

From: [Kathleen H. Nakasone](#)
To: [Ezalarab, Susan](#)
Cc: [Im, Martha](#)
Subject: RE: PSC call on 6/9 - Hawaii requirements for frequency of proofs of loss for waiver of premium claims
Date: Monday, June 22, 2020 2:49:47 PM

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear PSC Chair Conway, Vice Chair Dwyer and Committee Members,

As discussed on the last PSC call, Hawaii's statutes and the proposed language appear to conflict with the Waiver of Premium standard. We believe the conflict is found in two different areas of the standard titled **RAUS 2019-4 (Dec 12, 2019) Additional Standards for Qualifying Events for Waiver of Premium Benefits:**

1. §3 Benefit Provisions, A. Benefit, (8)
2. §3 Benefit Provisions, E. Filing of Claim, (1)(b)(i)

Our suggested edits to the standard are in [blue, underlined text](#) below. We believe the edit leaves the necessary flexibility for the carrier to ask for proof every 30 days where the claimant's disability is not total and the probable period of total disability is less than 3 years.

The form shall describe the initial and subsequent due proof requirements for ~~total~~ disability. To initialize a claim, the form may require written notice and proof of ~~total~~ disability while the insured is alive and ~~totally~~ disabled, or as soon as reasonably possible.

During a specified period of time after the company approves the claim for the waiver benefit, not to exceed 24 months, the form may require proof of continued ~~total~~ disability not more frequently than once every 30 days. After such specified period of time, the form shall state that the company shall not require proof more than once in any 12-month period.

- [When the insurer has determined there is total disability and the probable period that it will last, the insurer shall require further certification during the stated period of disability or probable disability only at its expense and not more often than once in any three calendar years, unless there is evidence of a change of circumstances that indicate a change in the medical condition of the insured.](#)

- The form may also state that as part of the due proof requirement, the company at its expense may have its designated physician examine the insured.

The suggested language is from our Hawaii Revised Statutes section 431:10-211.5 limits, which limits the frequency an insurer may ask for *continued* proof of *total* disability to specific circumstances; see relevant section (b) below. The statute is linked [here](#), and copied below. The term "total disability" does not presume that the disability is permanent. The statute recognizes that the "total disability" may be of a temporary duration, which is why the insurance company (Company) may request the "probable period [the disability] will last." For example, if the insured

broke all 4 limbs and the “probable period” of total disability is 4 months, the Company may ask for certification within that stated period to determine whether the insured is eligible for continuation of the waiver of premium benefit. The Company does not need to wait 3 years to request for continued proof of disability.

Hawaii Revised Statute is [§431:10-211.5](#), titled *Premium waiver provisions; restrictions*.

(a) Whenever an insurance policy contains a provision or a rider for the waiver of premiums in the event of the total disability of the named insured, the waiver of premiums shall be applicable throughout the period of total disability or for the balance of the waiver period specified in the policy or the rider, whichever is shorter. To qualify for the premium waiver, the insured shall submit a certificate from a physician who is selected by the insured which attests to the insured's medical condition and states the period that the condition will last. If the period that the condition will last cannot be established with reasonable medical certainty, the physician shall state an opinion of the period during which the condition is likely to persist. If the insurer does not accept the insured's physician's diagnosis or estimate of the period that the condition will last, the insured will be examined by a second physician selected by the insurer at the insurer's expense. The insurer will accept the second physician's diagnosis and estimate of the period that the condition will last in order to determine total disability and waiver of premium benefits to be provided. The insured will be furnished with copies of all physicians' reports. The insurer will also furnish the insured with an explanation of the insurer's decision regarding the total disability under the terms of the contract and the expected period it will last. If the insured does not agree with the insurer's decision, the insured may appeal to the insurance commissioner within thirty days following receipt of the written notice of insurer's decision.

(b) When the insurer has determined there is total disability and the probable period that it will last, the insurer shall require further certification during the stated period of disability or probable disability only at its expense and not more often than once in any three calendar years, unless there is evidence of a change of circumstances that indicate a change in the medical condition of the insured.

(c) If a claim for premium waiver has been filed after expiration of the grace period specified in the insurance policy, and the qualifying disability has been proved, and the policy owner has demonstrated good faith and honest error justifying the late filing for premium waiver, the insurer shall refund premiums paid after the date the premium waiver would have been effective if the claim had been filed within the period specified in the policy for filing claims. [L 1989, c 336, §1]

Note

Derivation. L 1987, c 250, §1 and L 1989, c 276, §2.

Thank you for the opportunity to comment.

