WRITTEN STATEMENT

FROM

THE AMERICAN COUNCIL OF LIFE INSURERS

AND

AMERICA'S HEALTH INSURANCE PLANS

BEFORE

THE 2023 ERISA ADVISORY COUNCIL

LONG-TERM DISABILITY BENEFITS AND MENTAL HEALTH DISPARITY

September 19, 2023

The American Council of Life Insurers (ACLI) is the leading trade association driving public policy and advocacy on behalf of the life insurance industry. 90 million American families rely on the life insurance industry for financial protection and retirement security. ACLI's member companies are dedicated to protecting consumers' financial wellbeing through life insurance, annuities, retirement plans, long-term care insurance, disability income insurance, reinsurance, and dental, vision and other supplemental benefits. ACLI's 280 member companies represent 94 percent of industry assets in the United States. ACLI member companies provide the majority of private disability income insurance coverage in the United States.

American's Health Insurance Plans (AHIP) is the national association whose members provide health care coverage, services, and solutions to hundreds of millions of Americans every day. AHIP is committed to market-based solutions and public-private partnerships that make health care better and coverage more affordable and accessible for everyone.

An objective of the ACLI and AHIP is to educate public policymakers and regulators about the value of disability income insurance and our industry's important role in providing income protection and return to work assistance for people with disabilities. The private disability income insurance industry recognizes the critical role it plays in helping families manage what is very often a difficult time in their lives. We also recognize that disability income insurance is not an insurance product that is mandated to be bought by employer groups and individuals and thus strive to provide insurance solutions for those wanting this voluntary coverage to fit their needs.

Executive Summary

ACLI and AHIP applaud the advancements in the realm of medicine and the greater access for individuals to have the same medical benefits for mental health treatment. We believe that everyone deserves access to effective, affordable, and equitable medical coverage and treatment for mental health support and counseling.

It is important to note that while comprehensive, major medical coverage provides reimbursement for actual medical expenses and is generally payable directly to health care providers, supplemental insurance benefits generally take the form of direct cash benefits to consumers that can be used by the policyholder for any purpose they may need. The principal purpose of private disability income insurance is to provide income replacement to eligible employees or individuals who become temporarily or permanently disabled and cannot work for a defined period of time.

Disability income insurance is an insurance product, not mandated by any law that is offered through an employer group or bought on an individual basis. Disability income insurance is regulated by state insurance departments via multiple laws and regulations that cover many aspects of the insurance product: e.g., licensing to sell an insurance product, policy filings and what can be included in a policy (including limitations and exclusions), general requirements of rate filings, advertising rules, disclosures, and claims practices, just to name several areas. These laws and regulations are for the protection of the policyholder as well as oversight of an insurer's solvency.

Congress provided for certain benefits to be excepted from the requirements of MHPAEA and the ACA market reforms. Thus, Congress understood that including "coverage of disability income insurance" as an

excepted benefit meant that this type of coverage would not be subject to MHPAEA and other ACA market reforms. Congress understood that disability income insurance is different than providing comprehensive medical coverage under a group health plan. ERISA includes disability income insurance as an excepted benefit in the definition of excepted benefit.

As will be explained in detail in the rest of this testimony, we do not think mandating the concept of "parity" for disability income insurance benefits is appropriate for employers and individual consumers. To recommend a mandate on a voluntary, excepted benefit product that less than half the working population has, risking the reduction in options or the coverage itself, should not be the discussion. Working to expand access to disability income coverage should be the focus of this effort as the option to have unlimited mental health benefit periods exists, if requested, and meets any underwriting requirements.

Disability Income Insurance and Its Importance for Financial Security

The principal purpose of private disability income insurance is to provide income replacement to eligible employees or working individuals who become temporarily or permanently disabled and cannot work for a defined period of time due to an accident, illness, injury, or other disabling condition that makes it difficult or impossible for the individual to perform their occupational duties or other work. This coverage can be offered through an employer group or bought on an individual basis. Since this review by the ERISA Advisory Council is focused on employer group insurance, ACLI and AHIP's comments will focus primarily on the group market.

Employer sponsored disability income insurance is generally sold in two forms: short-term and long-term disability income coverage. Approximately 42 percent of U.S. workers in the private industry are covered by short-term disability income insurance and about 34 percent of the U.S. workers in private industry are covered by long-term disability income insurance.[1] These percentages are for employer-paid coverage, but they easily could be higher based on an employer offering a product that the employee would purchase, if they so choose amongst other supplemental insurance products (e.g., dental, vision, etc.).

