



## **IIPRC-AB-I-WSC**

### **ADDITIONAL STANDARDS FOR WAIVER OF SURRENDER CHARGE BENEFIT**

1. Date Adopted: November 15, 2014
2. Purpose and Scope: These standards are intended to apply to traditional forms of Waiver of Surrender Charge Benefits that are built into individual deferred variable and non-variable annuity contracts or added to such contracts by rider, endorsement or amendment; the waiver benefits are triggered by a qualifying event associated with either the annuitant or owner, as specified in the contract or waiver benefit form.
3. Rules Repealed, Amended or Suspended by the Rule: In accordance with the 5-year Commission Review of Rules required by § 119 of the Rule for the Adoption, Amendment and Repeal of Rules for the Interstate Insurance Product Regulation Commission, this rule amends the Core Standards for Individual Deferred Variable Annuity Contracts adopted by the Interstate Insurance Product Regulation Commission (“IIPRC”) on August 27, 2008. The amendments apply only to new filings received after the effective date of the amendments. It is not necessary to resubmit previously approved forms to comply with these amendments, or to suspend use of previously approved forms that do not comply with these amendments. See the Transmittal Memo under the Standards History on the Record for a more detailed description of the amendments.
4. Statutory Authority: Among the IIPRC’s primary purposes and powers is to establish reasonable uniform standards for the insurance products covered in the Interstate Insurance Product Regulation Compact (“Compact”), specifically pursuant to Article I §2, Article IV §2 and Article VII §1 of the Compact, as enacted into law by each IIPRC member state.
5. Required Findings: None
6. Effective Date: March 5, 2015

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## Table of Contents

<u>Provision/Section</u>	<u>Page</u>
<b>SCOPE</b>	<b>1</b>
<b>§ 1 ADDITIONAL SUBMISSION REQUIREMENTS</b>	<b>2</b>
A. General	2
B. Variability of Information	2
<b>§ 2 GENERAL FORM REQUIREMENTS</b>	<b>4</b>
A. Cover Page	4
B. Specifications Page	4
<b>§ 3 BENEFIT PROVISIONS</b>	<b>4</b>
A. Waiver Benefit Provisions	4
B. Conditions for Waiver Benefit Eligibility	7
C. Preexisting Conditions	9
D. Denials of Waiver Claims	9
E. Filing of Claim	10
F. Proof of Unemployment	10
G. Retroactive Assessment	11
H. Termination	11

## **ADDITIONAL STANDARDS FOR WAIVER OF SURRENDER CHARGE BENEFIT**

**Scope:** These standards apply to waiver of surrender charge benefits (“waiver benefits” or “waiver benefit”) that are built into individual deferred variable and non-variable annuity contracts or added to such contracts by rider, endorsement or amendment. The waiver benefits are triggered by a qualifying event associated with either the annuitant or owner, as specified in the contract or waiver benefit form.

**Mix and Match:** These standards are available to be used in combination with State Product Components as described in Section 111(b) of the Operating Procedure for the Filing and Approval of Product Filings.

**Self-Certification:** These standards are not available to be filed on a self-certification basis in accordance with the Rule for the Self-Certification of Products Filed with the Interstate Insurance Product Regulation Commission.

As used in these standards, the following definitions apply:

The term “waiver benefit form” refers to waiver of surrender charge benefits that are either built into the contract or added by rider, endorsement or amendment.

“Benefit ineligibility period” is the initial period of time during which the owner is ineligible to receive the waiver benefit, whether or not there is a qualifying event. A benefit ineligibility period is only allowed if there is no identifiable charge for the waiver benefit.

“Benefit eligibility date” is the date the benefit ineligibility period ends. If there is no benefit ineligibility period, the benefit eligibility date is the waiver benefit issue date.

“Preexisting condition” is an injury or sickness beginning, commencing, originating, occurring, sustained or manifesting or first manifesting itself before the waiver benefit issue date, which may or may not be the cause of a qualifying event.

“Qualifying event” means any of the following, as long as the event meets the requirements of this standard:

- (1) The diagnosis of limited life expectancy, impairment, or disability or the occurrence of unemployment.
- (2) The receipt of health care services.

“Waiting period” is the period of time that must elapse after a qualifying event before the owner can receive the waiver benefit. If the qualifying event occurs during the benefit ineligibility period, the waiting period may begin on the benefit eligibility date.

