

State Corporation Commission

Senate Bill 567 Short-Term
Disability Income Protection for
Childbirth

Report of Survey Responses

Katie Johnson
Policy Advisor – Insurance
Bureau of Insurance
December 1, 2020

COMMONWEALTH OF VIRGINIA



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December 1, 2020

The Honorable Richard L. Saslaw, Chair
Committee on Commerce and Labor
Virginia Senate
Pocahontas Building
900 East Main Street
Richmond, Virginia 23219

The Honorable Jeion A. Ward, Chair
Committee on Labor and Commerce
Virginia House of Delegates
Pocahontas Building
900 East Main Street
Richmond, Virginia 23219

Re: Senate Bill 567 (2020 Regular Session)

Dear Senator Saslaw and Delegate Ward:

This report has been prepared in response to three questions posed in Senate Bill 567¹ (SB 567) introduced in the 2020 Regular Virginia General Assembly session. SB 567 will require that insurers writing individual and group accident and sickness policies that offer short-term disability income policies for disability arising out of childbirth provide for a payable benefit of at least 12 weeks immediately following childbirth. This bill applies to "policies delivered or issued for delivery in the Commonwealth on or after July 1, 2021." (See Appendix A for a copy of the bill.)

The bill directed the State Corporation Commission to solicit comments from insurance industry stakeholders on the impact of this act on current and future short-term disability income policyholders. In addition, the Commission was directed to request the industry stakeholders to identify the (i) potential private options for creating a standalone maternity leave benefit and (ii) potential private options for creating a paid family leave policy. This report contains a summary of the responses received by the Commission.

¹ See § 38.2-3407.11:4 of the Code of Virginia.

Summary

Insurance stakeholders that currently write short-term disability income protection covering pregnancy and childbirth are concerned that the language in SB 567 is not clear as to whether the weeks of benefit above the normal six to eight-week benefit must be medically determined or are to be provided with no additional medical review. If no additional medical review is required, stakeholders raised concerns of discrimination under federal, state, and local laws. The Commission's Bureau of Insurance (Bureau) supports clarification of the language in SB 567.

With respect to the question relating to potential options for creating a stand-alone maternity leave policy, industry stakeholders did not support a stand-alone maternity policy due to the potential costs. One insurer pointed out that the cost of the coverage would likely be equal to the amount of the benefit. Several insurers pointed out that such policies could create discrimination issues and suggested that an option for paid family medical leave policies would be more appropriate.

Finally, with respect to the question regarding a private family medical leave option, eleven of the 22 responding industry stakeholders indicated an interest in Virginia permitting private family medical leave policies. They assert that a family medical leave insurance policy rather than a disability income policy is the appropriate vehicle for providing leave for parents after the birth or adoption of a child. Currently, Virginia law does not permit insurers to file such policies; however, the Bureau is available to provide technical assistance to the General Assembly if requested should enabling legislation be considered.

Background

Short-term disability income protection insurance policies may be written by insurers licensed to write life insurance and accident and sickness insurance in the Commonwealth. Prior to SB 567, short-term disability income protection policies were primarily regulated under 14 VAC 5-140-10 et seq., Rules Governing the Implementation of the Individual Accident and Sickness Insurance Minimum Standards Act. In 14 VAC-5-140-70 F, the rules provide that a policy covering disability income protection arising out of pregnancy, childbirth, or miscarriage may limit the period for such disability to one month. All but one of the insurers writing short-term disability income protection coverage indicated that their policies typically provide more than the minimum of one month's coverage for childbirth if a medical determination is made that additional leave is warranted.

Data Call

The Bureau mailed notice of the data call to 880 insurance companies that write life insurance and accident and sickness insurance as well as all Life and Health and

Property and Casualty interested parties.² The data call was posted on the Commission’s website³ and postcards were mailed to each of the insurers as well as the Property & Casualty and Life & Health interested parties. (See Appendix B for a copy of the data call.)

The Bureau received responses from 91 insurers. Of those that responded, 22 insurers currently offer disability income policies covering pregnancy, childbirth, and miscarriage. Sixty-nine insurers responded that they either do not write disability income coverage for childbirth, or no longer write new business offering this coverage in Virginia and have no plans to offer such coverage in the future.

The table below lists the responses from the 22 companies that write disability income coverage for childbirth in Virginia with the periods of disability covered. Of these, most of the companies offer at least six weeks for a normal delivery and eight weeks for a caesarian section. Two companies offer four weeks for a normal delivery and six weeks for a caesarian section. Several companies offer coverage prior to childbirth if medically indicated while one company offers income protection coverage only if there is a disability due to complications of childbirth.

