

SUBSTANTIVE CHANGE ITEMS – Notice 8/13/2013

Substantive change items

Substantive change items are proposed amendments to the Uniform Standards that would change or alter the meaning, application or interpretation of the provision. Substantive change items would likely impact not only the Uniform Standards but product filings submitted to the IIPRC and would be the equivalent to a change in an individual state's laws or regulations. When looking at the substantive change items, the scope of review should consider whether circumstances or underlying assumptions have changed since the last time the rule was adopted, amended or reviewed. The substantive change items are compiled from suggestions or issues in the Comments or raised by the IIPRC Office from questions, issues and circumstances that have arisen in conjunction with the product filing review process.

List of Substantive Change Items

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1. GRACE PERIOD

APPLIES: All individual life uniform standards.

CURRENT PROVISION:

GRACE PERIOD

- (1) The policy shall contain a grace period provision and include the conditions of the provision.
- (2) A minimum of 31-day grace period shall be provided for the payment of any premium due except the first.
- (3) The coverage shall continue in force during the grace period.
- (4) The policy may provide that if the insured dies during the grace period the overdue premium will be deducted in any settlement under the policy. Interest cannot be added to any overdue premium.
- (5) The company may not require that the premium be received within the grace period. The owner shall have the entire grace period within which to remit payment. Any payments sent by U.S. mail shall be postmarked within the grace period.

COMMENTS:

Industry Advisory Committee Comment: When the term life standards were first developed, New Jersey insisted on adding the first and last sentence. To our best knowledge, this is not now, or has ever been, in any other state law.

When mail arrives at a company, it may include premium payments, beneficiary designations, changes in owner notifications, etc. Some companies provide envelopes for premium payments, but insureds/owners sometimes use their own. With regard to premium payments, not all of these would involve a grace period premium. So in order to comply with the spirit of the last sentence, ***the company would have to have a process in place to keep all envelopes received with premium checks***, so that, if there was a grace period premium payment, the company would have a record of the postmarked envelope. No company has such a process in place today, and if a company did, it would be a costly one.

While the standard says that a company cannot require that a premium be received within the grace period, the reality is that if a company does not receive a premium by the end of the grace period, the policy lapses for nonpayment of premium. After a grace period expires, it is not realistic to expect a company to wait indefinitely before considering the policy “lapsed”.

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Consequently, item (5) is misleading since it does not include the consequences of lapse, and the fact that reinstatement may be subject to evidence of insurability and interest may be required for an overdue premium. The item is also inconsistent with the Reinstatement standard, which states that a policy will lapse if the grace period has elapsed for nonpayment of premium. One may decide to pay the premium on the 31st day of a grace period, but such a decision bears consequences.

It is not clear to us if item (5) is required to be included in a policy, or if it is instructional as to the process that must be complied with. If item (5) is required to be included, we believe that it does more harm than good, by implying that there are no consequences if a premium is not received by a company by the end of a grace period. If the first sentence of item (5) means that the company may not require that the premium be received by the end of the grace period, does this eliminate the company's right to lapse the policy? We believe the Reinstatement standards make it quite clear that this is not the case.

We strongly suggest that the PSC re-examine the intent of the entire item. We believe that it is imperative that the company have the right to receive the premium by the end of the grace period, and that this is consistent with the Reinstatement standards.

IIPRC Office Comments/Observations: The IIPRC Office notes that it commonly issues objections regarding this provision specifically objecting when the form provides that the premium must be received within the grace period. The IIPRC Office is aware of the concerns and challenges raised by filers and non-filers of the difficulty of compliance with this provision as it requires changes in their processes and systems to accommodate payment received outside the grace period for payment mailed with a postmark date within the grace period.

IIPRC Office Recommendation: The IIPRC Office does not have a specific recommendation and suggests the Product Standards Committee review the consistency of the subsections within this provision and whether the practical effect of allowing the premium to be received outside the grace period makes it difficult for companies to administer the payment period permissible under the grace period provision as well as the reinstatement provision of Compact-filed products.