Kathleen Nakasone
Rate and Policy Analysis Branch Manager

Department of Commerce and Consumer Affairs
Insurance Division
P.O. Box 3614 Honolulu, HI 96811-3614
Main: (808) 586-2790 Branch: (808) 586-2809 Direct: (808) 587-6708

Confidentiality Notice: This e-mail, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and/or privileged information. Any review, use, disclosure, or distribution by unintended recipients is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

-

From: Ezalarab, Susan <sezalarab@insurancecompact.org>
Sent: Thursday, June 18, 2020 9:26 AM
To: Kathleen H. Nakasone <knakason@dcca.hawaii.gov>
Cc: Martha C. Im <mim@dcca.hawaii.gov>
Subject: RE: PSC call on 6/9 - Hawaii requirements for frequency of proofs of loss for waiver of premium claims

CAUTION: This email originated from outside of Hawaii State Gov't / DCCA. Do not click links or open attachments unless you recognize the sender and are expecting the link or attachment.

Good afternoon

I am checking to see if you have gotten a response from your legal counsel regarding the frequency of proofs of loss. If you have suggestions for revising the current language, it would be helpful to discuss it on the June 23 Product Standards Committee call. Please let me know. Thank you.

Susan Ezalarab, CIE, FLMI
Regulatory Coordinator Consultant
Interstate Insurance Product Regulation Commission
sezalarab@insurancecompact.org
608 695-7900

From: Kathleen H. Nakasone <knakason@dcca.hawaii.gov>
Sent: Tuesday, June 9, 2020 12:09 PM
To: Ezalarab, Susan <sezalarab@insurancecompact.org>
Cc: Im, Martha <mim@dcca.hawaii.gov>
Subject: FW: PSC call on 6/9 - Hawaii requirements for frequency of proofs of loss for waiver of premium claims

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Sorry! Please see the correction in [red text](#)

From: Kathleen H. Nakasone

Sent: Tuesday, June 9, 2020 7:01 AM

To: Ezalarab, Susan <sezalarab@insurancecompact.org>

Cc: Martha C. Im <mim@dcca.hawaii.gov>

Subject: RE: PSC call on 6/9 - Hawaii requirements for frequency of proofs of loss for waiver of premium claims

Hi Susan,

Hawaii will be prepared to comment on our interpretation of the Hawaii Revised Statute below. There does appear to be some conflict.

Our state limits the frequency with which an insurer may ask for proof of *continued* proof of *total* disability in specific circumstances, highlighted below. I believe the key terms are “total disability,” and “probable period” of the total disability.

My understanding of the statute is as follows:

The term “total disability” does not presume that the disability that is permanent. The statute recognizes that the “total disability” may be temporary, which is why the insurance company (Company) may request to know the “probable period it will last.” If the “probable period” of total disability is 4 months, say if the insured broke all 4 limbs, then Company may ask for certification within that stated period to determine whether the insured is eligible for continuation of the waiver of premium benefit. The Company does not need to wait 3 years to request for continued proof of disability.

The fact that the Compact’s standard allows the insurer to ask for proof of continued total disability not more frequently than once every 30 days appears may be necessary in Disability Income insurance policy but perhaps not for a Life insurance policy. A DI policy allows for different definitions of disability (own-oc, any occ), with different benefit levels. An insured who is totally disabled according to the policy definition of own-occ, may recover to any-occ during the state period of total disability and the Company needs a way to prevent overpayment.

I will check with our Legal Department about the origins of this statute, but I’ve always assumed it was written for the waiver of premium provision in the life insurance line of business, and not to be tied to restrict the insurance company’s right to determine proof of loss via the waiver of premium provision in a DI policy.

Hawaii Revised Statute is [§431:10-211.5](#), titled *Premium waiver provisions; restrictions*.

(a) Whenever an insurance policy contains a provision or a rider for the waiver of premiums in the event of the total disability of the named insured, the waiver of premiums shall be applicable throughout the period of total disability or for the balance of the waiver period specified in the policy or the rider, whichever is shorter. To qualify for the premium waiver, the insured shall submit a certificate from a physician who is selected by the insured which attests to the insured's medical condition and states the period that the condition will last. If the period that the condition will last cannot be established with reasonable medical certainty, the physician shall state an opinion of the period during which the

condition is likely to persist. If the insurer does not accept the insured's physician's diagnosis or estimate of the period that the condition will last, the insured will be examined by a second physician selected by the insurer at the insurer's expense. The insurer will accept the second physician's diagnosis and estimate of the period that the condition will last in order to determine total disability and waiver of premium benefits to be provided. The insured will be furnished with copies of all physicians' reports.

The insurer will also furnish the insured with an explanation of the insurer's decision regarding the total disability under the terms of the contract and the expected period it will last.