Private long-term disability income insurers provide income protection coverage to approximately 33.7 million individuals,[2] the vast majority of these plans are chosen by the employer, i.e., long-term disability income insurance is not a mandatory product to be purchased or offered by employers. The employer is the policyholder and decision maker in choosing the overall benefit design if they decide to provide or offer this important benefit to their employees. Because insurers can offer group disability income insurance to employers in a cost-effective way, millions of workers get coverage to which they may not easily have access otherwise. This private long-term disability income coverage has been shown to supplement the federal safety net, Social Security Disability Insurance (SSDI), as well as help other federal and state programs. Employers are not obligated to provide disability coverage to employees; however, the product has become an important component of an employer's benefit package even with many other competing products for the employers' and/or employees' dollars. Thus, disability income insurance competes against other types of benefits for a portion of an employer's (or employee's) limited budget. To the extent health care coverage costs continue

[1] U.S. Bureau of Labor Statistics, National Compensation Survey, *accessed on June 26, 2023.* Reflects 2022 data.
[2] NAIC, 2021 Accident and Health Policy Experience Report, 2022.

to increase employer costs for providing coverage, employer sponsored disability income insurance may be a benefit that employers might not offer.

Short-term disability income coverage makes benefits available when one is unable to work for a short period of time due to a covered illness or injury. These policies typically provide benefits for a maximum of 13 to 26 weeks, usually the elimination period for long-term disability products (if offered by the employer). Short-term disability income insurance typically has no exclusions or limitations for mental health claims for the benefit periods offered.

When one is unable to work for longer periods of time, there is private long-term disability income coverage. Long-term disability insurance provides proportional income replacement benefits (based on the employer's plan design) if an illness or injury limits, restricts, or prevents an employee from performing his/her occupation for an extended period of time. The duration of benefits available under these contracts varies, but generally ranges anywhere from a minimum of 2 years all the way to a maximum benefit period which may include up to the insured's Social Security Normal Retirement age (the maximum benefit period is stated in the policy).

Disability income insurers also assist consumers to exercise their rights under the SSDI program which, if awarded, also protects an employee's earning potential. The integration of disability income benefits with Social Security disability benefits has long been recognized as an important tool in reducing the cost of disability insurance coverage and keeping it affordable so that employers choose to provide disability benefit programs to their employees and thereby maximize the number of employees who can receive coverage. In addition to replacing lost income for claimants in a timely manner, private disability insurers can play a key role in restoring disabled workers to financial self-sufficiency and maintaining productivity for America's businesses. In a Charles Rivers Associates paper, authored by David F. Babbel and Mark F. Meyer, submitted as part of the McCrery-Pomeroy SSDI Solutions Initiative in 2015, the authors' analysis "estimates that group disability insurance, at the current proportion of the U.S. workforce with coverage, will save the federal treasury at least $25 billion over the next 10 years—at least $10 billion in SSDI benefits and approximately $15 billion in other federal programs.[3]"

The industry has been proactive by designing policies that facilitate claimants return to work by, for example, providing return to work incentives, vocational counseling, retraining for a new occupation, dependent care benefits during rehabilitation, and reimbursing the employer's costs of reasonable accommodations. Additionally, by investing in rehabilitation and return-to-work programs, private disability insurers are actively engaged in assisting disabled workers with returning to the workforce. These innovative benefits reflect the industry's strong commitment to promoting employment and self-sufficiency among persons with disabilities.

Innovative rehabilitation and return-to-work programs include a wide range of strategies in recognition of the fact that persons with disabilities are highly diverse and face varying circumstances. Services offered include support for the medical management of the employee's case (including cognitive behavioral therapy, access to mental health specialists, access to mental health applications such as CALM, Monsenso, Thrive, partnering with a claimant's treating provider on advances in treatment and the appropriateness of use such

[3] David F. Babbel and Mark F. Meyer, "Expanding Private Disability Insurance Coverage to Help the SSDI Program" (2015), page 2.

as virtual reality devices, etc.), vocational and employment assessment, worksite modification, purchase of adaptive equipment, business and financial planning, retraining for a new occupation, child or dependent care benefits during rehabilitation and education expenses. In addition, carriers typically incorporate in their return-to-work programs the Americans with Disabilities Act (ADA) and state ADA-like workplace accommodation services. Past and more recent developments of enhanced employee assistance programs (EAPs) and advancements in medical care for mental health issues have benefited employers in providing long-term disability coverage to their employees.

