

Agenda Item 2. Review and consider Public Comments on additional revisions to Items (2) (d) of §5. REHABILITATION PROVISIONS of the draft GROUP DISABILITY INCOME INSURANCE POLICY AND CERTIFICATE UNIFORM STANDARDS FOR EMPLOYER GROUPS.

The PSC reviewed the Industry Advisory Committee (IAC) comments related to objections to §5 (2)(d) and the additional language that in the case of conflicting opinions on whether a *Covered Person* is medically able to participate in a rehabilitation program, at the request of the *Covered Person* the insurance company shall make its determination based on a third medical opinion from a *Physician* that is mutually acceptable to the *Covered Person* and the insurance company. In response to Industry's additional written comments that companies use § 6.OPTIONAL PROVISIONS H. PROCEDURE FOR REVIEW OF A DENIAL OF A CLAIM for such determinations, some members questioned whether the review should be a required provision. After lengthy discussion, the Committee agreed to the following revision:

The certificate shall state that nonparticipation in a rehabilitation plan shall not affect the insurance company's determination of whether a *Covered Person* is *Disabled*. However, unless the insurance company requires the covered person to pay any expenses associated with a rehabilitation as described in (b) above, an insurance company may include a provision indicating that failure to participate in a rehabilitation plan, without good cause (where "good cause" means a medical reason documented by the Covered Person's treating physician preventing implementation of the rehabilitation plan), may result in the reduction or cessation of the *Covered Person's* right to *Disability* benefits, in a manner specified in the certificate. In the determination of "good cause," the certificate shall state that the insurance company shall consider the opinion of the Covered Person's treating Physician but reserves the right to make the determination based on the medical opinion of a Physician retained by the insurance company. In the case of conflicting opinions, at the request of the Covered Person the insurance company shall make its determination based on a third medical opinion from a Physician that is mutually acceptable to the Covered Person and the insurance company. adverse determinations are subject to §6H Procedures for Review of a Denial of Claim Rights.

Agenda Item 3. Review and consider Public Comments on additional revisions to H. PROCEDURES FOR REVIEW OF A DENIAL OF A CLAIM RIGHTS in § 6. OPTIONAL PROVISIONS

The PSC agreed with the IAC's recommendations to change the references to "policy" in items (2) and (3) to "certificate."

Agenda Item 4. Review and consider Public Comments on § 7. PERMISSIBLE LIMITATIONS OR EXCLUSIONS.

- a) "Caused or contributed to by" or "results from." The PSC reviewed the IAC's recommended language defining "contributed to by" as well as a summary of a review of several group disability policy forms approved in the majority of member

states. They noted that although Industry indicates the language is necessary to allow the insurance companies the opportunity to exclude a condition if the pre-existing condition contributed to the additional condition in a meaningful and significant way, the language “caused or contributed to by” is not found in the preexisting limitation. Noting that the reviewed approved forms contained no standard terminology and reflect the term “results from” more often than other language, and in order to provide consistency between Individual and Group Disability Income Uniform Standards, the Committee agreed to maintain the recommended revision “results from.”

- b) Disability Not Verifiable by Objective Medical Means.** The Committee agreed to add a sentence clarifying that the condition must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not just the Covered Person's statement of symptoms.
- c) Specified Conditions.** The Committee agreed to the IAC's recommendations to add the sentence that was added to Disability Not Verifiable by Objective Medical Means that there can be no exclusion and to allow the specified conditions to be “any one or more of the following.”
- d) Felony.** The Committee discussed the IAC's objections to deleting misdemeanor and the request for an additional limitation or exclusion for the Covered Person's possession of firearms or commission of assault, battery or theft. Members noted that firearm possession may be legal possession and therefore a request for an additional limitation unrelated to misdemeanor. Disabilities due to illegal possession of a firearm and assault, battery or theft could be limited or excluded under (11) Illegal Occupation or Activity. The Committee rejected any change.
- e) Mental or Nervous Disorders.** The Committee reviewed written comments and heard oral testimony from Phil Keller, Director of Rates and Forms for the Vermont Department of Insurance. Mr. Keller explained that Vermont prohibits disability policies from excluding disabilities resulting from a mental health condition, including alcohol or substance abuse. Vermont has consistently disapproved mental health exclusions in disability policies since 2005 and issued Bulletin 127 in 2008. The Bulletin stated that Title 8 V.S.A. §4062 prohibits unjust or unfair policy terms and Vermont will not approve policies that discriminate against persons disabled due to a mental health condition. Mr. Keller requested that the PSC consider a compromise approach that requires an insurer filing a group disability policy with the Compact to use variable language with respect to mental health exclusions so that the actual policy issued in Vermont can conform to state requirements. Such an approach would prevent the Department from having to consider opting out of the Group Disability Income Uniform Standards. The Committee agreed to table further discussion until the IIPRC staff discusses Vermont's objections with Industry representatives.

- f) **Recreational Activity.** The Committee agreed to the Industry suggestion to add the words “or more” to clarify that the limitation or exclusion could apply to more than one activity.

Agenda Item 5. Review and consider Public Comments on § 9. BENEFIT PROVISIONS.

- a) **Disability Benefits Reduced on Account of Other Benefits or Income.** The Committee reviewed the IAC’s concerns about the addition of the phrase “with the same employer” to item (f). After discussion they agreed with the concept that if there is more than one group disability policy, the insurance company should not consider benefits paid to cover other income; however the combined total benefits paid to the *Covered Person* should not be more than the *Covered Person’s* earnings from all jobs prior to *Disability*. IIPRC staff will review the language in the IDI standards and propose revisions to address the Committee’s concerns.

Under (g) the Committee reviewed the IAC’s additional written comments indicating that it agrees with the CAC’s recommendation to delete auto liability, but not no-fault vehicle insurance. The IAC stated no-fault is a permissible limitation and exclusion in all states today and is a “benefit or income source” for the *Covered Person*. The Committee agreed to retain no-fault but add language that clarified it was only lost income benefits provided through a no-fault policy.

The Committee considered the IAC’s objection to the revisions to (m) and decided to keep the language as they had modified it, citing the ambiguity of the language originally drafted, including the potential difficulty in calculating earnings a Covered Person is capable of earning, but does not.

- b) **Estimate of Benefits or Income.** The Committee reviewed the IAC’s additional rationale for adding language to allow the insurance companies to estimate the benefits that would have been paid if procedures and deadlines were honored. The Committee noted that the provision as drafted by the regulators may be found in several approved filings and the additions made by the IAC were vague and unworkable. The Committee made no further revisions.
- c) **Waiver of Premium.** In response to the IAC’s written comments, the Committee noted that the explanation for why the phrase “the greater of” was deleted from the recommendation was included in both the Call Summary and the redlined draft. The PSC agreed with the Subgroup recommendation to delete the phrase the “greater of” and the example to allow the employer or insurance company flexibility in specifying when waiver of premium commences. The PSC agreed with the IAC recommendation that “a specified period” be changed to “a period specified in the certificate.”
- d) **Date Disability Benefits End.** Upon review of the IAC’s examples of the use of and need for maximum lifetime benefit limits, the Committee noted that it would be

helpful to define this term. The Committee requested that IIPRC staff ask Industry to provide a definition of the term for the PSC's consideration.

Agenda Item 6. Any Other Matters

The Chair noted that the Group Disability Income Subgroup would meet on Thursday April 16th with the goal of finalizing § 10 Incidental Benefit Provisions. Once completed, the Subgroup will present the recommendations to the PSC and schedule another Public Call.