Co. No. ⁴	Benefit Period	Extend Benefits if Medically Determined
1	4 weeks for normal childbirth and 6 weeks for caesarian section (C-section)	NA
12	The company utilizes the MD Guidelines recommendation for postpartum benefit periods of 4 weeks for vaginal delivery and 6 weeks for caesarean delivery absent any medical complications.	Yes
14	Average benefit is 45 days; childbirth treated like any other disability	Yes
22	Current average duration for childbirth is 6 weeks; childbirth is covered like any other disability	Yes
3, 7, 8, 9	6 weeks for normal; 8 weeks for C-Section; inclusive of waiting period.	Yes

² Of those insurers licensed to write accident and sickness and life insurance, many of the companies do not write short-term disability insurance or do not write coverage for childbirth. Many of these insurers did not respond.

³ The data call letter was also posted on the Bureau’s website at: <https://scc.virginia.gov/getdoc/5afbb9fb-7f66-4c86-9445-69ae4dc27c1a/Letter-to-Industry-and-Stakeholders-6-8-20>. The letter was revised on 7-15-20 to request the insurers’ NAIC Company Codes.

⁴ The companies have been numbered for aggregation purposes.

Co. No.	Benefit Period	Extend Benefits if Medically Determined
11	6 weeks for normal; 8 weeks for C-Section; if complications, inclusive of 1-2 week waiting period. Childbirth is treated like any other disability	Yes
13	8 weeks normal (2 weeks before and 6 after childbirth); 10- weeks C-Section (2 before and 8 after childbirth; inclusive of 7 day waiting period	Yes
15	6 weeks for normal; 8 weeks for C-Section; if complications, the period of disability may be extended; if patient disabled prior to childbirth, coverage may begin then; length subject to plan terms	Yes
16	8 weeks normal (2 weeks before and 6 after childbirth); 10- weeks C-Section (2 before and 8 after childbirth, based on the Medical Disability Advisor guidelines	Yes
5, 6, 10, 17	6 weeks for normal; 8 weeks for C-Section	Yes
18 & 19	6 weeks for normal; 8 weeks for C-Section; if complications, the period of disability may be extended depending on the options purchased. The most popular options are 3-month and 6-month benefit periods; maximum benefit period available is 24 months.	Yes
20	6 weeks for normal childbirth and 8 weeks for caesarian section	NA
2	8 weeks normal (2 weeks before and 6 after childbirth); 10- weeks C-Section (2 before and 8 after childbirth; inclusive of waiting period of 7-15 days depending on contract.	Yes
4	Coverage is offered only if there are complications of pregnancy or the disability is longer than 90 days	Yes
21	Average benefit is 6 weeks for childbirth; maximum benefit is 26 weeks ⁵	Yes

Variations in the coverage offered is dependent on the terms of the policy purchased.

Questions Posed by Senate Bill 567

What is the impact of the bill on current and future short-term disability policyholders?

Respondents to the data call have expressed concern with the language of Senate Bill 567. In particular, the concern is whether the extension of benefits to 12 weeks in the bill requires an additional medical determination. Does the language mean that an insured automatically receives 12 weeks of benefit or does the insured receive the typical 6 to 8 weeks that may be extended to at least 12 weeks if it is medically determined that

⁵ This company does not currently write disability income policies in Virginia but has plans to offer the coverage.

the insured needs additional leave. Based on the responses received from insurers, there is approximately a 50-50 disagreement on the meaning of the language in the bill.

The industry's concern is rooted in the potential discrimination issues that would arise under federal, state, and local laws if Senate Bill 567 requires no additional medical determination. Senate Bill 567 applies to the mother after childbirth and not the other parent. According to the industry, unless the period of leave over the normal 6 to 8 weeks benefit period is medically required, the benefit is more like family medical leave. As noted above, family medical leave benefits apply to both parents and adoptee parents for bonding time with their child. Thus, if Senate Bill 567 is interpreted to provide bonding time (with no additional medical determination) to the mother but provides no leave for the other parent, it would give rise to potential discrimination concerns. As one insurer points out, pregnancy itself is not a disability under the Americans with Disabilities Act of 1990⁶; rather, the mother must have a disability in order to be eligible for a disability benefit.⁷

The Bureau supports clarification of the language.

Identify potential private options for creating a standalone maternity leave benefit.