**Drafting Note:** Other terms may be used in the contract provided they are consistent.

## **§ 1 ADDITIONAL SUBMISSION REQUIREMENTS**

### **A. GENERAL**

The following additional filing submission requirements apply:

- (1) If a waiver benefit is provided by attachment to the contract by rider, endorsement or amendment, the following shall be included:
  - (a) A listing by filing jurisdiction of the types of contracts with which the waiver benefit form will be used, including the contract form numbers, the corresponding approval date for these contracts and any filing identification number.
  - (b) A statement as to whether the waiver benefit form will be made part of the contract at issue or is intended for use after the date of issue of a contract, or both.
  - (c) A statement as to whether the waiver benefit form is intended for use with new issues and/or in force business.
  - (d) A description of the waiver benefit form for all types of contract forms with which the benefit will be used.
  - (e) Any contract pages or provisions referenced in the waiver benefit form.
- (2) If a waiver benefit is contingent on a declared interest rate, the company shall provide a certification by an officer that the owner will be provided a timely notification each time the declared interest rate declines to a point at which the waiver benefit becomes available.
- (3) If a waiver benefit is based on a specific condition or situation subject to underwriting, a statement that the application shall include pertinent questions to determine if the condition or situation is present at the time of application.

### **B. VARIABILITY OF INFORMATION**

- (1) The following items shall only be changed upon prior approval:
  - (a) Definition of health care facility; and
  - (b) Exclusions applicable to qualifying events.
- (2) The company may also identify waiver benefit specifications that may be changed without prior notice or approval, as long as the Statement of Variability presents reasonable and realistic ranges for the item. These items include:

- (a) Amount/percent of account value or surrender charge available under the waiver benefit;
- (b) Life expectancy (no less than six months);
- (c) Period of time required to meet the definition of total and permanent disability or to meet the definition of any other disability allowed under the standards (no greater than 12 months);
- (d) Number of “activities of daily living” (no more than three);
- (e) Period of time for which surrender charges are waived;
- (f) Benefit ineligibility period if no identifiable charge (no greater than one year from the waiver benefit issue date);
- (g) Maximum age for initial eligibility for the waiver benefit, if no identifiable charge;
- (h) Period of time within which annuitant or owner must enter a health care facility after discharge from an institutional confinement (no less than 30 days) and period of original confinement (no greater than three days);
- (i) Period of time for which confinement in a health care facility is required to be eligible for a waiver benefit for home care or hospice care (no greater than 30 days);
- (j) Waiting period (no greater than 90 days);
- (k) Period of time before application of new waiting period to recurrent condition (no less than 30 days after receiving services/treatment or disability);
- (l) Period of time for company to provide claim forms (no greater than ten days);
- (m) Period of time for submitting proof of claim (no less than 90 days after receiving services or treatment, or after unemployment or disability begins);
- (n) Interest rates applicable for waiver benefit contingent on a declared interest rate;
- (o) Period of time within which to apply for waiver benefit contingent on a declared interest rate;
- (p) Specified ages or contract years at which penalty-free withdrawals can be made;
- (q) Expiry age for termination of the waiver benefit; and

- (r) Identifiable charge, if any.
- (3) A zero entry in a range for any benefit or credit is unacceptable, and any change to a range requires a refiling for prior approval.

**§ 2 GENERAL REQUIREMENTS**

**A. COVER PAGE**

- (1) If a waiver benefit is provided by attachment to the contract by rider, endorsement or amendment, the following shall be included on the cover page:
  - (a) At least one signature of a company officer if the waiver benefit form is added after the date of issue of a contract.
  - (b) A statement to the effect that the waiver benefit form is made a part of the contract and that its provisions apply in lieu of any contract provisions to the contrary.

**B. SPECIFICATIONS PAGE**

- (1) The specifications page of the contract or waiver benefit form shall include the following information, when applicable, and the respective waiver benefit provisions shall direct the owner to the specifications page:
  - (a) The name, age, sex and premium class for each annuitant or owner, as applicable;
  - (b) The amount/percent of account value or surrender charge available under the waiver benefit (including any maximum benefit amount);
  - (c) Any applicable identifiable charges. In this regard, an identifiable charge is recognized as a separate premium charge or an administrative fee or charge deducted from the account value;
  - (d) The benefit eligibility date; and
  - (e) The expiry date or age, if any, for the termination of the waiver benefit.

