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Filing Guidance Notice 2019 – H
Accident and Sickness Insurance

TO: All Carriers Offering Individual and Group Disability Policies (“Carriers”)
FROM: Kevin Beagan, Deputy Commissioner
DATE: August 30, 2019
RE: Guidelines for Compliance with Chapter 441 of the Acts of 2018:
Disability Policies Offered on and after January 1, 2020

The purpose of this notice is for the Division of Insurance (“Division”) to provide guidance as Carriers look to make changes to existing policies or file new policies and clarify the procedure for submitting form and rate filing materials where necessary to come into compliance with Chapter 441 of the Acts of 2018 (“Chapter 441”). Carriers should note that this statute applies to those disability policies required to be filed with the Division that are issued or delivered in the Commonwealth on or after January 1, 2020, but it does not apply to disability policies in force prior to January 1, 2020. Disability policies offered in the Commonwealth prior to January 1, 2020 will not be permitted to be issued or delivered to new policyholders on and after January 1, 2020 unless they are modified, where necessary, to come into compliance with Chapter 441. For the purpose of this guidance, the term “policy” includes disability coverage riders that are attached to policies of other types of insurance, but does not apply to waiver of premium features that are tied to total and permanent disability

Chapter 441 provides that as of January 1, 2020, “insurers and producers authorized to issue policies against disability from injury or disease in the commonwealth shall not make a distinction or otherwise discriminate between persons, reject an applicant, cancel a policy or demand or require a higher rate of premium for a group or individual disability contract issued or delivered in the commonwealth to 1 or more residents of the commonwealth for reasons based solely upon an applicant’s or insured’s race, color, religious creed, national origin, sex, pregnancy, gender identity, sexual orientation or marital status.”

Please note that a Carrier is not required to cover pregnancy in a disability income policy and a Carrier may consider pregnancy to be a pre-existing condition, but a Carrier may not discriminate on

the basis of pregnancy when it is included in the policy as a covered condition.

The Division is aware that employment-sponsored group plans are subject to provisions under the federal Pregnancy Discrimination Act (“PDA”) and Title VII of the federal Civil Rights Act of 1964 that prohibit discriminatory treatment on the basis of sex, including on the basis of pregnancy, childbirth, or related medical conditions, with respect to the offer of benefits and rates for coverage within group insurance coverage. For employment-sponsored group disability policies, the Division will consider that those plans that are in compliance with the requirements of the PDA and Title VII of the federal Civil Rights Act of 1964 will be deemed to be in compliance with the provisions of Chapter 441, provided that they do not include any rates or benefits that discriminate on the basis of “gender identity, sexual orientation or marital status.”

Clarification of Chapter 441 Terms

“Policies Against Disability from Injury or Disease”

According to 211 CMR 42.05(2)(g), “[d]isability income insurance provides weekly or monthly benefits to replace income that is lost due to disability resulting from accident and/or sickness [and] includes business expense insurance and business buy-out insurance policies that condition receipt of benefits upon the disability of the insured.” Chapter 441 applies to all group, blanket and individual disability policies that condition benefits on the insured becoming disabled.

“Group or Individual Disability Contracts”

Within Chapter 441, it is noted that the statute applies to a “group or individual disability contract issued or delivered in the commonwealth to 1 or more residents of the commonwealth.” Chapter 441 applies to all policies issued to individuals and groups as allowed under M.G.L. c. 175, §§108 and 110 within the Commonwealth of Massachusetts on and after January 1, 2020.

“Make a Distinction or Otherwise Discriminate”

Chapter 441 states that a Carrier “shall not make a distinction or otherwise discriminate between persons...based solely upon an applicant’s or insured’s race, color, religious creed, national origin, sex, pregnancy, gender identity, sexual orientation or marital status. All Carriers must ensure that pregnancy is treated the same as any other condition according to the defined benefits of the policy.

“For Reasons Based Solely Upon”

Chapter 441 states that a Carrier “shall not...otherwise discriminate between persons, reject an applicant, cancel a policy or demand or require a higher rate of premium for a group or individual disability contract...for reasons based solely upon an applicant’s or insured’s race, color, religious creed, national origin, sex, pregnancy, gender identity, sexual orientation or marital status.”