Of the 22 insurers that write disability income protection for childbirth, 13 of the insurers saw no realistic private options for creating a standalone maternity leave benefit or provided no response to the question. Two insurers pointed out that by creating a stand-alone maternity policy or voluntary rider to cover maternity, prices for the maternity benefit would be extremely expensive. The insurers suggested that the annual premium would be close to the actual benefit received. Generally, the insurers indicated they are not interested in a private stand-alone maternity benefit. One company recommended that Virginia not pursue a stand-alone maternity benefit policy; but, rather continue to support short-term disability income protection policies that provide coverage for pregnancy, childbirth, and related conditions.

Five of the responding insurers pointed out that a stand-alone maternity policy may be considered discriminatory towards the non-childbearing parent as well as adoptive parents and referenced the federal Pregnancy Discrimination Act of 1978⁸ as well as other federal, state, and local non-discrimination laws. Some of these insurers interpreted the question to relate to coverage for bonding after a birth and recommended that Virginia consider a paid family leave policy as a better option.

⁶ 42 U.S.C. § 12101 et seq.

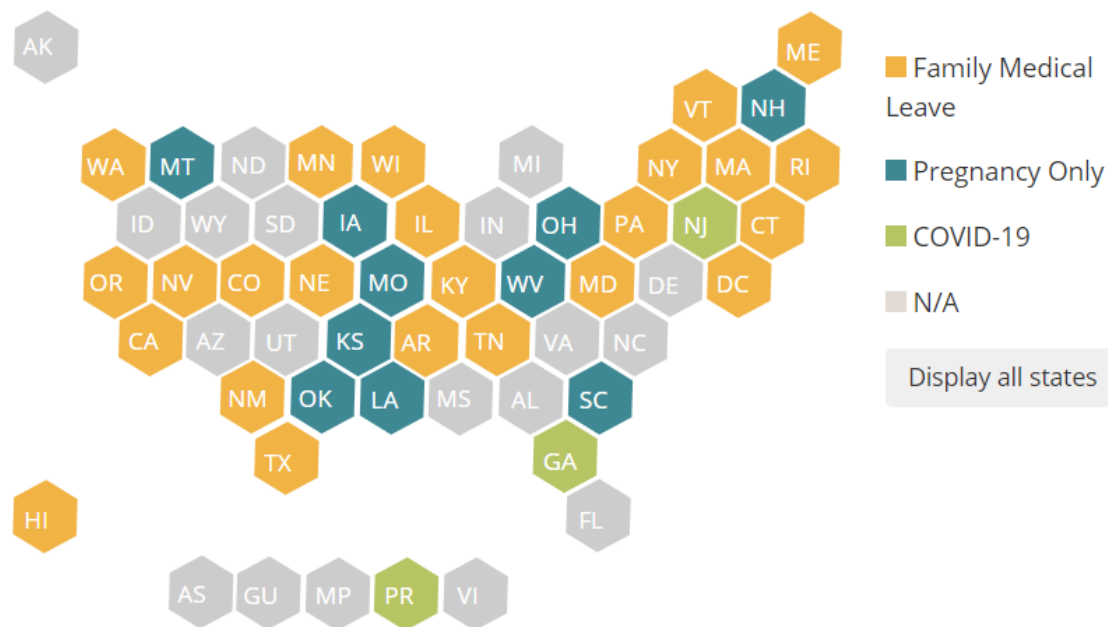
⁷ See EEOC at <https://www.eeoc.gov/laws/guidance/enforcement-guidance-pregnancy-discrimination-and-related-issues>.

⁸ The Pregnancy Discrimination Act of 1978 ((Pub. L. 95-555) amended Title VII of the Civil Rights Act of 1964 to protect an individual from discrimination on the basis of pregnancy, childbirth, or a related medical condition.

Identify potential private options for creating a paid family leave policy.

Of the 22 insurers that write disability income protection covering childbirth, 10 of the insurers had no response to this question or indicated limited interest in a product providing paid family leave. One company had no comments but expressed interest in reviewing a proposal regarding paid family leave policies. Eleven insurers suggested they are or may be interested in legislation that would permit insurers to file paid family leave programs in Virginia. Many referenced the letter sent to the Bureau by American Council of Life Insurers (ACLI) proposing legislation for a private option. ACLI recommended separating the durations for medical leave components from durations for family leave to maintain existing disability options while providing for the additional family leave coverage. Legislation would be required to amend Title 38.2 of the Code of Virginia to permit insurers to file family medical leave policies. (See Appendix C for ACLI's letter.)