These items may be considered as variable items and marked to denote variability.

**§ 3 BENEFIT PROVISIONS**

**A. WAIVER BENEFIT PROVISIONS**

- (1) A waiver benefit form that includes an active employment requirement with respect to disability shall comply with the following:

- (a) The definition of employment may refer to the annuitant or owner's own occupation or one for which he or she is suited or becomes suited by reason of education, training or experience. The waiver benefit form shall not define employment as an occupation that he or she could or may become suited for in the future.
  - (b) If applied to a homemaker or student, the definition of employment shall provide that the homemaker is unable to perform the customary duties of a homemaker or that the student is unable to attend regularly scheduled classes.
- (2) A waiver benefit may be provided in the following situations:
- (a) Upon annuitization of the contract or upon annuitization of the contract under one or more specified annuity settlement options;
  - (b) Upon the annuitant or owner's death if a death benefit is paid under the contract;
  - (c) Upon minimum distributions from a qualified annuity;
  - (d) Upon surrender of amounts totaling up to X% of the contract value or contract premiums;
  - (e) Upon surrender when a declared interest rate declines to a specified amount or by a specified percentage;
  - (f) Upon withdrawals of interest only;
  - (g) Upon withdrawals made to avoid the 10% penalty under Internal Revenue Code Section 72T (qualified plans) and Section 72Q (nonqualified plans); and
  - (h) Upon withdrawals made at specified ages or after a specified number of years.
- (3) A waiver benefit may be triggered by the occurrence of a qualifying event. The qualifying event shall be described in the waiver benefit form and may include:
- (a) The annuitant or owner is receiving care from a health care facility designated in the waiver benefit form. A health care facility may include, but is not limited to the following facilities: skilled nursing, extended care, intermediate care, convalescent care, personal care, home care or hospice care.
  - (b) Due to any medical condition of the annuitant or owner, the annuitant or owner's life expectancy is expected to be less than or equal to a limited period of time. The period of time shall not be restricted to a period of less than six months.

- (c) The annuitant or owner has any medical condition that would in the absence of treatment result in death within a limited period of time. The period of time shall not be restricted to a period of less than six months.
- (d) The annuitant or owner is determined to have a total and permanent disability that prevents the annuitant or owner from performing any work for pay or profit for a period of time. The period of time shall not be longer than 12 months. The waiver benefit form shall not include a requirement that the annuitant or owner be eligible for Social Security benefits.
- (e) The annuitant or owner is determined to have a disability that prevents him or her from engaging in the substantial and material duties of an occupation for which he or she is or becomes qualified by reason of education or training for a period of time. The period of time shall not be longer than 12 months. The waiver benefit form shall not include a requirement that the annuitant or owner be eligible for Social Security benefits.
- (f) The annuitant or owner is unable to perform a certain number of “activities of daily living” as defined in Items (i) through (vi). Requirements for the qualifying event shall not be more restrictive than the annuitant’s or owner’s inability to perform not more than three of the activities of daily living.
  - (i) “Bathing” means washing oneself by sponge bath; or in either a tub or shower, including the task of getting into or out of the tub or shower.
  - (ii) “Continence” means the ability to maintain control of bowel and bladder function; or, when unable to maintain control of bowel or bladder function, the ability to perform associated personal hygiene (including caring for catheter or colostomy bag).
  - (iii) “Dressing” means putting on and taking off all items of clothing and any necessary braces, fasteners or artificial limbs.
  - (iv) “Eating” means feeding oneself by food into the body from a receptacle (such as a plate, cup or table) or by a feeding tube or intravenously.
  - (v) “Toileting” means getting to and from the toilet, getting on and off the toilet, and performing associated personal hygiene.
  - (vi) “Transferring” means moving into or out of a bed, chair or wheelchair.
- (g) The annuitant or owner is determined to have a cognitive impairment. “Cognitive impairment” is defined as a deficiency in a person’s short or long-term memory, orientation as to person, place and time, deductive or abstract reasoning, or judgment as it relates to safety awareness.