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2. INTEREST ON DEATH BENEFIT PROCEEDS

APPLIES: All individual life uniform standards

CURRENT PROVISION:

DEATH BENEFIT PROCEEDS

(2) The policy shall contain a provision for the payment of interest on the death benefit, as follows:

- (a) Interest shall accrue and be payable from the date of death.
- (b) Interest shall accrue at the rate or rates applicable to the policy for funds left on deposit or, if the company has not established a rate for funds left on deposit, at the Two Year Treasury Constant Maturity Rate as published by the Federal Reserve. In determining the effective annual rate or rates, the company shall use the rate in effect on the date of death.
- (c) Interest shall accrue at the effective annual rate determined in Item (b) above, plus additional interest at a rate of 10% annually beginning with the date that is 31 calendar days from the latest of Items (i), (ii) and (iii) to the date the claim is paid, where it is:
 - (i) The date that due proof of death is received by the company;
 - (ii) The date the company receives sufficient information to determine its liability, the extent of the liability, and the appropriate payee legally entitled to the proceeds; and
 - (iii) The date that legal impediments to payment of proceeds that depend on the action of parties other than the company are resolved and sufficient evidence of the same is provided to the company. Legal impediments to payment include, but are not limited to (a) the establishment of guardianships and conservatorships; (b) the appointment and qualification of trustees, executors and administrators; and (c) the submission of information required to satisfy a state and federal reporting requirements.

COMMENTS:

Industry Advisory Committee Comments: Claims need to be paid from **date of death**, at rate of funds left on deposit rate or 2-year T; additional 10% applies if claim is not paid within 31 day of due proof, but only if company is “unable” to pay beyond its control.

Kentucky Chapter 304, Subtitle 12.s.304.12-235 [Trade Practices and Frauds]

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Claims need to be paid within 30 days from date of **due proof**; after 30 days from receipt of due proof, pay interest at 12% per annum. If delayed further “without reasonable foundation”, pay for attorney fees.

Michigan Chapter 500.2006 [Unfair and Prohibited Trade Practices, Frauds]

Claims need to be paid within 60 days from date of “entire” **due proof**; after 60 days after receipt of due proof, interest at 12% per annum.

Wisconsin Chapter 628.46 [Insurance Marketing]

Claims need to be paid within 30 days from date of **due proof**; after 30 days from receipt of due proof, pay interest at 12% per year; has exceptions similar to IIPRC.

These three states may have deemed the IIPRC “from date of death” to be a better standard and consequently acceptable. However, companies are requesting confirmation that these states will support the IIPRC standards, and if these states are in support, would it be possible to provide a legal position from these states to that effect?

IIPRC Office Comments/Observations: The IIPRC Office is aware that companies – both filers and non-filers – are concerned about the provision that requires interest from the date of death at the interest rate for funds left on deposit. They are concerned this requirement brings on additional burden in the event a beneficiary does not make a prompt or timely claim as well as the administrative burden involved in calculating interest on the proceeds between the date of death and the date of payment for every claim even ones that are paid within 30 days of receipt of such claim.

IIPRC Office Recommendation: The IIPRC Office does not have a specific recommendation though agrees that if this uniform standard was intended to address the uniformity of interest on death benefit proceeds of Compact-approved products, that the provision should more clearly state that payment pursuant to the provision in the uniform standards does not run afoul of state-specific unfair trade or claims practices.

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3. AGREEMENTS

APPLIES: Provision found in all individual insurance Application Standards.

CURRENT PROVISION:

The application shall include the statements agreed to by each proposed insured, such as:

- (a) That they have read the application and all statements and answers as they pertain to them, and that these statements and answers are true and complete to the best of their knowledge and belief;
- (b) That the statements and answers in the application are the basis for any policy issued by the company, and that no information about them will be considered to have been given to the company unless it is stated in the application;
- (c) That a sales representative does not have the company's authorization to accept risk, pass on insurability, or make, void, waive or change any conditions or provisions of the application, policy or receipt, as applicable;
- (d) That the company will have no liability until:
 - (i) A policy is issued on this application and delivered to and accepted by the owner; and
 - (ii) The first premium due is paid in full while each proposed insured is alive.

