New York State ("insurers") regarding the benefits that the Department has approved in accident policies and disability income insurance policies in order to make the policy form approval process more efficient.

II. Discussion

Pursuant to § 52.1(c) of 11 NYCRR 52 (Insurance Regulation 62), any benefits offered by insurers must provide real economic value. Benefits designed merely to produce superficial differences or play upon people’s fears of particular diseases are prohibited. Benefits that are unduly complex or unduly limited, or that do not meaningfully expand consumer choice, but instead serve to confuse and make intelligent choice more difficult are also prohibited. In addition, coverage that does not provide a substantial economic benefit, or that is contrary to the health care needs of the public, or that contains provisions that serve only to confuse or obfuscate is prohibited. Any benefit in an accident policy or disability income insurance policy must comply with these requirements and must have a rational nexus to accident insurance or disability income insurance. For example, as discussed in greater detail below, the Department has received accident policy and disability income insurance policy submissions with incidental benefits that unnecessarily duplicate the primary coverage in the policy. Such incidental benefits have not been approved as they are duplicative, confusing, and do not expand consumer choice. In addition, the Department has received accident policy and disability income insurance policy submissions with incidental benefits that are not triggered by an accident or a disability. These incidental benefits have not been approved as they do not have a nexus to accident or disability income insurance.
This circular letter provides a list of benefits that the Department has generally approved in accident policies and disability income insurance policies along with a list of benefits that the Department has not approved. The lists are illustrative and not exhaustive.

A. Permissible Benefits in an Accident Policy or Disability Income Insurance Policy Issued in the Individual or Group Markets

The following categories of benefits are generally approvable for inclusion in an individual or group accident policy or disability income insurance policy as set forth in 11 NYCRR §§ 52.8 and 52.9.

1. Benefits designed to encourage the use of safety equipment, including:
   - A seat belt benefit that provides an additional benefit to the insured for injuries sustained during a covered accident while the insured was wearing a seat belt;
   - An air bag benefit that provides an additional benefit to the insured for injuries sustained during a covered accident while the insured’s vehicle was equipped with an airbag; and
   - A helmet benefit that provides an additional benefit to the insured for injuries sustained during a covered accident while the insured was wearing an appropriate helmet.

2. Benefits designed to encourage the insured’s treatment and recovery following a covered accident or disability, including a:
   - Medical expense benefit that covers the cost of medical treatment for the insured’s injury resulting directly from a covered accident in an accident policy;
   - Rehabilitation benefit that provides an indemnity payment to the insured to encourage participation in a rehabilitation program designed to help the insured return to work;
   - Family lodging or transportation benefit that covers the cost for a companion who accompanies an insured who is admitted to a hospital; and
   - Mental health or family therapy counseling benefit in an accident policy that provides a benefit covering grief or mental health counseling services for a family member of an insured who dies in a covered accident or suffers another significant covered loss.

3. Benefits designed to help the insured return to work after a covered accident or disability, including:
   - Dependent care for children, spouses, or parents;
   - Job training and education for covered insureds; and
   - Reasonable physical modifications to a home, vehicle, or workplace.

4. Benefits that provide substantial economic value or support the health care needs of the insured, including a:
   - Waiver of premium benefit that waives future premiums due under the policy once the insured experiences a covered accident or becomes disabled;
• Family extension benefit that, pursuant to 11 NYCRR § 52.18(e), provides for the continuation of coverage for the insured’s dependents following the death of the insured when the insured has family coverage;
• Catastrophic disability benefit in a disability income insurance policy that provides a benefit for an insured who meets the definition of disabled under the policy and cannot perform a specified number of activities of daily living;
• Premium assistance benefit in a disability income insurance policy that covers the employee’s contribution towards health insurance coverage while the insured is disabled;
• Cost of living adjustment benefit in a disability income insurance policy that provides an increase in the monthly disability benefit after the insured has been continuously disabled for a specified waiting period;
• Retirement assistance benefit in a disability income insurance policy that either pays a benefit to a retirement plan, such as a 401K, to which the insured contributed prior to the disability, where the benefit is limited to the employee’s contribution in a group disability income insurance policy, or a benefit that pays to establish a stand-alone retirement account for the insured;
• Common carrier benefit in an accident policy that provides a benefit if the insured is injured as a result of a covered accident while a fare-paying passenger on a train, plane, bus, boat, or other commercial carrier;
• Exposure or disappearance benefit in an accident policy that presumes the insured is deceased and pays the accidental death benefit after a certain period of time following the insured's presumed death due to exposure to hazardous weather conditions or disappearance due to a conveyance loss, such as the sinking of a ship or an airplane crash;
• Common disaster benefit in an accident policy that provides a benefit if the insured and the insured’s spouse both die in the same accident for which a benefit is payable for the loss of both lives; and
• Medical repatriation or emergency medical evacuation benefit in an accident policy that provides a benefit for transportation expenses when an insured suffers an illness or injury while traveling and needs medical transportation to seek medical care or return home.

B. Impermissible Benefits in an Accident Policy or Disability Income Insurance Policy Issued in the Individual or Group Markets

The following categories of benefits are generally impermissible for inclusion in an individual or group accident policy or disability income insurance policy.

