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The Honorable Israel O'Quinn
Pocahontas Building, Room W230
900 East Main Street
Richmond, Virginia 23219

Re: SB 1189, Disability insurance; disability arising out of childbirth

Chair O'Quinn and members of the Commerce and Energy Subcommittee #1, the American Council of Life Insurers (ACLI) opposes Senate Bill 1189, which would require each insurer proposing to issue individual or group accident and sickness insurance policies providing short-term disability income protection coverage whose policies provide coverage for short-term disability arising out of childbirth to, notwithstanding a disability determination or medical necessity requirement, provide for 12 weeks of income protection coverage for a payable benefit of at least 12 weeks immediately following childbirth.

Senate Bill 1189 is inconsistent with Virginia Law. Virginia classifies short-term disability policies as "accident and sickness insurance" defined as "insurance against loss resulting from sickness, or from bodily injury or death by accident or accidental means, or from a combination of any or all of these perils . . ." (Va. Code Ann. § 38.2-109). Arbitrarily extending "disability" in cases where it would not otherwise be medically supported/necessary would directly contradict a bedrock principle of this type of insurance.

Disability income insurance, under the recently adopted minimum standards (citations below), does not require coverage for childbirth. Nor does the proposed amended statute.

The proposed statute impacts carriers issuing policies providing STD coverage for disability arising out of childbirth are subject to the requirements of 38.2-3407.11:4. It follows that carriers issuing policies not providing STD coverage for disability arising out of childbirth are not subject to the requirements of 38.2-3407.11:4.

This interpretation is consistent with the recently adopted minimum standards:

14 VAC 5-141-30

D. If covered, pregnancy, childbirth, or miscarriage shall be treated like any other sickness.

14 VAC 5-141-60

K. If a disability income policy provides coverage for disability from childbirth, it shall provide for a payable benefit of at least 12 weeks immediately following childbirth in accordance with s 38.2-3407.11:4.

In other words, carriers can choose whether to specifically include coverage for childbirth in DI policies.

Furthermore, SB 1189 would make Virginia an outlier by becoming the first state in the country to arbitrarily mandate that short-term disability policies cover a minimum of 12 weeks of leave after childbirth. Short-term disability policies

sold in VA are already required to provide 12 weeks of leave if the mother is still unable to return to work after 6-8 weeks due to physical or mental impairment resulting from childbirth.

Lastly, as written the bill states that “the provisions of this section shall apply to any policy delivered or issued for delivery in the Commonwealth on and after July 1, 2021.” Forcing insurers to retroactively change the terms of existing policies can be a “slippery slope” that can potentially put all insurance contracts at risk.

Chair O’Quinn and members of the subcommittee, for all these reasons we respectfully ask that you vote against SB 1189.

Respectfully submitted,

A handwritten signature in black ink that reads "Michelle Carroll Foster". The signature is written in a cursive, slightly slanted style.

Michelle Carroll Foster

¹ 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.