Several insurers supporting a private family medical leave option currently write paid family leave policies in conjunction with short-term disability income protection policies in those states that permit family leave policies to be filed or have made this coverage mandatory. Below is a graphic⁹ of the states that offer family medical leave, paid or unpaid (some states leave it to the employers to decide if leave is paid), as well as those states that only require leave for pregnancy.



According to the National Conference of State Legislators eight states and the District of Columbia have passed **paid** family leave laws: California, New Jersey, Rhode

⁹ The map is from the National Conference of State Legislators. More information may be found at : <https://www.ncsl.org/research/labor-and-employment/paid-family-leave-resources.aspx>.

Island, New York, Washington, Washington D.C, Massachusetts (2021), Connecticut (2022), and Oregon (2023). Puerto Rico requires employers to pay maternity leave at the same rate as the employee's regular pay rate.

The federal Family and Medical Leave Act (FMLA) provides certain employees with up to 12 weeks of **unpaid**, job-protected leave per year. According to the U.S. Department of Labor, "The FMLA is designed to help employees balance their work and family responsibilities by allowing them to take reasonable unpaid leave for certain family and medical reasons. It also seeks to accommodate the legitimate interests of employers and promote equal employment opportunity for men and women. The FMLA applies to all public agencies, all public and private elementary and secondary schools, and companies with 50 or more employees." These employers must provide an eligible employee with up to 12 weeks of unpaid leave each year for any of the following reasons:

- For the birth and care of the newborn child of an employee;
- For placement with the employee of a child for adoption or foster care;
- To care for an immediate family member (i.e., spouse, child, or parent) with a serious health condition; or
- To take medical leave when the employee is unable to work because of a serious health condition.

Given that federal law provides for unpaid leave for up to 12 weeks per year, the options for paid family medical leave have been left to the states and private insurers. As noted above, many states have enacted laws for family medical leave in various forms.

¹⁰

Since the 2011 session, several bills have been introduced in the Virginia General Assembly to create a state-run family medical leave program. The most recent is House Bill 328 introduced in the 2020 session. However, private insurers are interested in writing insurance coverage for family medical leave as an option for Virginians if authority is provided to permit them to do so.

¹⁰ In 2019, § 2.2-1210 of the Code of Virginia was enacted to provide **parental leave** for state employees. This coverage applies to the birth, adoption, or foster placement of a child younger than age 18 and must be taken within six months of the qualifying activity.

If you have any questions about this or any other matter, please feel free to contact me at (804) 371-9398.

Cordially,

A handwritten signature in black ink, appearing to read "Scott A. White". The signature is fluid and cursive, with a large loop at the end.

Scott A. White, Commissioner of Insurance
Bureau of Insurance
State Corporation Commission

VIRGINIA ACTS OF ASSEMBLY -- 2020 SESSION

CHAPTER 935

An Act to amend the Code of Virginia by adding a section numbered 38.2-3407.11:4, relating to disability insurance; coverage for disability arising out of childbirth.

[S 567]

Approved April 9, 2020

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 38.2-3407.11:4, as follows:
§ 38.2-3407.11:4. Disability arising out of childbirth; minimum benefit.

A. 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 shall provide coverage for a payable benefit of at least 12 weeks immediately following childbirth for such a disability.

B. The provisions of this section shall apply to any policy delivered or issued for delivery in the Commonwealth on and after July 1, 2021.

2. That the State Corporation Commission (the Commission) shall solicit comments from insurance industry stakeholders on the impact of this act on current and future short-term disability policyholders. The Commission shall request industry stakeholders to identify (i) potential private options for creating a standalone maternity leave benefit and (ii) potential private options for creating a paid family leave policy. The Commission shall provide a report of such comments to the Chairs of the House Committee on Labor and Commerce and the Senate Committee on Commerce and Labor prior to December 1, 2020.

Appendix B

SCOTT A. WHITE
COMMISSIONER OF INSURANCE
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BUREAU OF INSURANCE



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TO: All Insurers Licensed to Write Accident & Sickness Insurance, Life Insurance, and All L&H and P&C Interested Parties

FROM: Katie Johnson, Policy Advisor-Insurance, Policy, Compliance, & Administration Division, SCC Bureau of Insurance

DATE: June 8, 2020 (revised 7/15/20)

RE: Senate Bill 567-Short-Term Disability Income Protection

Pursuant to Senate Bill 567, the Bureau of Insurance (Bureau) is soliciting comments from insurance industry stakeholders on the impact of this act on current and future short-term disability policyholders.

As you may know, the bill requires all insurers that provide short-term disability income protection coverage whose policies provide coverage for short-term disability arising out of childbirth to provide coverage for a payable benefit of at least 12 weeks immediately following childbirth for such a disability. This bill becomes effective July 1, 2021.