If the insured does not agree with the insurer's decision, the insured may appeal to the insurance commissioner within thirty days following receipt of the written notice of insurer's decision.

(b) When the insurer has determined there is total disability and the probable period that it will last, the insurer shall require further certification during the stated period of disability or probable disability only at its expense and not more often than once in any three calendar years, unless there is evidence of a change of circumstances that indicate a change in the medical condition of the insured.

(c) If a claim for premium waiver has been filed after expiration of the grace period specified in the insurance policy, and the qualifying disability has been proved, and the policy owner has demonstrated good faith and honest error justifying the late filing for premium waiver, the insurer shall refund premiums paid after the date the premium waiver would have been effective if the claim had been filed within the period specified in the policy for filing claims. [L 1989, c 336, §1]

Note

Derivation. L 1987, c 250, §1 and L 1989, c 276, §2.

Thank you.

Kathleen Nakasone
Rate and Policy Analysis Branch Manager (Acting)

Department of Commerce and Consumer Affairs
Insurance Division
P.O. Box 3614 Honolulu, HI 96811-3614
Main: (808) 586-2790 Branch: (808) 586-2809 Direct: (808) 587-6708

Confidentiality Notice: This e-mail, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and/or privileged information. Any review, use, disclosure, or distribution by unintended recipients is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

From: Ezalarab, Susan <sezalarab@insurancecompact.org>

Sent: Monday, June 8, 2020 10:16 AM

To: Kathleen H. Nakasone <knakason@dcca.hawaii.gov>; Martha C. Im <mim@dcca.hawaii.gov>

Subject: PSC call on 6/9 - Hawaii requirements for frequency of proofs of loss for waiver of premium claims

CAUTION: This email originated from outside of Hawaii State Gov't / DCCA. Do not click links or open attachments unless you recognize the sender and are expecting the link or attachment.

Good afternoon

I wanted to remind you that the Homework assignment for PSC members includes a discussion about the frequency of requests for proof of disability or eligibility for qualifying events. Karen Schutter advised me that Hawaii does not allow insurers to ask for proof as often as every 30 days. It would be helpful if you could be prepared to comment on this provision on the call tomorrow. I have copied it below. Thanks and feel free to contact me.

1. Filing of Claims: § 3. . D. (1)(b)(i) Frequency of requests for proof
Current Provision: During a specified period of time, not to exceed 24 months after the company approves a claim for a waiver benefit as a result of total disability, the form may require proof of continued total disability not more frequently than once every 30 days. After such specified period of time, the form shall state that the company shall not require proof more than once in any 12-month period.

COMPACT OFFICE COMMENT: ACLI has asked whether there needs to be a comparable provision for qualifying events. Hawaii has indicated it does not permit asking for continued proof of total disability at such frequency in the first two years. Compact Office suggests PSC discuss and also review state-approved forms / laws for how it handles ongoing proof of total disability or qualifying event trigger to continue a waiver of premium /monthly deduction benefit

FOR PSC DISCUSSION AND FEEDBACK: PSC members asked to review state-approved forms and state laws to determine if any state limits on the frequency of requests in reference to frequency of proof of claim for total disability. Asked to consider whether this provision should apply to proof of continued eligibility based on other qualifying events. Be prepared to discuss and provide feedback on the 6/9/2020 call.

Susan Ezalarab, CIE, FLMI
Regulatory Coordinator Consultant
Interstate Insurance Product Regulation Commission
sezalarab@insurancecompact.org
608 695-7900

----- CONFIDENTIALITY NOTICE

This message and any attachments are from the IIPRC and are intended only for the addressee. Information contained herein is confidential, and may be privileged or exempt from disclosure pursuant to applicable federal or state law. This message is not intended as a waiver of the confidential, privileged or exempted status of the information transmitted. Unauthorized forwarding, printing, copying, distribution or use of such information is strictly prohibited and may be unlawful. If you are not the addressee, please promptly delete this message and notify the sender of the delivery error by e-mail or by forwarding it to the NAIC Service Desk at help@naic.org

----- CONFIDENTIALITY NOTICE

This message and any attachments are from the IIPRC and are intended only for the addressee. Information contained herein is confidential, and may be privileged or exempt from disclosure pursuant to applicable federal or state law. This message is not intended as a waiver of the confidential, privileged or exempted status of the information transmitted. Unauthorized forwarding, printing, copying, distribution or use of such information is strictly prohibited and may be unlawful. If you are not the addressee, please promptly delete this message and notify the sender of the delivery error by e-mail or by forwarding it to the NAIC Service Desk at help@naic.org