

**DATE:** October 20, 2017

**TO:** IIPRC Product Standards Committee (“PSC”)

**FROM:** Industry Advisory Committee

**SUBJECT:** IIPRC 5 Year Review For Phase 8: Individual Disability Income  
Response to IIPRC Report and Recommendations Dated October 10, 2017  
 (“Report”)

## **GENERAL COMMENTS**

1. We note that in some cases the PSC has elected to follow a strict construction of Model #171, and in some cases not to do this, and this inconsistency seems arbitrary to us. Take for example the PSC decision to push back on a request to allow a 3 Months Benefit Period or change the Preexisting Conditions Provision, but allow Suspension of Coverage While Unemployed. Additionally, reliance on Model #171 to reject proposed changes to the IDI standards in this manner does not make sense to us for the following reasons:

- Only 18 states have adopted Model #171 in whole or substantial part.
- Some if not all of these states have at times approved language not specifically addressed in Model #171 or even sometimes in contradiction to what is specified in the Model #171, such as PEC look backs, benefit periods of 3 months, return of premium benefits. suspension of coverage while unemployed, etc.
- An NAIC Subgroup has started last year to review Model #171 and as of the last date it met, significant changes were discussed, including regulator suggestions to use some recently adopted IIPRC Group standards which were more specific and more reflective of current products in the marketplace. [This Subgroup has not met for some time due to uncertainties with the Obamacare legislation but the Subgroup may soon resurrect the discussions.]

To deny that Model #171 does **not** address DI products as substantially as it should have, or that its current content is **not** reflective of the current product marketplace or what states are approving is to do a great disservice to the opportunities afforded by a 5 Year Review, and will only serve to discourage companies from filing their IDI products with the IIPRC.

2. We also note that for several items in the Report the IIPRC staff notes that they have not received filings for certain language or benefits, thereby implying that industry may not really need these. The reason the IIPRC staff has not seen the language or benefits is because the current standards do not allow this, ***so companies have continued to rely on forms that had been previously approved by the states or make new filings only with the states since the majority of the state will approve such filing.***

## **COMMENTS ON SUBSTANTIVE ITEMS IN THE REPORT**

### **Substantive Change Item #1, Mix and Match, Report Pages 2-4**

While we agree with the proposed change, we seek clarification on the need to restrict the mix and match to “disability income riders”. Some companies may file a rider and some companies may file and issue an IDI policy to accomplish the same mix and match effect.

### **Substantive Change Item #2, 3 Months Benefit Period, Report Pages 5-7**

One company has a 3 months benefit period approved in 2015 in all compacting states except: ID, NH, NJ, PA. The following states approved: AK, AL, AR, AZ, CO, CT, DC, DE, GA, HI, IA, IL, IN, KS, KY, LA, MA, ME, MI, MN, MO, MS, MT, NC, NE, NM, NV, OK, TN, TX, UT, VA, WA, WI, WV, WY. For AR, CT, DE, IA, KS, SC, TX, UT, and WA, a statement was required on the policy face page indicating that the policy provides limited benefits for a 3 months benefit period. We would be willing to require such a statement in the IIPRC standards.

Looking back at the last 7 years of this one company’s experience, 45% of all issued individual disability policies contain a 3 months benefit period. It is the number 1 seller of all benefit periods and equates to 35% of premium for the company. Based on this information there is a significant and consistent customer demand for 3 months benefit periods.

The company advises that the 3 months benefit periods are preferred by those in lower middle class to middle class income levels (blue collar workers) and to these folks the traditional product with longer benefit periods is a tough sell, whereas the 3 months benefit period fills their need at the right price. Some of these consumers buy a 3 months benefit period to fill in until their Employer paid short term disability benefits kicks in.