1. Additional benefits predicated on loss due to violent and external means are prohibited pursuant to 11 NYCRR §§ 52.17(a)(8) and 52.18(b)(1). This includes a:

• Felonious assault benefit;
• Natural disaster or weather related benefit (e.g., a lightning strike or hurricane);
• Hijacking benefit (including all modes of transportation);
• Home invasion benefit;
• Kidnapping benefit; and
• Terrorism benefit.
2. Benefits that are only permissible in specified disease insurance policies pursuant to 11 NYCRR § 52.15 or benefits that play on people’s fears of contracting particular diseases. This includes a:

- Benefit to the insured upon the diagnosis or treatment of a specifically named disease or condition, including an infectious disease, that is contracted or triggered during a covered activity;
- Needle stick benefit (often referred to as an occupational HIV benefit); and
- Mandatory quarantine loss of income benefit that pays an indemnity benefit if the insured is quarantined away from the public to protect against the potential spread of a contagious disease, such as Ebola.

3. Benefits that do not meaningfully expand consumer choice in accordance with 11 NYCRR § 52.1(c), but instead serve to confuse and make intelligent choice more difficult by directing the payment of a certain portion of the insured’s benefit proceeds to a particular financial liability that is unrelated to policy. This includes a:

- Claims of creditors benefit; and
- Loan repayment benefit (e.g., student, mortgage, auto, or other outstanding loans).

4. Benefits that are overly fragmentary, unduly complex, or unduly limited. These benefits pay an additional amount for a benefit that is already covered under the policy. This includes a:

- Bonus benefit that provides a benefit solely because the accident occurs while traveling on official business for an employer;
- Commutation benefit that provides a benefit because the accident occurs while the insured is traveling between his or her home and place of work;
- Alternative commuting benefit that provides a benefit when the insured is using an alternate means of transportation for commuting necessitated by discontinuance of service, strike, or major breakdown of systems the insured normally uses in commuting; and
- Pedestrian benefit that provides a benefit for an insured who is injured while walking.

5. Benefits prohibited by New York law or regulation or benefits that are not accident and health insurance benefits as defined in Insurance Law § 1113(a)(3), but are instead life insurance or property/casualty insurance benefits. This includes a:

- Return of premium benefit that provides a benefit for the return of the premiums paid upon the death of the insured to a beneficiary that is prohibited by 11 § NYCRR 52.16(b);
- Business overhead expense benefit or designated employee benefit in a group or blanket insurance policy payable to the group or blanket policyholder that is prohibited by Insurance Law §§ 4235(e) and 4237(b);
- Funeral expense benefit (e.g., burial, cremation, or memorial) that provides an additional benefit beyond the accidental death benefit;
- Accelerated death benefit for the reasons described in Insurance Law § 1113(a)(1);
- Benefit that duplicates personal injury liability insurance as defined in Insurance Law § 1113(a)(13);
- Benefit that is not triggered by an accident, in accordance with 11 NYCRR § 52.9, including coverage for sickness, in an accident policy; and
• Long-term care or custodial care benefit unless the policy is issued or amended to comply with the requirements applicable to long term care insurance, in accordance with 11 NYCRR § 52.16(j).

6. Benefits that lack a rational nexus to either accident or disability income insurance, including a:

• Loss of professional license benefit in a disability income insurance policy, for reasons unrelated to the insured’s health; and
• Repatriation or evacuation benefit that is not triggered by the insured’s accident in an accident policy or triggered by the insured’s sickness in a disability income insurance policy, including a repatriation or evacuation benefit due to political unrest or the threat of contracting an illness due to a pandemic.

C. Permissible Benefits in a Blanket Accident Policy or Disability Income Insurance Policy

Blanket accident and health insurance policies are subject to the requirements set forth in Insurance Law § 4237 and 11 NYCRR §§ 52.21 and 52.70(d). These requirements permit an insurer to issue blanket insurance covering a group of insureds defined by their participation in certain recognized professions or activities as set forth in Insurance Law § 4237(a)(3)(A) through (F). As each blanket accident and health insurance policy may be specifically designed to address the unique hazards for a particular type of blanket policyholder, a case-by-case review of the inclusion of a benefit is necessary.

Examples of benefits that the Department has approved when issued to certain blanket policyholders include:
• Line of duty coverage that provides a benefit for an insured serving as a public safety officer, police officer, corrections worker, security officer, special weapons and tactics team member, or bomb squad member while performing official duties or sanctioned department activities (e.g., felonious assault, bullet proof vest, bomb scare, gunshot, or post-traumatic stress disorder benefits);
• Firefighter or first responder coverage that provides a benefit for an insured serving as a firefighter or first responder, including volunteers and auxiliary members, while performing official duties or sanctioned department activities (e.g., felonious assault, burns, cosmetic disfigurement from burns, or post-traumatic stress disorder);
• Pilot coverage that provides a benefit for an insured who is a pilot and is injured while performing his or her job duties; and
• Business travel coverage that provides a benefit for accidents or disabilities occurring while the insured is traveling for his or her employer.

III. Conclusion

Insurers are reminded that pursuant to 11 NYCRR § 52.1(c), the Department only will approve benefits for inclusion in accident policies and disability income insurance policies when they contain a rational nexus to accident insurance or disability income insurance, provide a real economic value, do not produce superficial differences or play upon people’s fears of particular diseases, are not unduly complex or unduly limited, meaningfully expand consumer choice but do not serve to confuse and make intelligent choice more difficult, provide a substantial economic
benefit, are not contrary to the health care needs of the public, and do not contain provisions that confuse or obfuscate.

Please direct any questions regarding this circular letter to Jason St. James, Senior Insurance Attorney, Health Bureau, New York State Department of Financial Services, One Commerce Plaza Albany, NY 12257 or by e-mail at jason.stjames@dfs.ny.gov.

Very truly yours,

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