COMMENTS:

Industry Comment: See comments from Frank Best, Vice President, General Counsel, Insurance Operations, and Corporate Secretary of The Penn Mutual Life Insurance Company dated August 30, 2012. Mr. Best indicates that the provision in the Uniform Standards that requires the language “true and complete to the best of their knowledge” interferes with certain states’ laws and case law on rescission that do not require the insurer to show the applicant had knowledge that the representation was false. Mr. Best requests filers be able to include the language “true and complete to the best of my knowledge” as variable so that the filer has the option not to use this language in states in which it would be inconsistent with the law of rescission.

IIPRC Office Comments/Observations: The IIPRC Office notes that it does object when the language “true and complete to the best of my knowledge” is not included in the statement that the applicant has read the application and all statements and answers as they pertain to them.

IIPRC Office Recommendation: The IIPRC Office does not recommend this provision be changed but does recommend requesting further comments from Compacting States and the Industry Advisory Committee and Consumer Advisory Committee on whether this clause should be required or should be permitted as variable.

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4. NONFORFEITURE VALUES – POLICY PROVISIONS

APPLIES: Individual Flexible Premium Adjustable Life Insurance Policy Standards

CURRENT PROVISION:

- (10) A provision that the policyholder may surrender the policy for the cash surrender value at any time, and if surrendered within 30 days following a policy anniversary that the value available shall not be less than the anniversary value.

COMMENTS:

Industry Advisory Committee Comments: We suggest that consideration be given to end the item with the first sentence ending with “at any time.” We believe that item D. of the [NAIC Model Standard] Nonforfeiture Law was intended for a scheduled premium plan and is not specifically applicable for a flexible premium policy.

In defining a minimum surrender value as is done in this item, singling out the first month after an anniversary for a universal life policy seems inconsistent with how universal life policies are actually administered. A universal life policy can generally be described as a policy which functions on a monthly basis. Regardless of the premium frequency, charges and credits typically occur on “monthiversary” dates. Requiring minimum surrender values based on anniversaries is more consistent with a traditional whole life policy that has annual cash surrender value calculations. In addition the current language does not provide for reductions to surrender values for partial withdrawals or loans that have occurred since the anniversary.

IIPRC Office Comments/Observations: The IIPRC Office notes that it receives questions and commonly issues objections with regards to this provision as companies want to know how to administer this provision in light of being able to calculate cash surrender value on a monthly interval rather than at the policy anniversary. The IIPRC Office agrees clarification is needed and notes that Clarification Item #6 suggests clarifications to this provision as well.

IIPRC Office Recommendation: The IIPRC Office agrees this provision should be changed for the Individual Flexible Premium Adjustable Life Insurance Policy Standards as follows with further wording change to describe “monthiversary” in lieu of monthly deduction date:

A provision that the ~~ownerpolicyholder~~ may surrender the policy for the cash surrender value at any time. The cash surrender value on the date of surrender shall equal the cash surrender value on the policy monthly deduction date preceding the date of surrender adjusted for any partial withdrawals, policy loans or repayments or premium payments made since the preceding monthly deduction date., ~~and if surrendered within 30 days following a policy anniversary that the value available shall not be less than the anniversary value.~~

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5. ACCELERATED DEATH BENEFITS – NOTICE OF EFFECT OF BENEFIT PAYMENT

APPLIES: Standards for Accelerated Death Benefits.

CURRENT PROVISION:

The form shall state that prior to or concurrent with the election to accelerate the policy death benefits, the owner and any irrevocable beneficiary will be given a statement demonstrating the effect of the acceleration of the payment of death benefits on the cash value, death benefit, premium, COI charges, and policy loans (including policy liens) of the particular policy involved. The statement shall display any premium or COI charges necessary to continue coverage following the acceleration, and shall display all expense and interest charges associated with accelerating the death benefit. Statements for use with liens shall say that future due and unpaid premiums or COI charges may be included in the lien if the provision so provides. The statement shall be based only on guaranteed values. No projected or nonguaranteed values or benefits may be shown. The statement shall include a disclosure that receipt of an accelerated death benefit may affect eligibility for Medicaid or other government benefits or entitlements and may have income tax consequences.