### **Substantive Change Item #5, Partial/Residual Disability, Report Pages 8-13**

We had previously recommended using the Group DI approach for clarity and better organization and progression of information provided. We find the rewrite of the current IDI standards somewhat disjointed with other changes that are still under consideration, such as:

- On Page 12, a reference to “Substantial and Material Duties is proposed in lower case so not clear if this is to be a Definition/Concept.
- On Page 12, there are references to “Occupation” and it is not clear if the Definitions/Concept we proposed for “Occupation”, “Regular Occupation”, “Regular Job” and “Regular Specialty” are still under consideration for this Item #5.
- On Page 12, the Report has elected to use the term “Prior Earnings”. In Group DI, instead of equating “Prior Earnings” and “Pre-Disability Earnings” and using these one or both of these in the standards for benefit provisions, we elected to settle with “Pre-Disability Earnings” for clarity since “Prior Earnings” is not as specific as “Pre-Disability Earnings” and we only need one of these. Accordingly, we suggest that we do the same for IDI – in

the current IDI standards, the Definitions/Concepts section includes both “Prior Earnings” and “Pre-Disability Earnings” and the Report proposes to refer to “Prior Earnings”. We should select one term and be consistent, and if “Pre-Disability Earnings” was acceptable for Group DI, it should be acceptable for IDI. Companies have the option to substitute “Prior Earnings” or any other term as long as it is used consistently, so electing one consistent approach would not eliminate this flexibility for the companies.

- The references to “periodic income benefits are not consistent with the proposed “Benefit Period” language which is intended to clarify “periodic (usually monthly) or lump sum”.
- On Page 13, there is a reference to “current Earnings”. The current IDI Definition/Concept states that “Earnings” means the amount of income received by an insured”. It is not clear what the intention is to add “current” – is the intent to refer to Earnings while Partially/Residually Disabled?

### **Substantive Change Item #6, Preexisting Conditions, Report Pages 15-17**

We can accept the current IDI Definition/Concept for preexisting conditions if we are able to change “or for which medical advice or treatment was recommended by a *Physician* or received from a *Physician*” to say “**or for which medical advice, consultation, diagnostic testing or treatment was recommended by a *Physician* or received from a *Physician*, or for which the insured took or was prescribed drugs or medications...**”.

We had and continue to have concerns with relying on “treatment” to include consultation, diagnostic testing, prescribing drugs and medications or taking drugs and medications. Too many times a company may miss a preexisting condition such as a slow degenerative disease or mental /nervous disorders because an applicant has not been “treated” recently and yet they are taking drugs or medications. The Group DI Definition/Concept allows a more detailed question, even though Model #171 was not as specific, and so we believe a more detailed question should also be allowed for IDI.

In the example of “overreach” provided at the bottom of Page 16 of the Report, it is argued that “symptoms diagnosed by a Physician as a common cold would be excluded from coverage when the symptom proved to precede a stroke.” We believe this conclusion is mistaken – the language clearly requires that an insured would have had to receive medical advice, consultation, diagnostic testing or treatment, or had taken or was prescribed to take drugs or medications for the stroke.

With regard to the language proposed for Section 3F. PERMISSIBLE LIMITATIONS OR EXCLUSIONS, as shown at the bottom of Page 17 of the Report, we suggest making a change to better clarify that if a disability due to a preexisting condition begins in the first 12 months following a policy effective date, such disability will not be covered under the policy. We propose the following change:

“The policy shall not **limit or exclude** coverage for a loss due to a *Preexisting Condition* **that begins after** twelve (12) months following the issuance of the policy where the application for the insurance does not seek disclosure of prior illness, disease or physical conditions or prior medical care or treatment and the *Preexisting Condition* is not specifically limited or excluded by the terms of the policy.”

The Consumer Advocates Committee in their comments for Substantive Issue #9 complained that the IDI products are “already expensive products.” We have made several suggestions in the definitions of Total Disability (Substantive Change Item #7), Rehabilitation, and in this Substantive Issue #6 and other provisions to make the product more affordable, and in some cases have met PSC resistance to this. In our arguments to allow better language in this Substantive Issue #6, we are told that what we suggested was too restrictive; however; if an underwriter cannot have better tools to assess a risk for a pre-existing condition, rates may have to be higher.

