

From: BOLTON David H * DCBS
To: [Smoucha, Lucy](#)
Cc: [Hart, Janice M.](#); [SCHOPF Michael D * DCBS](#); [SIZEMORE Tashia * DCBS](#); [Keen, TK](#)
Subject: Incontestability & Required Life Policy Provisions/Concerns on Recommended Changes by Industry for "Product Innovation"/ IIPRC Teleconference 11/28
Date: Wednesday, November 22, 2017 4:13:18 PM

Summary: It is my opinion that Regulators support *product innovations* that enhance benefits for consumers. "Innovations" recommended by the life insurance industry that *take away* existing state laws and regulations reflected in the original adopted IIPRC product standards may expose the regulators to *increased scrutiny through reductions in consumer protection and possible federal involvement*.

History: *Required Life Insurance Standard Policy Provisions* were adopted by state law after the Armstrong Investigations and the unrestrained climate of *laissez-faire*. The conclusion of the elected was that many of the life insurance contracts and illustrations were not worth the paper upon they were written. *Having the paper now on a digital format does not change any of the existing requirements of the life insurance contract*. The enabling authority for the IIPRC was based on "high" consumer protections that as a whole would mirror the existing consumer protections passed by state legislatures and signed into law by the Governor. Not a hundred pages of changes to adopted product standards.

Required Life Insurance Standard Policy Provisions:

ORS 743.168 Incontestability: A Life insurance policy *shall contain a provision* that the policy *shall be* incontestable after it has been in force for two years from its date of issue during the life time of the insured, except for non-payment of premiums.

ORS 743.171 Incontestability and limitation of liability after reinstatement: A reinstated policy of life insurance may be contested on account of fraud or misrepresentation of facts material to the reinstatement only for the same period following reinstatement, and with the same conditions and exceptions, as the policy provides with respect to contestability after original issuance.

ORS 743.177 Statements of insured: A life insurance policy *shall contain a provision* that all statements made by or on behalf of the insured *shall*, in the absence of fraud, be deemed representations and not warranties, and no such statement shall be used in defense of a claim under the policy unless contained in a written application and unless a copy of such application is indorsed upon or attached to the policy when issued.

ORS 743.315 Incontestability for group life insurance: same two year period requirements for individual life insurance.

Time does not allow the inclusion of the many required provisions based on statutory requirements that impact the underwriting, application, and other required process for life insurance companies.

Quality Prior Approval Review: The regulator that does the review needs to look not only for what "new innovations" are included in the filing, but also what is missing that is a required life insurance

contract provision by law.

Upheld by Courts: Metropolitan Life Insurance Company v. Conway was one of the first and the “Incontestability Provision” has been upheld by numerous court decisions to current day. A list can be found in Law and the Life Insurance Contract by Greider and Beadles and other life insurance textbooks or legal sites.

Conclusion: The life insurance business is one of long-term promises that may not be fulfilled for over 60-70 years. A promise that must be honored to estates and widows and children, when we know that the person paying will not be here to witness their commitment nor defend themselves. Agents, Regulators and Industry will do well, if the life insurance contract *does not* contain innovative new exclusions and limitations that result in non-payment and does not lapse due to large increased premiums similar to LTC. That is why I review the life insurance rates per ORS 743.018. We have federal regulation of health insurance in part due to the pre-existing clauses and numerous recessions for claims that happened many years after policy issue, that were not always material to the reason for the claim.

David Bolton/ Oregon
(503) 947-7253