COMMENTS:

Industry Advisory Committee (IAC) Comment: The IAC did not offer a comment on this provision in connection with the 5-year review process. The IAC participated in the drafting and consideration of the pending Group Term Life Insurance Uniform Standards for Accelerated Death Benefits. In connection with the pending Uniform Standards, the IAC requested clarification as to the differences between the Uniform Standards and the NAIC Accelerated Benefits Model Regulation (#620) and worked with the PSC on revisions. The IAC has not offered an objection to the Management Committee on the recommended language in the pending Uniform Standards.

IIPRC Office Comment/Observation: The disclosure requirements in this provision have generated comments from Compacting States and member companies. It is desirable to strengthen the disclosure requirements to avoid state-specific filings intended to comply with the timing of state-specific disclosure provisions that may apply to IIPRC-approved forms. It will be beneficial to consider addressing the extent to which eligibility for the accelerated death benefit may be conditioned upon the risks stated in the disclosure regarding eligibility for Medicaid or other government benefits or entitlements. At a minimum, the IIPRC Office recommends conforming this provision to the corresponding provision in the pending Group Term Life Insurance Uniform Standards for Accelerated Death Benefits.

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IIPRC Office Recommendation: At a minimum, the IIPRC Office recommends revising the provisions to conform to the timing requirements of the pending Group Term Life Insurance Uniform Standards for Accelerated Death Benefits as follows.

The form shall state that (a) prior to or concurrent with the election to accelerate the policy death benefits and (b) upon the payment of the accelerated death benefit, the company shall provide a statement to the owner and any assignee of record or irrevocable beneficiary of record will be given a statement demonstrating the effect of the acceleration of the payment of death benefits on the cash value, death benefit, premium, COI charges, and policy loans (including policy liens) of the particular policy involved. The statement shall display any premium or COI charges necessary to continue coverage following the acceleration, and shall display all expense and interest charges associated with accelerating the death benefit. Statements for use with liens shall say that future due and unpaid premiums or COI charges may be included in the lien if the provision so provides. The statement shall be based only on guaranteed values. No projected or nonguaranteed values or benefits may be shown. The statement shall include a disclosure that receipt of an accelerated death benefit may affect eligibility for Medicaid or other government benefits or entitlements and may have income tax consequences.

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6. ACCELERATED DEATH BENEFITS --EXCLUSIONS/RESTRICTIONS

APPLIES: Standards for Accelerated Death Benefits

CURRENT PROVISION:

EXCLUSIONS/RESTRICTIONS

The form shall not contain exclusions or restrictions for an accelerated death benefit that are not also exclusions or restrictions in the policy.

COMMENTS:

Industry Advisory Committee (IAC) Comment: The provision is a disincentive to file with the IIPRC, as a majority of states do not limit exclusions or restrictions applicable to accelerated death benefits to those applicable to the policy because underwriting is different. This limitation can result in benefits not being issued rather than being issued with an exclusion based on alcoholism or drug addiction, for example. IAC suggests reconsidering the provision.

IIPRC Office Comment/Observation: This provision has not been the subject of inquiries or objections from filers. The pending Group Term Life Insurance Uniform Standards for Accelerated Death Benefits contain an identical provision. The provision in the group Uniform Standards was not subject to comment or discussion during the drafting process.

IIPRC Office Recommendation: The IIPRC Office has no specific recommendation.

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7. **BENEFIT DESIGN OPTIONS, Item (8) -- Aggregate limit**

APPLIES: Standards for Accelerated Death Benefits.

CURRENT PROVISION: (8) The form shall not include an aggregate limit provision that caps the accelerated death benefit payable for all policies issued by the company and its subsidiaries and affiliates.

COMMENTS:

Industry Advisory Committee (IAC) Comment: The provision is a disincentive to file with the IIPRC. The IAC requests the provision be eliminated or a limit be permitted for terminal illness only benefits, as there is no additional charge paid by the insured.