Currently, insurers providing disability income protection coverage are permitted to limit the coverage for disability arising out of pregnancy, childbirth, or miscarriage to one month. (See [14 VAC 5-140-70 F of the Virginia Administrative Code](#).) This bill expands the minimum limit for short-term disability coverage arising out of childbirth to no less than 12 weeks.

Consequently, **in addition to the full name of the company and its NAIC number**, the Bureau is seeking your response to the following questions.

1. Does your company:
 - (a) currently cover disability arising out of childbirth? If 'yes', what is the common duration of the benefit payment; or
 - (b) plan to begin covering disability arising out of childbirth?
2. What are the potential private options for creating a standalone maternity leave benefit?
3. What are the potential private options for creating a paid family leave policy?

Please provide your **emailed** response by **August 1, 2020**.

My email address is: Katie.Johnson@scc.virginia.gov

My telephone number is: 804-371-9688

**Steven Clayburn**

Senior Actuary, Health Insurance & Reinsurance
(202) 624-2197 t
steveclayburn@acli.com

July 31, 2020

Ms. Katie Johnson
Policy Advisor
Insurance, Policy, Compliance, & Administration Division
State Corporation Commission Bureau of Insurance
via email: Katie.Johnson@scc.virginia.gov

Re: Senate Bill 567-Short-Term Disability Income Protection (Request for Information June 8, 2020)

Dear Ms. Johnson:

On behalf of the American Council of Life Insurers (“ACLI”), we appreciate the opportunity to respond to the State Corporation Commission Bureau of Insurance’s (“Bureau”) June 8, 2020 request for comments on Senate Bill 567, short-term disability income protection. ACLI members provide the majority of disability income insurance in the Commonwealth.

ACLI membership provides disability income protection either through short-term disability income protection or long-term disability income protection, or a combination of both. The typical short-term disability income product provides income replacement for someone who cannot work due to an accident or illness or recovery from childbirth. An employer can choose to purchase a short-term disability policy from a carrier, self-fund its short-term disability claims, or not provide coverage for short-term disability at all. The typical duration of benefits is up to 26 weeks for a medical condition. Short-term disability policies most commonly replace 60 percent of a worker’s income. And the typical short-term disability policy provides up to 6 to 8 weeks of paid leave following childbirth or longer if there are complications. When claims of childbirth are submitted to carriers, there is a medical “certificate” that is submitted from the doctor regarding the “disability” from childbirth: it would describe a natural childbirth - typically 6 weeks paid disability leave - or a C-section - typically 8 weeks paid disability leave. Maternity claims are the single most common short-term disability claims relative to other disabling conditions.

Senate Bill 567 states, *“accident and sickness insurance policies providing short-term disability income protection coverage whose policies provide coverage for short-term disability arising out of childbirth shall provide coverage for a payable benefit of at least 12 weeks immediately following*

American Council of Life Insurers | 101 Constitution Ave, NW, Suite 700 | Washington, DC 20001-2133

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.

childbirth for such a disability.” The bill is narrowly focused on a subset of employees, pregnant women who are covered by a fully insured short-term disability policy that covers maternity coverage. Please note that many employers self-insure short-term disability versus fully insuring the product. Self-insured disability plans are not expressly subject to Senate Bill 567, thus creating disparate coverage for a common benefit under short-term disability.

Two Different Possible Interpretations Leading to Two Significantly Different Benefits

Not only is the bill narrowly focused on a subset of fully-insured employees, the bill can lead to at least two different interpretations, both which would require the typical short-term disability policy to be changed and repriced - and with maternity claims being approximately 25% of short-term disability claims this cost will have to be addressed.

Initially, the proposed legislation appeared to be a 12-week mandate for childbirth. Following ACLI and Industry input, several proffered amendments to Senate Bill 567 were made and accepted by the sponsor and legislators, including the added phrase referring to at least 12 weeks “for such a disability.” With the amendments, the language in final form reads more that the short-term disability policy has to provide up to 12 weeks at a minimum *if and to the extent that it is supported by medical documentation that there is a disability.*

During the legislative process, we know – only as a result of ACLI and its counsel’s insights – that the sponsor of Senate Bill 567 intended it to be a 12-week mandate, regardless of medical documentation related to the duration of disability. It seems clear that many employers and carriers – who do not have the same insight about the sponsor’s intentions – will read the language of final Senate Bill 567 as meaning that the policy must provide up to 12 weeks at a minimum if and to the extent that it is supported by medical documentation that there is a disability.