Disability Income Insurance – What It Is Versus What It Is Not

Disability income insurance is an excepted benefit (as defined in ERISA)[4] and is not subject to Federal consumer protections and requirements for comprehensive medical coverage. Thus, disability income insurance is not coverage for the diagnosis or treatment of medical conditions, nor does disability income insurance provide reimbursement of expenses incurred for medical conditions; it is income replacement for a disability related to a medical or mental health condition. While understanding that treatment for mental health conditions is necessary, disability income insurance is an excepted benefit and, therefore, is not subject to the Mental Health Parity and Addiction Equity Act (MHPAEA). In addition, states also recognize disability income insurance as an excepted benefit and not subject to MHPAEA.

As stated above and noted in MHPAEA (including implementing regulations and guidance) and the Department's self-compliance tool[5], MHPAEA does not apply to excepted benefits such as disability income insurance. Disability income insurance does not cover the medical costs associated with rehabilitation following an injury or illness or the rehabilitation of mental health issues, whether provided by an in-network or out-of-network provider; disability income insurance is income replacement and is considered an excepted benefit under ERISA. The actual medical costs are generally covered under one's health insurance coverage or plan.

Disability income insurance is a financial product that provides 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 of expenses incurred for the treatment of mental or physical illnesses. Congress provided for certain benefits to be excepted from the requirements of MHPAEA and the ACA market reforms. Thus, Congress understood that including "coverage of disability income insurance" as an excepted benefit meant that this type of coverage would not be subject to MHPAEA and other ACA market reforms. Congress understood that disability income insurance is different than providing comprehensive medical coverage under a group health plan. Potentially recommending that the DOL require "parity" or the same level of coverage

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[4] Section 9831 of the Code, section 732 of ERISA, and sections 2722(b)-(c) and 2763 of the PHS Act provide that the respective Federal consumer protections and requirements for comprehensive coverage do not apply to any individual coverage or any group health plan (or group health insurance coverage offered in connection with a group health plan) in relation to its provision of certain types of benefits, known as "excepted benefits." These excepted benefits are described in section 9832(c) of the Code, section 733(c) of ERISA, and section 2791(c) of the PHS Act. HIPAA defined certain types of coverage as "excepted benefits" that were exempt from its portability requirements. The same definitions are applied to describe benefits that are not required to comply with some of the ACA requirements. There are four statutory categories of excepted benefits: independent, noncoordinated excepted benefits; benefits that are excepted in all circumstances; limited excepted benefits; and supplemental excepted benefits. Disability income insurance is in the first category - a benefit that is excepted in all circumstances, as defined in ERISA.

[5] Self-Compliance Tool for the Mental Health Parity and Addiction Equity Act (MHPAEA) (dol.gov)

for disabilities arising from all conditions interferes with Congressional intent and the employers' and other consumers' right to select and purchase the benefits that best meet their individual needs.

Furthermore, it is clear that any federal restriction on mental illness limitations within long-term disability income policies would require legislation from Congress. There is no existing law that would permit such a change to take place through regulation or other administrative action. On the contrary, where Congress has acted, it has expressly taken a contrary position. Specifically, MHPAEA itself expressly limited its mandate to health care plans as defined by federal law. Further, the Americans with Disabilities Act provides (in Section 501(c)):

> Subchapters I through III of this chapter and title IV of this Act shall not be construed to prohibit or restrict
>
> * * *
>
> (2) a person or organization covered by this chapter from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law;…

We note below that nearly every state permits long-term disability income policies to contain limited durations for claims due to mental illness and have approved policy forms so providing. This provision makes clear that the ADA cannot be construed as prohibiting such a provision.

These laws do not show legislative silence but show Congress's intent that neither of these laws would be construed to restrict mental illness limitations permitted by state insurance laws to be included in long-term disability income policies. We believe this reflects the judgment of Congress, in enacting these laws, that such an outcome would not be supported by the public policies that led to the enactment of MHPAEA and the Americans with Disabilities Act. And we believe that the public policy arguments we have presented in this letter support the continued validity of the decisions Congress made not to subject long-term disability income insurance policies to such a mandate. This position has been recognized by federal appellate courts interpreting Section 501(c); e.q. *Ford v. Schering-Plough*, 145 F.3d 601 (3rd Cir. 1998).

