

Agenda Item 2. Review public comments received by the Management Committee for the Group Disability Income Insurance Policy and Certificate Uniform Standards for Employer Groups and prepare recommendations for the Management Committee.

Betsy Jerome, Utah, Chair of the Product Standards Committee (PSC), noted that the purpose of the call is to consider the public comments received by the Management Committee for the Group Disability Income Insurance Policy and Certificate Uniform Standards for Employer Groups and prepare recommendations for the Management Committee. IIPRC staff provided a summary of the comments as well as the history of each item as the Uniform Standards were being developed.

- (a) **Comments from Industry Advisory Committee (IAC) regarding definition of Elimination Period § 3(A)(22).** The PSC noted that there was extensive discussion about this provision during drafting and the IAC did not present any new information. The Committee had previously determined that vacation time is not meant for sick or disability time and some employers allow employees to accumulate this time, paying it upon termination of employment. The PSC had previously opined that an employee may choose to use vacation leave before disability benefits start, but should not be required to do so. The PSC is not recommending any change to the proposed provision.
 - (b) **Comments from US Able Life regarding Grace Period §4J(1)c-f.** The Committee discussed the submitted comments and noted that the Grace Period provision was not altered from the original draft language suggested by the IAC. Members agreed that no change is recommended since the proposed standard is consistent with current practice as well as the Model Law.
 - (c) **Comments from IAC regarding Termination of Insurance §4(Q)(b)(ii).** The Committee reviewed the IAC request to change the provision for notification from the insurance company to the policyholder of contract termination from at least 31 days to “such as” 31 days for consistency with other language in the provision. The PSC previously changed the language to at least 31 days, noting that they preferred where the language “such as” was used, that it be revised to “no less than” or “at least 31 days.” The Committee noted that for consistency they recommend changing the proposed language in §4(Q)(b)(iv) and (v) from “such as” to “at least.”
 - (d) **Comments from VT DOI and Mental Health Legal Advisors Committee on mental health limitations or exclusions §7(C), (L), (M), (O).** The PSC reviewed the comments and noted that based on current state practices and laws, they could not recommend the position requested by the Mental Health Legal Advisors Committee that the uniform standards prohibit any limitation or exclusion for disability as a result of a mental health condition. They then discussed the request from the Vermont Department of Insurance that the Committee 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 or limitations. The PSC noted its prior discussions on this matter and reaffirmed their concern that including variable language for a single state was not in accordance with the goal of establishing uniform national standards. A representative of
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the Vermont Department noted that mental health parity has expanded in recent years and variable language would allow other states to fully participate in the IIPRC should their laws change in the future to require parity for disability income products. He noted that variable language to allow for state law exists in other Uniform Standards including term life and long term care.

Following further discussion, the PSC agreed that they would not recommend the amendment but would provide the Management Committee with the history of this issue, the basis for the current provision and if the Management Committee chose to address this public policy issue, suggested language that could be included in the relevant provisions to indicate the limitation or exclusion was subject to the applicable law in the state where the policy is delivered or issued for delivery. The Committee also agreed that the suggested language for the Management Committee's consideration should include a drafting note indicating that the IIPRC will maintain a list of states that limit or prohibit exclusions or limitations for disability as a result of a mental health condition.

- (e) **Comments from the Consumer Advisory Committee (CAC) and IAC on Third Party Offset §9 (B) (1)(m).** The Committee reviewed the comments and history regarding the provision related to third party offset. They noted that this issue was discussed on no less than nine prior public and member calls and had been fully vetted. The Committee reaffirmed its prior observation that while it understood the CAC concerns, in the vast majority of states, there is no prohibition on a third party settlement offset. The current provisions have provided additional consumer protections by requiring that amounts from third party settlements that the covered person must pay in legal fees cannot be offset, the offset can only be for the part of the settlement applicable to lost income, and the insurance company can only either offset or subrogate for the claim, not both.

The PSC then reviewed the IAC comments regarding the provision that if the settlement does not identify the amount applicable to lost income due to disability, the insurance company can estimate the amount using a percentage of the settlement amount based on the Covered Person's Pre-Disability Earnings, prorated to cover the period for which the settlement or judgment was made. The Committee noted that this provision was added based on prior IAC comments stating that settlements are often lump sum so they cannot determine how much of the settlement is for lost income, and was based on language in an existing group disability income product approved in many jurisdictions. A member noted that this is not a formula, rather an estimate to give an idea of the portion of the settlement that is applicable to lost income due to disability. The settlement (not the offset) is not based on what the insurance company pays in disability; in order to have the most relevant and accurate look at what income was lost due to the disability, the point of reference is Pre-Disability Earnings. However, the insurance company should not be calculating its offset based on the Pre-Disability Earnings. It estimates the portion of the settlement that is for lost income and prorates for the period of time for which the settlement was made.

The Committee discussed the IAC suggested revision and rejected it since it only allows for out of pocket medical expenses to be considered, nothing more. They noted that such an approach does not address third party settlement amounts related to such items as unreimbursed lost income, other out of pocket expenses, and pain and suffering. After discussing whether to delete the language in 1.(m)(i) related to estimating or retain the language as is, the Committee recommended no change to the current proposal.

- (f) **Comments from the IAC on COBRA notice §9(H)(4).** The Committee reviewed the history of this item and the IAC request to add a sentence allowing the notification to be included in the certificate as long as it is also in the policy. The PSC agreed that the recommendation would provide clarity.

Agenda Item 3. Any other matters.

The Chair stated that the PSC will not meet December 1. The next meeting will be December 8 when the Committee will review the comments received from the IAC and the IIPRC staff recommendations related to the Uniform Standards for Group Disability Income Insurance Initial Rate Filings and Rate Revisions.