Of these two interpretations, it is important to note the “mandate” interpretation creates a litigation risk of being in violation of the Pregnancy Discrimination Act of Title VII of the Civil Rights Act of 1964 and similar state and local anti-discrimination laws. In sum, because the effect is that the weeks of leave not supported by medical documentation of a disability are essentially a form of parental leave for bonding and are not offered on equal terms on a gender neutral basis to others who would qualify to bond with the child (e.g., the biological father, the other spouse, or an adoptive parent, etc.).

The following is a link to the Equal Employment Opportunity Commission’s (EEOC) pregnancy guidance: https://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm. Although the entirety of this guidance may be informative, we would highlight the guidance beginning with “3. Parental Leave and Examples 14-15.” The EEOC mandates that “parental leave must be provided to similarly situated men and women on the same terms.” Notably, the EEOC has commenced multiple enforcement actions against employers in recent years regarding this position.¹

Both of these interpretations would lead to policy changes by carriers. Some changes might lead to a reduction of short-term disability product options due to current plan design of some short-

¹ <https://www.eeoc.gov/newsroom/estee-lauder-companies-pay-11-million-settle-eeoc-class-sex-discrimination-lawsuit>

term disability products.² Due to the longer required duration for childbirth claims, this increased cost may have to be addressed in some manner. Employers might decide to self-fund, or worst case, not provide this benefit to avoid treating one set of employees differently than the other employees. Employers might not purchase the product due to increased costs and the potential litigation issues. The result will be decreased access to paid benefits following childbirth in direct contravention to the legislative intent. At a minimum, both carriers and employers need interpretative guidance from the Bureau so that it will provide an even playing field for carriers, and so that they know the law will be applied consistently throughout Virginia.

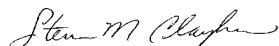
Alternative Solution

ACLI and its members believe that the spirit and intent of Senate Bill 567 could be addressed in a manner that would not change the typical short-term disability policy. A birth mother would still get paid for the period of time she is medically disabled related to the birth (e.g. post-partum recovery, complications prior to or following birth). After being fully paid for that period, additional paid parental leave would be available. That same leave would be available to non-birth parents and adoptive parents, avoiding potential issues of discrimination. We believe that enacting a paid family leave insurance law would be the best alternative for the Commonwealth; and ask the Bureau to consider this alternative as it has the flexibility to be for parental leave only. We have included a proposed paid family leave legislative template as Attachment A.

This proposal would not only cover additional weeks following childbirth, it is designed to benefit all employees. Some examples include: the paid family leave income replacement insurance would provide non-birth parents with bonding time following the birth of a child; it could provide parents of an adoptive child with bonding time; and it could allow paid leave for an employee to care for a family member that is ill. Enacting minimum standards for a paid family leave insurance benefit will help eliminate the potential litigation risk of treating one group of employees differently than other employees. This paid family leave alternative can be utilized as the debate for more needed paid leave continues throughout the country and in the Commonwealth.

Again, we appreciate the opportunity to provide responses and alternatives to your request for comments on Senate Bill 567. We are available for any follow-up conversations or questions you may have.

Respectfully,



Steve Clayburn, FSA, MAAA
Senior Actuary, Health Insurance & Reinsurance

cc: Michelle Foster, Regional Vice President, ACLI
Patrick Cushing, Williams Mullen

² For example, some short-term disability policies might have maximum durations of 12 weeks – and if an employee has prenatal complications, it is possible that the 12 weeks would be exhausted prior to the birth of the child.

Attachment A – Paid Family Leave Income Replacement Law

The following proposal has been developed so that it could be added to the Commonwealth's accident and sickness statute to allow an insurer already licensed to offer disability income insurance policies to also offer paid family leave insurance coverage in the Commonwealth. This new law would allow paid family leave benefits to be offered as either a rider to a disability income policy or via a separate policy of insurance. All such coverage would be required to comply with: (1) the relevant sections of the of the disability income insurance law, such as rating provisions, disclosures, and right of return; (2) any state filing requirements; and (3) the specific provisions of the proposed law.