Any parity mandate would increase the cost of disability income coverage and thus potentially decrease the likelihood that employers will be able (or consider) to provide such disability income insurance coverage for their employees, or that individuals will be able to afford such coverage if offered through an employer plan. Previously mentioned, less than 40% of the U.S. labor force has private group or individual disability income protection paid by the employer. The cost of providing "parity" in coverage for disabilities would likely slow the growth of this non-mandated, (voluntary) coverage.

Disability Income Insurance – How It Is Regulated, Developed and Sold in the U.S. Market

Prior to discussion of how disability income insurance is regulated and sold in the U.S., a survey was conducted of ACLI and AHIP members that sell disability income insurance. The overwhelming majority of responses of ACLI and AHIP's long-term disability income carriers is that they offer policies with no mental health limitations. The carriers that responded represent a majority of the long-term disability market (based on 2022 year-end premium volume). Furthermore, if requested to have no limitation on coverage, the policy would be underwritten and priced based on the multiple characteristics of the group. The load, or accounting for this product feature, will vary per carrier, with a range reportedly up to at least 20%.

Disability income insurance products (both group and individual), like other insurance products, are regulated by state insurance regulators. The National Association of Insurance Commissioners (NAIC), an association made up of insurance departments from the 50 states and 6 jurisdictions, has as one of its core purposes developing insurance standards to protect those covered by the insurance products offered by the insurance industry to employers and individuals. To do this, the NAIC has, over the years, developed Model Laws and Model Regulations (which are to implement the Model Laws) on numerous aspects of insurance: product form and rate filings, minimum product standards, reserving guidance, advertising, unfair claims and trade practices, and producer licensing (just to name a few major areas). These Model Laws and Regulations help to provide uniformity for the robust state regulatory system. Many states have utilized these Models and enhanced them for state regulation and, ultimately the consumers in their respective states. The uniformity not only helps consumers in the states but also helps employers that have employees that might be located across several states (e.g., large, nationwide employers).

For an insurer to be able to offer insurance products in a state, the insurer must obtain a license to do so. In addition to having to obtain a license to sell an insurance product, an insurer cannot just sell an insurance product, for example, a disability income insurance policy, without filing the policy form and often times rates for such policies. These policies are reviewed and approved by state regulators for the respective state insurance product filing. For a group product filing, the policy submitted is one that may have many variable options for certain benefits – that is, this variability allows insurers to customize products that the employer wants to provide and/or offer to its employees. In addition to having the policy form (and its variability) approved, most states require a rate filing supported by an actuary. For group disability income insurance, this filing is a group rate manual that would include the "loads" or "discounts" for the insurance (the differences to show what would be applied for the variability of some of the benefits). The overall objective is to provide an overview of the costs of the product in relation to the benefits ultimately chosen. The actuary submitting the rate filing follows Actuarial Standards of Practice to continue the professionalism within the industry.

As mentioned, there are many NAIC Model Laws and Regulations applicable to insurance products that an insurance company needs to follow if a state has enacted its own version of the Model Law and/or Model Regulation. One of these Model Regulations is the regulation to Implement the Accident and Sickness Insurance Minimum Standards Model Act (Model #171)[6]. This Model Regulation outlines minimum standards for various accident and sickness insurance, which includes disability income insurance. The Model Regulation outlines definitions of insurance products, prohibited policy provisions, disclosures, and minimum standards for the insurance products in the regulation. In Section 6.F. of Model #171, there is a list of limitations or exclusions of coverage that are permitted, including for mental or emotional disorders, alcoholism and drug addiction. These are acceptable limits that may be offered as part of the product. For example, if an employer does not want to include a particular limit or exclusion, or if an employer wants to enhance the coverage, the employer can do so since these products are voluntary, and this product does not have mandated benefits that have to be bought, either on a group basis or an individual basis.

[6] https://content.naic.org/sites/default/files/MO171.pdf

Reviewing states that have promulgated Model #171 regulation, it appears none of the states prohibit including a medical or mental health or alcohol and drug addiction limitation or exclusion of coverage, even the state of Vermont[7]. Furthermore, in reviewing the state statutes, none of the states included a prohibition on limitations on medical or mental health limitations in long-term disability income policies. As mentioned to the ERISA Advisory Council, Vermont had issued a bulletin eliminating different benefit periods between mental health (and substance abuse) and physical issues.[8]

Since disability income insurance is not a mandated benefit for any employer or individual, although incredibly valuable for workers, this benefit "competes" with the many other products that are not mandated. With certain employers (i.e., those with over 50 employees) mandated to offer medical health coverage, there are only so many "dollars" that can be allocated for other supplemental-type products, including disability income insurance. Thus, the employer is the decision maker for offering disability income insurance or choosing a policy to offer its employees. Usually, this benefit is considered by an employer's Human Resources (HR) department or through a broker. The HR representative or broker provides the insurance carrier with the information about the product that they would like to be priced. Employers usually utilize brokers for receiving bids from carriers – these brokers are the conduits for the employers, and the employers come to the table with the benefit plan design(s) they wish to obtain for their employees. The carriers price the disability income policy as requested. Almost all carriers offer the ability for an employer to have disability income protection for mental illness conditions without limitations in the policy – and the employer group can select what it wants to provide for its employees.