In the course of reviewing an application for a disability policy, the Division understands that Carriers collect and consider information about the applicant’s medical history, including information about conditions or treatments that may be more common to persons of one type of sex or of another of the protected categories. Carriers may not reject an applicant nor make rating decisions based solely on any one of these protected categories.

Carriers shall not use any information that is designed to prevent disease (e.g., receiving prenatal care during pregnancy or having a Pap smear test) or is irrelevant to the risk of potential future disability in making underwriting or rating decisions, as such information could be considered a proxy for a protected category.

Form Filings

Carriers are instructed to amend contract language where necessary to comply with Chapter 441. Forms containing references to “gender” or “sex” need not be amended if the references do not pertain to the issue of underwriting or rating of coverage. Additionally, Carriers issuing individual disability policies are required to make the appropriate form filing with the Division for forms required to be filed with the Division.

Rate Filings

Actuarial Memorandum and Other Filing Materials

The actuarial memorandum is to provide all appropriate documentation that explains the development of rates that are not based solely on the insured’s or applicant’s “race, color, religious creed, national origin, sex, pregnancy, gender identity, sexual orientation or marital status.”

As noted in 211 CMR 42.06(2):

“All rate filings shall at least explain formulas used to derive rates, expected claim costs, assumptions regarding mortality, morbidity and lapse rates, and the detailed commission schedule and anticipated administrative expenses associated with the policy. In order to substantiate rate revision filings, filings must maintain experience for that policy form, may combine experience for different policy forms where the coverage is substantially the same, and must demonstrate that the Carrier is using fund accounting for guaranteed renewable policies to reflect premiums, investment income, losses, expenses, and provisions for reserves specific to that policy form. Any rates filed, whether initial or revised, will be disapproved unless the aggregate anticipated loss ratio for the entire period for which rates are computed to provide coverage meets the following standards, provided that ‘aggregate lifetime loss ratio’ means the present value at the form’s inception of all expected future benefits under the form divided by the present value at the form’s inception of all future premiums to be received under the form.”

Where changes are necessary to be in compliance with Chapter 441, Carriers issuing individual disability policies should submit rate filing materials that are consistent with 211 CMR 42.06(2) for forms required to be filed with the Division.

Rate Manual

As noted in 211 CMR 42.06(4):

“Rate Manual. Every Carrier must maintain on file with the Division an up-to-date rate manual for all individual accident and health policies, riders, and endorsements currently available for sale in Massachusetts. The manual must include:

- “(a) name of the Carrier on each page;
- “(b) table of contents or index; and
- “(c) identification by form number of each policy or endorsement to which the rates apply.”

Where changes are necessary to be in compliance with Chapter 441, Carriers offering individual disability policies should submit rate manuals that are consistent with 211 CMR 42.06(4) for forms required to be filed with the Division.

Expedited Review Process

The Division's Policy Form Review Unit has developed an expedited review process for Carriers who wish to file for the sole purpose of bringing previously reviewed individual disability policies and their rates into compliance with Chapter 441. This process will be available for filings submitted before November 1, 2019.

In addition to what is required under 211 CMR 42.00, the Carrier is to include the following for it to be considered for expedited review. The filing must be made via SERFF and include:

- (1) a Filing Description field beginning with the phrase "GENDER NEUTRAL DISABILITY FILING" and giving a brief description of proposed changes;
- (2) a certification in the Filing Description that the described materials are being made to ensure compliance with Chapter 441, and are consistent with relevant requirements identified within both this filing guidance notice and 211 CMR 42.00;
- (3) appropriate filing fees, with \$75 fees required for a form filing and \$150 required for a rate filing; and
- (4) a list of the product type(s), form number(s), state or SERFF tracking number(s) and approval date(s) of all applicable previously approved forms (in form filings, the Form Utilization List requirement may be used for this purpose).

No changes to the policies or rates may be proposed in such filings other than those intended to ensure compliance with Chapter 441.

Contact

Any questions about this filing guidance notice should be directed to Sheri Cullen, Director of Policy Form Review, at (617) 521-7359 or to Sheri.Cullen@mass.gov.