- (h) The annuitant or owner becomes involuntarily or voluntarily unemployed.
- (4) Other qualifying events as may be approved by the Interstate Insurance Product Regulation Commission.
- (5) A waiver benefit form shall specify the period of time for which the surrender charges are waived.
- (6) A waiver benefit form may specify more than one qualifying event. The waiver benefit form shall not require that a waiver will be provided only if all qualifying events specified are satisfied.
- (7) A waiver benefit form shall clearly describe the amount of the account value available for the penalty-free withdrawal or surrender under the waiver benefit and shall disclose any limitations on the amount.
- (8) A waiver benefit form shall specify when the contract value used in the calculation of the penalty free withdrawal or surrender amount is determined.
- (9) A waiver benefit form shall not restrict the qualifying event to one or more specific medical conditions.
- (10) A waiver benefit form shall not limit a qualifying event to sickness only or injury only; it shall provide for both.
- (11) A waiver benefit form shall specify the status of the waiver benefit should the annuitant or owner become eligible for additional occurrences of the same qualifying event.
- (12) A waiver benefit form shall uniquely define the terms used. For example, if a waiver benefit provision requires that the care from a health care facility must be medically necessary, the waiver benefit provision shall define “medically necessary.”
- (13) A waiver benefit that is contingent on a declared interest rate falling below a specified rate shall specify the rate or rates applicable to the waiver benefit for the duration of the waiver benefit.
- (14) If a waiver benefit built into the contract is not described in a separate appropriately captioned provision of the contract, then the reference to the waiver benefit by name in the contract and any specified time period restrictions or limitations shall be in prominent print.

**B. CONDITIONS FOR WAIVER BENEFIT ELIGIBILITY**

- (1) If there is an identifiable charge for the waiver benefit:
  - (a) A benefit ineligibility period shall not be required; and

- (b) The annuitant or owner shall not be required to be younger than a specified age in order to be initially eligible for the waiver benefit.
- (2) If there is no identifiable charge for the waiver benefit:
  - (a) The waiver benefit form may require a benefit ineligibility period, that shall not exceed one year;
  - (b) The annuitant or owner may be required to be younger than a specified age in order to be initially eligible for the waiver benefit; and
  - (c) A disclosure describing the benefit ineligibility period or the initial age limit shall be included at the top or beginning of the conditions for waiver benefit eligibility.
- (3) A waiver benefit form may include a requirement that the health care services be provided, or the diagnosis of limited life expectancy, impairment, disability, or unemployment occur, after the waiver benefit issue date. Such waiver benefit form shall not require that the qualifying event occur after the benefit eligibility date.

**Drafting Note:** The purpose of Paragraph (3) is to disclose to the owner, if applicable, that the company requires that the qualifying event occurs after the waiver benefit issue date. On the other hand, the standards do not allow a company to require that the qualifying event occur after the benefit eligibility date, and the standards do not allow preexisting condition exclusions, i.e. the waiver benefit form shall not require that disability or need for services, treatment or diagnosis be caused by injury or sickness beginning or first manifesting itself after the waiver benefit issue date. (See PREEEXISTING CONDITIONS section).

- (4) If a waiver benefit form requires that the annuitant or owner enter a health care facility within a period of time from discharge from an institutional confinement, the period of time from discharge shall be at least 30 days. The original institutional confinement shall not be required to be greater than three days.
- (5) If there is a waiver benefit for home health care or hospice care, and the waiver benefit requires that the annuitant or owner be confined in a health care facility to establish eligibility for the home health care or hospice care, the period of confinement shall not be required to be greater than 30 days.
- (6) If a waiver benefit form requires the annuitant or owner to receive services, receive treatment, be disabled or be unemployed for a period of time (waiting period) prior to the waiver of surrender charge, the waiting period shall not exceed 90 days. For qualifying events that occur during the benefit ineligibility period, the 90 days may be measured from the later of the date of the qualifying event or the benefit eligibility date. The waiver benefit form shall not require that a new waiting period be applied to services received, treatment received or disability due to the same cause as a previously-covered service, treatment or disability, or due to a cause related to the cause of a previously-covered service, treatment or disability, unless the services received, treatment received or

disability occurs at least 30 days after the previously-covered service, treatment or disability.

- (7) A waiver benefit for imminent death shall not require that the condition causing the limited life expectancy be diagnosed after the waiver benefit issue date.
- (8) A waiver benefit for health care facility confinement shall not require that the confinement begin after the benefit eligibility date or exclude confinements beginning during the benefit ineligibility period. Confinements that begin before the benefit issue date may be excluded.
- (9) A waiver benefit form shall not provide for the accumulation or pooling of values or the aggregation of contracts, policies or values in the determination of a waiver benefit.