As mentioned, the group rate filings are variable with additional loads or discounts included in the approved filings depending on the product structure chosen. All policy information is included in the policy that the policyholder purchases. In addition, for group products employees are provided a summary plan description (SPD) by the employer, which is a fiduciary under ERISA[9].

Conclusion

In summary, ACLI and AHIP applaud the advancements in the realm of medicine and the greater access for individuals to have the same benefits for mental health treatment. We believe that everyone deserves access to effective, affordable, and equitable medical coverage and treatment for mental health support and counseling.

However, long-term disability income insurance is different, in that it is not a mandated benefit; and, for those employers that offer it (and those employees that purchase it), purchase decisions are more heavily influenced by cost, and any mandate that would materially impact that cost will make it less likely that employers will offer it, or that employees will enroll in it if they are bearing the cost.

Thus, we believe the discussion should be on expanding the access to disability income coverage while keeping the employer or individual options as they believe will work for their employees or individual

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[7] VT Admin. Code 4-3-8:6 E.(2)
[8] Please refer to Appendix A for information on the Vermont bulletin and ACLI's involvement and what occurred after the issuance.
[9] https://www.dol.gov/general/topic/retirement/planinformation

circumstances. We believe improving communication of the importance of disability income insurance for workers is an initiative that should be explored. If that includes reminders and updated education to employers on the decisions they make on behalf of their employees, we support that initiative.

Appendix A – Vermont Bulletin

There has been much discussion on Vermont's bulletin[10] requiring benefit periods for mental health and substance abuse to be similar to benefit periods for physical disabilities, since it is the only state that mandated mental health parity and addiction equity similar to major medical health insurance. This Appendix is to provide the ERISA Advisory Council members with what occurred versus the anecdotal comments made by several people in various settings. First of which, ACLI never threatened the Vermont insurance department with litigation – the only anecdotal threat made was by someone in the insurance department. The insurance department staffer mentioned that this could easily be taken to the Vermont legislature to do as the department wants (this came up when ACLI read the legislative history that stated disability income insurance was not included in its mental health parity law and then updates to the law). As mentioned in the letter that we submitted to the Deputy Commissioner at the time, ACLI believes in employer and consumer choice when the topic is on purchasing disability income insurance (whether group or individually), especially when studies show that there is a need to expand workers having coverage and disability income insurance is not a product that anyone is required to purchase.

It has been mentioned that "no rate increases were noted" and that "the thriving disability income [niche] market in Vermont had no carriers leave the market". As mentioned in the main testimony, group policy and rate filings (and this is the same for Vermont) are generally filed with variability, that is, the additional costs/loads/discounts are included in the filing such that the examiner knows the benefits that have variability. In addition, a range of those additional loads for unlimited mental illness benefit is included in the letter. Being a trade association, ACLI does not ask for specific pricing information and being able to provide a range of loads that may be included in the pricing for a disability income policy. That was the situation when the Vermont bulletin came out. Carriers mentioned that they were requested to remove variability in the policy filings; however, since carriers had already included what the load would be for unlimited mental health coverage in the rate manuals, the implication of "no rate increases were noted" seems anecdotal at best.

Furthermore, what did occur was that employer and individual choice were reduced. That is, several carriers made the business decision to stop selling non-contributory plans to employers to offer to their employees (employee has the option to purchase or not) and some just left the market.

The following is the letter sent to the Vermont Deputy Commissioner when discussion of the proposed, then final issuance of HCA Bulletin 127.

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[10] dfr-bulletin-health-127.pdf (vermont.gov)

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October 3, 2008

RE: HCA Bulletin 127 – Discrimination Against Disability Due to a Mental Health Condition Prohibited in Disability Income Replacement Insurance

Dear Deputy Commissioner Oliver:

On behalf of the American Council of Life Insurers, we are writing to you about our concerns with the Department's recent bulletin, HCA Bulletin 127, that was issued to clarify the Department's policy regarding discrimination against persons disabled due to a mental health condition in the context of disability income replacement insurance. The American Council of Life Insurers (ACLI) is the principal trade association of life insurance companies, representing 353 member companies that account for 93 percent of total assets, 93 percent of the life insurance premiums, and 94 percent of annuity considerations in the United States. ACLI member companies provide the majority of disability income insurance coverage in the United States.