#### **Substantive Change Item #8, Reinstatement, Report Pages 20-22**

The term “producer” should be changed to say “agent” for consistency with IIPRC standards.

We seek clarification if the Item (15) preamble as shown on Page 22 of the Report would allow a company to include the right to require evidence of insurability if a previous insured wants to reinstate after the 60 days reinstatement period. If the answer is no, then we respectfully request a justification for not allowing this – for anti-selection purposes, this is the one of the critical components of an application for reinstatement.

#### **Substantive Change Item #9, Return of Premium Benefit, Report Pages 23-24**

We withdraw our request to include this benefit.

#### **Substantive Change Item #10, Suspension of Coverage While Unemployed, Report Pages 26-29**

The proposed changes are acceptable to us.

#### **Substantive Change Item #11, Disability Excluded Outside the US, Report Pages 30-31**

We withdraw the request for the “working/travelling” language.

#### **Substantive Change Item #12, Chemical Dependency, Intoxicants, Narcotics or Other Controlled Substances, Mental/Nervous Disorders, Report Pages 32-35**

We do not object to the proposed language.

### **Substantive Change Item #13, Insurance With Other Companies, Report Pages 36-39**

In the comments we submitted on July 10, 2017, we alerted the PSC that in the last sentence of item (8)(iii) there is a requirement to return premium, and that it was not clear if this is intended for a specific claim, or is the intent to require a permanent premium reduction in the policy for all future benefits. We have not received a response to this, and we seek confirmation if this language would allow companies to permanently adjust benefits to account for unknown in-force coverage, and that doing so is not in conflict with the Definitions/Concepts of Guaranteed Renewable and Noncancellable in a policy.

Our other comment was regarding the request to have “other valid coverage” include group health or disability insurance, benefits provided by union welfare plans or employer or employer benefit organizations. The IIPRC office notes at the bottom of Page 38 of the Report that “this provision was only applicable when the existence of other individual disability income coverage is not disclosed.” If this is likely possibility for Individual DI sales, why is it ruled out that it is not a likely possibility that the existence of the Group DI coverage may also not be disclosed? If non-disclosure justifies inclusion in “other valid coverage” for Individual DI coverage, it should also be justifiable for Group DI coverage.

### **COMMENTS ON CLARIFICATION ITEMS IN THE REPORT**

#### **Clarification Item #3, Mental or Nervous Disorders, Report Pages 52-54**

We accept the PSC’s determination that no changes are needed to accommodate the language we had suggested since this can be filed with the IIPRC if needed.

#### **Clarification Item #6, Date Policy Ends, Report Pages 62-65**

The term “termination” is used in the proposed new title but the term “end” is used within the provision. For readability reasons industry has abandoned “termination” in favor of “end”. In either case, terms should be consistent.

We withdraw our request for a “Date Disability Benefits Ends” provision.

#### **Clarification Item #7, Application Actively At Work Issue, Report Pages 66-67**

We agree with the Report suggestion since there is consensus that companies can use whatever hourly requirement that is appropriate.

#### **Clarification Item #9, Minimum Loss Ratios For Multi-Life Plans, Report Page 70-72**

Our July 10, 2017 comments were presumed to be a “misunderstanding of the intent of this clarification item”.

We understand that the clarification was referring to the adjusted MLR and that the ALR has to be greater than the adjusted MLR. However, just because there is a multi-life discount does not necessarily mean that the MLR will have to be adjusted. The guidelines say that the adjustment takes place if the average expected premium is less than \$2,500. This \$2,500 applies whether there is a discount or not. It is not the discount that is the trigger – the trigger is the average expected premium. Basically, the guidelines for determining what the MLR is have to be followed whether there is a multi-life discount or not.

***Submitted by the Industry Advisory Committee:***

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