#### **C. PREEXISTING CONDITIONS**

- (1) A waiver benefit form shall not exclude disability, services, treatment or diagnosis caused by a preexisting condition. Therefore, the waiver benefit form shall not require that disability or need for services, treatment or diagnosis be caused by injury or sickness beginning, commencing, originating, occurring, sustained or manifesting or first manifesting itself after the waiver benefit issue date.

#### **D. DENIALS OF WAIVER CLAIMS**

- (1) A waiver benefit form shall state that if the waiver claim is denied by the company the surrender proceeds shall not be disbursed until the owner is notified of the denial and provided with the opportunity to accept or reject the surrender proceeds, including any surrender charges.
- (2) A waiver benefit form shall not include the following exclusions and restrictions as a basis of waiver claim denial by the company:
  - (a) Denial due to the annuitant or owner's financial resources, income or need;
  - (b) Denial if there is not a reasonable expectation that a significant improvement will occur in the annuitant or owner's condition;
  - (c) Denial if services are provided by a health care facility for the annuitant or owner less often than on a daily basis;
  - (d) Denial if services are not provided in the least costly setting;
  - (e) Denial if the health care facility does not accommodate a minimum number of persons;

- (f) Denial if services are provided by a health care facility that predominantly provides care and treatment of the mentally ill or drug addicts;
- (g) Denial if services are provided by a health care facility that does not have surgical facilities or access to such facilities;
- (h) Denial if reimbursement for services is provided by another company; or
- (i) Denial if the annuitant or owner is not confined to a health care facility with the expectation that he or she will remain in the facility for a lifetime (until death).

#### **E. FILING OF CLAIM**

- (1) A waiver benefit form shall disclose any claim requirements for filing a claim. The waiver benefit form shall not include requirements more restrictive than the following:
  - (a) If the waiver benefit form requires the filing of a proof of claim form, the waiver benefit form shall state that the claim form shall be provided by the company within ten working days of the surrender request to the owner. If the claim form is not furnished within ten working days, it is considered that the claimant complied with the claim requirements if the claimant submits written proof covering the occurrence, the character and the extent of the occurrence for which claim is made.
  - (b) If the company requires that proof of claim be provided within a certain time frame, the waiver benefit form shall state that the proof will not be required to be supplied sooner than 90 days after receiving services or treatment, or after unemployment or disability begins. Provision shall be made for the situation where it can be shown that it was not reasonably possible to provide proof within the required period of time and that the proof was given as soon as possible; however, in no event, except in the absence of legal capacity may the required proof be provided later than one year after proof is otherwise required. For a limited life expectancy waiver benefit, the waiver benefit form shall not require a time frame within which proof of claim must be provided.
  - (c) The waiver benefit form shall state if the company has the right to require a physical exam as proof of claim.
  - (d) The waiver benefit form shall state that any requirements for a second or third medical opinion to confirm proof of claim shall be at the company's expense. The waiver benefit form shall state which opinion rules in the event of conflict.
  - (e) If the waiver benefit is contingent on a declared interest rate declining to a specified amount or by a specified percentage, then the waiver benefit form shall specify the period of time within which to apply for the waiver benefit.

**F. PROOF OF UNEMPLOYMENT**

- (1) If a waiver benefit form provides for unemployment (voluntary or involuntary) as a qualifying event and if there is an identifiable charge for the waiver benefit, the waiver benefit form shall specify a means for an owner or annuitant who is self employed or otherwise could not qualify for unemployment compensation to prove unemployment as an alternative to unemployment compensation qualification.

**G. RETROACTIVE ASSESSMENT**

- (1) A waiver benefit form shall not provide for retroactive assessment of a surrender charge to recover any prior surrender charge that was waived by the company.

**H. TERMINATION**

- (1) A waiver benefit form shall include the following termination conditions:
  - (a) Upon written request from the owner;
  - (b) Upon termination of the contract; or
  - (c) Upon nonpayment of any identifiable charge.
- (2) A waiver benefit form may also include the following termination conditions:
  - (a) The date that the total amount of surrender charges waived equals the maximum waiver benefit amount; or
  - (b) The contract anniversary on which the annuitant or owner attains a specified age.
- (3) A waiver benefit form shall state that termination shall not prejudice the waiver of any surrender charge while the waiver benefit was in force.