Some specific provisions of the proposed law include:

- A purpose section recognizing all employees' increasing need for paid family leave benefits, as well as the increasing need for paid family leave benefits, as well as the increasing desire on the part of employers and policymakers to provide workers such benefits.
- Definitions of specific terms, such as "parent", "child", and "family member", that would be unique to this type of insurance policy.
- A description of the types of events that may qualify for benefits, including parent/child bonding, care for a family member with a serious medical condition, or other event specified in the policy.
- A requirement that the policy list the requirements needed in order to qualify for benefit payments.
- A requirement that coverage benefit period be no less than two weeks, or as otherwise provided for in the policy.
- A requirement that the policy disclose the existence of any waiting period before benefits can be received.
- A requirement that the policy clearly state how an individual's benefit is determined, and any offset that exists in relation to other income.
- A list of permissible limitations and exclusions under the policy.
- A requirement that all benefits be paid promptly.
- Direction that premiums for such policies shall be calculated in accordance with the applicable provisions of a state's disability income insurance statute.

1 **Proposed Paid Family Leave Income Replacement Insurance Law**

2 The State's Insurance Code is amended to enact the following:

3 Title AA, Accident and Sickness Insurance, [Section X, Disability Income Insurance] is amended by
4 adding the following sections –

5 **Article Z. Paid Family Leave Income Replacement Benefits**

6 An insurance company licensed to issue disability income insurance policies in accordance with
7 this title may also offer paid family leave benefits providing wage replacement caused by absences
8 that are not based upon an insured's status as disabled. Such benefits may be offered either
9 through a rider to a policy of disability income insurance or as a separate policy and must: (1)
10 comply with the relevant sections of this title, and (2) [comply with any state disability income
11 insurance filing requirements - cite state insurance code].

12 **§ 100. Short Title**

13 This Article shall be known and may be cited as the "Paid Family Leave Income Replacement
14 Benefits Act".

15 **§ 101. Purpose**

16 [State] is a family-friendly state, and providing the workers of [State] with access to paid family
17 leave insurance will encourage an entrepreneurial atmosphere, encourage economic growth, and
18 promote a healthy business climate. Many workers need to take time off work for family reasons,
19 including bonding with a new child or caring for an ill family member. Increasingly, employers in
20 [State] want to make paid leave benefits available to workers who need time off for these reasons.
21 Employers recognize workers will be healthier and more productive workers when able to take care
22 of family responsibilities without a complete loss of income, and believe that offering paid family
23 leave benefits to their employees will improve recruitment opportunities and reduce turnover in the
24 workplace. Disability insurers currently offer income replacement benefits to workers who need
25 time off from work because of their own disabling medical condition. Disability insurers have
26 extensive experience, claims staff, systems, and expertise that can be used to provide fully insured
27 paid family leave benefits for employees either through employer-sponsored group insurance
28 policies or voluntarily purchased employee policies. It is in the best interests of [State's] workers

29 and employers to permit disability insurers to expand their fully insured benefits in [State] to include
30 paid family leave benefits.

31 **§ 102. Definitions**

32 As used in this Article:

33 1. “Armed forces of the United States” includes members of the National Guard and Reserves.

34 2. “Child” means a person who is (i)(a) under 18 years of age; or (b) 18 years of age or older and
35 incapable of self-care because of a mental or physical disability; and (ii) a biological, adopted, or
36 foster son or daughter; a stepson or stepdaughter; a legal ward; a son or daughter of a domestic
37 partner; or a son or daughter of a person to whom the employee stands *in loco parentis*.

38 3. “Family Leave” is any leave taken by an employee from work for reasons enumerated in Section
39 103. 4. “Family Member” may include a child, spouse, or parent as defined in this Section or any
40 other person defined as a “family member” in the policy of insurance.

41 5. “Health care provider” shall mean a person licensed under the public health law of the [State].

42 6. “Parent” means a biological, foster, or adoptive parent, a stepparent, a legal guardian, or other
43 person who stood *in loco parentis* to the employee when the employee was a child.

44 7. “Serious health condition” means an illness, injury, impairment, or physical or mental condition,
45 including transplantation preparation and recovery from surgery related to organ or tissue donation,
46 that involves inpatient care in a hospital, hospice, or residential health care facility, continuing
47 treatment or continuing supervision by a health care provider as defined in the insurance policy.
48 Continuing supervision by a health care provider includes a period of incapacity which is
49 permanent or long term due to a condition for which treatment may not be effective and where the
50 family member need not be receiving active treatment by a health care provider.

