DATE: **August 15, 2011**

TO: **IIPRC Management Committee**

FROM: **Industry Advisory Committee**

SUBJECT: **Illinois Comments Dated June 24, 2011**
Disability Income Standards Dated April 25, 2011

We have been in communication with Illinois regarding their comments and have been able to resolve most of their issues/concerns.

Re: Definition/Concept of Injury, Page 7, Item (13)

The IIPRC language reflects Model #171, Section 5.B., page 2. In response to Illinois' request, we have agreed to the following change:

"Injury" means bodily injury resulting from an accident, independent of disease or bodily infirmity, that occurs on or after…..".

Re: Definition/Concept of "Preexisting Conditions", Page 8, Item (21)

The IIPRC language reflects Model #171, K., page 5. In response to Illinois' request, we have agreed to the following change:

"Preexisting Condition" means a condition for which symptoms existed that would cause an ordinarily prudent person to seek diagnosis, care or treatment within a one-year period preceding the effective date of coverage of the insured, or for which medical advice or treatment was recommended by a *Physician* or received from a *Physician* within a two-year period preceding the effective date of coverage of the insured."

Re: Permissible Limitation/Exclusion for Preexisting Conditions ("PEC")(Page 20)

We have advised Illinois of the following:

All permissible limitations and exclusion have to be reviewed in context with the standards for Forms Used to Limit or Exclude DI Coverage Based on the Underwriting Process.

The IIPRC language allows a company to limit or exclude a medical condition or activity (aviation, mountain climbing) that is disclosed by an applicant in the application. The limitation and exclusion is agreed to by the applicant in lieu of refusal to insure or charging a higher premium. The medical condition or activities must be specifically excluded.

As stated in the standards for Forms Used to Limit or Exclude DI Coverage Based on the Underwriting Process, there is a prescribed procedure whether the limitation/exclusion is Included in the policy or if it is included by rider, endorsement or amendment. On page 3 of the standards, item (3) requires that sufficient information be included to identify the name of the insured to whom the limitation or exclusion applies, the nature of the limitation or exclusion, the effective date of the limitation or exclusion, and its expiry date, if any. The standards also allow the insured to submit EOI to eliminate a limitation or exclusion.

There is no mandated cutoff for a limitation or exclusion – the owner/insured has already agreed to a limitation which may have an expiry date or an outright exclusion.

The PEC limit/exclusion is used as an alternative to refusing any coverage or charging higher premiums.

An incontestability provision (Time Limit For Certain Defenses) would not operate to reinstate a limitation or exclusion of a condition or activity identified in the underwriting process and agreed to the by the owner/insured. This is not an issue of contesting statements in the application – the owner/insured admitted to a preexisting medical condition or activity in the application and the company offered coverage only if disability resulting from these could be limited or excluded.

Model #180 item (2)(b) on page 3, includes language identical to that included in ***Time Limit For Certain Defenses Other Than Misstatements in the Application*** on page 17 of the DI standards and Illinois' 215 ILCS 5/357.3. It should be further noted that at issue is reduction or denial of benefits for ***"disease or physical condition not excluded from coverage by name or specific description"***. If a preexisting condition is admitted to in the application and is then limited or excluded under the policy, the ***Time Limit*** standards on page 17 would not affect these.

Re: Time Limit For Certain Defenses [Pages 12- 13 Item (8) and Page 16 Item (19)]

We advised Illinois of the following:

The language on page 13 is applicable only to situations of misstatements in the application. There are two alternatives here – one where the company can contest for fraud and one where no misstatements can be contested after 2 years. The fraud contest alternative is based on Model #180, item (2)(a), page 3. The other alternative was

suggested by New York which argued that Model #180, item (2)(b), page 3, was intended to also be available for misstatements. The company could use one or the other.

[It should be noted that the Model allowed 3 years and industry settled for the 2 years to reflect what most states allowed.]

The language on page 17 addresses time limit for defenses other than misstatements in the application and reflects Model #180, item (2)(b) on page 3. This is the "incontestability" equivalent that is used for other insurance lines. The difference for DI is that this does not allow for a fraud contest.

Each serves a different purpose and is needed in the standards.

Re: Time Payment of Claims (Page 17)

IIPRC language reflects Model #180, item (9) on pages 5-6, which does not address the payment of interest requirement.

Illinois has requested that additional information be included in the DI policy standards regarding an interest penalty applicable in situations where there is a delayed payment of claim.

Upon further research, we have determined that in addition to Illinois there are 22 other states, 16 of whom are IIPRC members, who have similar requirements. However, they all vary with regard to the definition of delay (number of days ranges from 15 to 120), interest required (ranges from 1+ prime to 18%) and whether the specific information needs to be included in a policy (most are silent and have approved forms without any reference). Additionally, the jurisdiction rule for determining which interest rate applies ranged from "the state where the policy issued", "the state where the policyholder resides", and both (presumably the higher rate governs?).

There is a ***Proof of Loss*** standard on page 15 which requires a company to describe the process and content of satisfactory proof of loss.

The IIPRC has already established a precedent for a penalty standard in the life insurance standards, and we believe that the IIPRC can do the same for the disability standards. In recognition that 22 states and Illinois have penalty requirements, we are in favor of developing a national standard for the penalty and that such language be required to be included in a policy at issue. Accordingly, we recommend the following:

Change the title to say "***Timely Payment of Claims***".

Add the following to the end of the current language:

"The policy shall state that if a claim is paid more than 30 days after a company receives satisfactory proof of loss, as described in the policy, the delayed payment shall be subject to simple interest at the rate of 10% per year beginning with the 31st day after receipt of satisfactory proof of loss and ending on the day the claim is paid."

We suggest 30 days since 11 of the 23 states required this time period.

We suggest 10% as a fair compromise to what the 23 states require today and this is also consistent with what the life insurance standards require.

The above national standard for the interest penalty eliminates the jurisdictional issues.

It should also be noted that the above penalty parameters would now be required in 18 IIPRC member states that today do not have such a requirement.

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