IIPRC Office Comment/Observation: This provision has been the subject of inquiries from filers and objections from filers. In response to a similar IAC suggestion on the Group Term Life Insurance Uniform Standards for Accelerated Death Benefits, the PSC declined to remove the provision on the basis that an insured should be able to collect the maximum allowable benefits for which the insured has been underwritten, qualifies and has paid premiums.

IIPRC Office Recommendation: The IIPRC Office recommends the Product Standards Committee consider removing or modifying this limitation as several companies have indicated this limitation prohibits them from filing certain benefit designs with the Compact that can be filed with the states.

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8. ACCELERATED DEATH BENEFITS -- BENEFIT DESIGN OPTIONS, Item (11)

APPLIES: Standards for Accelerated Death Benefits.

CURRENT PROVISION: If an accelerated death benefit is included in a form, the form shall include an option at the time of acceleration to reduce the accelerated death benefit payment by an amount actuarially determined to pay the remaining premiums or an option to continue to pay premiums to keep the policy in force.

COMMENTS:

Industry Advisory Committee (IAC) Comment: The provision is a disincentive to file with the IIPRC. The IAC observes that the NAIC Accelerated Benefits Model Regulation (#620) does not contain this requirement and it can pose an operational issue for companies that do not have a process to calculate and collect all future premiums due. The IAC suggests making the provision optional rather than a mandatory form requirement.

IIPRC Office Comment/Observation: This provision has been the subject of inquiries or from filers for the same reasons stated by the IAC. The introductory clause is awkward and difficult to apply. The IIPRC agrees with the IAC suggestion.

IIPRC Office Recommendation: The IIPRC Office recommends revising the provision to make it optional as follows.

~~If an accelerated death benefit is included in a form,~~ The form shall ~~may~~ include an option at the time of acceleration to reduce the accelerated death benefit payment by an amount actuarially determined to pay the remaining premiums or an option to continue to pay premiums to keep the policy in force.

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9. WAIVER OF PREMIUM/DEDUCTION BENEFIT PROVISION

APPLIES: Standards for Waiver of Premium Benefits and Standards for Waiver of Monthly Deduction Benefits

CURRENT PROVISION:

BENEFIT PROVISIONS:

(e) The form may base the type of waiver benefit available on the insured's age on the date disability begins, but shall not do so on terms less favorable than the following:

(i) If the insured's total disability begins before the benefit anniversary on which the insured attains age 60, the form shall state that the company shall waive all premiums due for the insured under the policy for the period that the insured continues to be totally disabled. If such period extends to the benefit anniversary on which the insured attains age 65, the form shall state that the company shall waive all further premiums due for the insured under the policy; or

(ii) If the insured's total disability begins after the benefit anniversary on which the insured attains the age specified in item (i) for when total disability begins, the form shall state that the company shall waive all premiums due for the insured under the policy for the period that the insured continues to be totally disabled, but only up to the benefit anniversary on which the insured attains age 65;

COMMENTS:

Industry Advisory Committee (IAC) Comment:

Some companies advise that as of 2007 all states have approved language allowing the exclusion to apply to total disabilities occurring after the benefit anniversary on which the insured attains age 60, and yet the IIPRC standards only allow "after age 65".

Because the IIPRC only allows an "after age 65" exclusion, companies with age 60 approvals have no incentive to file with the IIPRC. Accordingly we suggest reconsideration of the "after age 65" standard.

IIPRC Office Comment/Observation: The IIPRC Office is aware of the concerns and challenges raised by filers and non-filers of the difficulty of compliance with this provision. Note that this provision is also listed under Clarification Item #17 to change the "or" to "and" between the subsections to clarify that both types of benefit situations are required to be available.

IIPRC Office Recommendation: The IIPRC Office does not have a specific recommendation but suggests the Product Standards Committee discuss modifying this age limitation as several companies have indicated this limitation prohibits them from filing certain benefit designs with the Compact that can be filed with the states.