The Department bases the bulletin on 8 V.S.A. sec. 4062. As the Department knows, most states have general consumer protection provisions similar to 8 V.S.A. sec. 4062. However, no other state has used the general protection provision to mandate mental health parity without a specific mental health parity provision as a statutory basis. In fact, in the present instance, the Vermont Legislature specifically had the option of applying mental health parity to disability income policies when it enacted 8 V.S.A. sec. 4089b (Vermont's mental health parity legislation). Instead, the Vermont Legislature chose not to include disability income policies by limiting the scope of the requirement for mental health parity to insurance that covers medical treatment. Therefore, we question why the Department would apply this choice-limiting provision to disability income policies.

Unlimited (i.e., no 12 or 24 month limitation for mental/nervous conditions) coverage for disabilities arising from mental health disorders is available from some insurers, but it is very expensive. Actuarially, the cost to

consumers to eliminate the choice for mental and nervous limitations equates to an increase of approximately 12-20% in monthly premiums. That is a significant increase for consumers and employers already having to deal with yearly increases in mandated benefits expenses, like healthcare premiums. The use of limitations for disabilities arising from such disorders was developed in response to consumer demand for more affordable disability income products. An example of an affordability limitation is a provision setting a maximum 24-month benefit period for disabilities caused by mental health conditions. As with any of the benefits, they are actuarially priced and justified when the policies are filed with the states. This is a standard benefit option accepted across the nation both in the industry and with regulators – and until recently, that included the Vermont Insurance Department.

Disability income insurance is a voluntary benefit that provides income protection for the insured if they become sick or disabled and cannot work, and is not coverage for the diagnosis or treatment of medical conditions. Less than 40% of the U.S. labor force has private group or individual disability income protection. As previously stated, the Department's interpretation would increase the cost of disability income coverage, decreasing the likelihood that employers will be able to provide comprehensive group coverage for their employees. In addition, the likelihood of individuals being able to buy the product declines as well. Requiring the same level of coverage for disabilities arising from all conditions interferes with employers' and other consumers' right to select and purchase those benefits that best meet their individual needs. Vermont currently has products previously approved with varying benefit periods that are available for consumers to purchase. The fact that these policies continue to be purchased demonstrates that Vermont consumers are sophisticated and want choice. Consumers in Vermont should not lose this choice without clear statutory authority.

Consumers have shown that the choice between policies with mental health parity and mental limitations and the associated pricing differences are important to them. Under the choice approach many consumers may be able to afford a policy (thus protecting them from physical as well as limited mental/nervous injury/illness) versus no coverage at all due to the expense of full mental parity. Thus, offering consumers alternative policies or provisions regarding mental health parity is a consumer choice issue and that should be determined by the Vermont Legislature. For all these reasons, the ACLI urges the Department to rescind the bulletin as soon as possible.

We would also like to object strenuously to the part of the bulletin that appears to require that in-force policies must come into compliance with the mental health parity requirements of the bulletin. Many individual disability income policies in force with limitations on coverage for mental/nervous conditions are non-cancellable, which means that an insurance carrier cannot cancel or unilaterally change the terms of the policies or raise rates. The premiums for these policies were priced on the basis that the limitations in the policy were enforceable. These policy forms were approved for sale in Vermont. It is our view that the state cannot legally mandate these changes by statute, much less by an unsupported bulletin, in the terms of in-force contracts. The retroactive requirements in this bulletin are a serious problem that we need to discuss with the Department.

With respect to the prospective application of this bulletin, some group and individual carriers do not offer a full mental health parity benefit (or offer it only in limited circumstances), and as a result, would need to

amend, reprice, and refile their policies and reprogram their computer systems accordingly, which is both extremely time consuming and costly. Additionally, even for insurers who might currently offer the option for full mental health parity, group insurers' renewals are commonly processed months in advance. Consequently, an effective date of November 1, 2008 is unworkable.

In summary, we view the bulletin as without basis in Vermont statutory law and urge the Department to rescind it as soon as possible.

We would like to discuss this issue in more detail with you as soon as possible.

Sincerely,

Ross Sargent Steven Clayburn