51 **§ 103. Family Leave Benefits:**

52 Family leave benefits may be provided for any leave taken by an employee from work to:

- 53 (a) participate in providing care, including physical or psychological care, for a family member
54 of the employee made necessary by a serious health condition of the family member;

- 55 (b) bond with the employee’s child during the first twelve months after the child’s birth, or the
56 first twelve months after the placement of the child for adoption or foster care with the
57 employee;
- 58 (c) address a qualifying exigency as interpreted under the Family and Medical Leave Act, 29
59 U.S.C. § 2612(a)(1)(e) and 29 C.F.R. §§ 825.126(a)(1)-(8), arising out of the fact that the
60 spouse, child, or parent of the employee is on active duty (or has been notified of an
61 impending call or order to active duty) in the Armed Forces of the United States;
- 62 (d) care for a family service member injured in the line of duty; or
- 63 (e) take other leave to provide care for a family member or other family leave as specified in the
64 policy of insurance.

65 **§ 104. Explanation of Family Leave Reasons**

66 The policy of insurance shall set forth the details and requirements with regard to each of the
67 covered family leave reasons.

68 **§ 105. Benefit Period**

69 The policy of insurance shall set forth the length of family leave benefits that are available for each
70 covered family leave reason, which will in no event be less than [two weeks] during a period of fifty-
71 two consecutive calendar weeks. Fifty-two consecutive calendar weeks may be calculated by (i) a
72 calendar year; (ii) any fixed period starting on a particular date such as the effective or anniversary
73 date; (iii) the period measured forward from the employee’s first day of family leave; (iv) a rolling
74 period measured by looking back from the employee’s first day of family leave; or (v) any other
75 method that is specified in the policy of insurance.

76 **§ 106. Waiting Period**

77 The policy of insurance shall set forth whether there is an unpaid waiting period and, if so, the
78 terms and conditions of the unpaid waiting period, which may include, but are not limited to: (i)
79 whether the waiting period runs over a consecutive calendar day period, (ii) whether the waiting
80 period is counted toward the annual allotment of family leave benefits or is in addition to the annual
81 allotment of family leave benefits, (iii) whether the waiting period must be met only once per benefit
82 year or must be met for each separate claim for benefits, and (iv) whether the employee may work
83 or receive paid time off or other compensation by the employer during the waiting period.

84 **§ 107. Amount of Family Leave Benefits/Other Income**

- 85 (a) The policy of insurance shall set forth: (i) the amount of benefits that will be paid for covered
86 family leave reasons; (ii) the definition of the wages or other income upon which the amount
87 of family leave benefits will be based; and (iii) how such wages or other income will be
88 calculated.
- 89 (b) If the family leave benefits are subject to offsets for wages or other income received or for
90 which the insured may be eligible, the policy shall set forth: (i) all such wages or other
91 income that may be set off and (ii) the circumstances under which it may be offset.

92 **§ 108. Permissible Limitations, Exclusions, or Reductions**

93 Eligibility for family leave benefits under this Article may be limited, excluded, or reduced, but any
94 limitations, exclusions, or reductions shall be set forth in the policy of insurance. Permissible
95 limitations, exclusions, or reductions may include, but are not limited to, any of the following
96 reasons:

- 97 (a) for any period of family leave wherein the required notice and medical certification as
98 prescribed in the policy has not been provided;
- 99 (b) for any family leave related to a serious health condition or other harm to a family member
100 brought about by the willful intention of the employee;
- 101 (c) for any period of family leave during which the employee performed work for remuneration
102 or profit;
- 103 (d) for any period of family leave for which the employee is eligible to receive from his or her
104 employer, or from a fund to which the employer has contributed remuneration or
105 maintenance;
- 106 (e) for any period of family leave in which the employee is eligible to receive benefits under any
107 other statutory program or employer-sponsored program, including, but not limited to,
108 unemployment insurance benefits, worker's compensation benefits, statutory disability
109 benefits, statutory paid leave benefits, or any paid time off or employer's paid leave policy;
- 110 (f) for any period of family leave commencing before the employee becomes eligible for family
111 leave benefits under the policy; or
- 112 (g) for periods of family leave where more than one person seeks family leave for the same
113 family member.

114 **§ 109. Payment of Family Leave Benefits**

115 Family leave benefits provided under this Article shall be paid periodically and promptly [If
116 Applicable: {as provided for in Section “X” of (State) Insurance Code}] except as to a contested
117 period of family leave and subject to any of the provisions of Section 108 of this Article.

118 **§ 110. The Insurance Policy**

119 (a) Premiums for policies or riders providing paid family leave benefits in accordance with
120 [State’s] disability income insurance law shall be calculated in accordance with applicable
121 provisions of the [State’s] insurance law, including Subsection (X) of such law.

122 (b) Policies of insurance issued pursuant to this Article may offer coverage for paid family leave
123 benefits or may offer paid family leave benefits as a rider to a policy of disability income
124 insurance.