

**Agenda Item 2. Discuss pending item from prior calls regarding the *IIPRC Office Report and Recommendations for the Uniform Standards Currently Subject to Five-Year Review (Phase 8 – Individual Disability Income Insurance)*:**

(a) **Substantive Item 2 – Minimum Benefit Period – Update on NAIC Model Regulation #171.** The Product Standards Committee (PSC) discussed the provision in Model Regulation #171 that says that a disability income insurance policy shall have “a maximum period of time for which it is payable during disability of at least six (6) months except in the case of a policy covering disability arising out of pregnancy, childbirth or miscarriage in which case the period for the disability may be one month.” They also were advised that at least 18 member states have adopted the Model in whole or substantial part. Several Committee members that have the six month provision in their regulations indicated that they would like to hear further comment on whether a change to three months would provide additional benefits for consumers. The PSC agreed to expose that question for comment for the upcoming Public call.

(b) **Substantive Item 5 - Partial Disability Triggers; Clarification Item 1 - Definition of Residual Disability, and Clarification Item 2 - Qualification Period and Elimination Period for Residual Disability, and review of Insurance Compact draft proposals.** The PSC reviewed proposals developed by the Compact office for two definitions for review. The first focused on revisions to the current *Partial Disability* definition to include a requirement for *Total Disability* and the second would be to combine the definitions of *Partial Disability* and *Residual Disability* as defined in the individual standard, not the group standards. Both drafts included revisions agreed to with Clarification items 1 and 2 as well. Following discussion, the PSC agreed to expose the following combined definition for public comment. The definition includes the option that a company can require a period of *Total Disability* before an individual is eligible for *Partial Disability* benefits.

*Partial Disability” or “Residual Disability” means that, due to an Injury or Sickness, the insured is unable to perform one or more, but not all of the substantial and material duties of an Occupation for which he or she is qualified by reason of education, training or experience, or the inability to perform all of the substantial and material duties of an Occupation for which he or she is qualified by reason of education training or experience for as long as usually required.*

(a) The benefit trigger may be described in terms of a reasonable reduction in the insured’s time worked expressed as hours per week or otherwise due to Disability.

(i) In order to trigger benefits, an insured shall be working at least 20% but no more than 80% of the time worked just before a Disability began.

- (ii) The benefit may be stated in terms of paying a stated percentage of the *Total Disability* periodic income benefit amounts, and the stated percentage of the *Total Disability* periodic income benefit amount shall be no less than 20% and no greater than 80%.
- (iii) An insured working longer than 80% of time worked just before a *Disability* began may be deemed ineligible for *Partial Disability* benefits.
- (iv) An insured working less than 20% of time worked just before a *Disability* began or earning less than 20% of *Prior Earnings* shall be considered working 0% or a 100% reduction in average *Prior Earnings* for the claim time period, subject to satisfaction of all policy terms and conditions by the insured.

**Drafting Note:** 80% may be reduced to as low as 50% if the company gives prominent notice of the lower threshold.

- (b) Alternatively, the benefit trigger may be described in terms of a reasonable reduction in the insured's *Earnings* due to *Disability*.
  - (i) An insured shall be earning at least 20% but no more than 80% of *Prior Earnings*.
    - (A) The benefit may be stated in terms of paying a stated percentage of the *Total Disability* periodic income benefit amounts, and the stated percentage of the *Total Disability* periodic income benefit amount shall be no less than 20% and no greater than 80%.
    - (B) If the reduction in *Earnings* of an insured for a claim time period (usually monthly) equals or exceeds 80% of average *Prior Earnings* (calculated for a comparable time period), then the insured's reduction of average *Prior Earnings* shall be considered a 100% reduction in average *Prior Earnings* for the claim time period subject to satisfaction of all policy terms and conditions by the insured.
    - (C) If the reduction in *Earnings* of an insured for a claim time period (usually monthly) is less than 20% of average *Prior Earnings* (calculated for a comparable time period) may result in no benefits being paid.

**Drafting Note:** 80% may be reduced to as low as 50% if the company gives prominent notice of the lower threshold.

(ii) The reduction in *Earnings* of an insured shall be measured by comparing *Earnings* for a claim time period (usually monthly) to average *Prior Earnings* (calculated for a comparable time period).

(A) The percentage of the *Total Disability* periodic income benefit amounts paid shall be calculated by subtracting current *Earnings* for a claim time period (usually monthly) from average *Prior Earnings* (calculated for a comparable period of time), and placing this difference as the numerator over average *Prior Earnings* (calculated for a comparable time period) as the denominator. This fraction shall be converted to a percentage, and the percentage multiplied by the *Total Disability* periodic income benefit amounts to arrive at the *Partial* or *Residual Disability* benefit paid for a claim time period.

(B) Alternatively, this can be expressed as a formula, such as: the difference between *Prior Earnings* and current *Earnings* OVER *Prior Earnings*, multiplied by the *Total Disability* periodic income benefit amounts.

(c) *Partial* or *Residual Disability* benefits may be predicated upon a qualification period during which the insured shall be *Totally Disabled* before *Partial* or *Residual Disability* benefits are paid. The qualification period may be in lieu of the *Elimination Period* or in addition to the *Elimination Period* but may not exceed six months due to use of a qualification period alone or in conjunction with an *Elimination Period*. A company may require care by a *Physician*.

**Drafting Note:** Benefits may be predicated on the insured being *Totally Disabled*, not on receipt of *Total Disability* benefits. In no event shall the qualification period result in the postponement of payment of *Partial* or *Residual Disability* benefits for a time period in excess of six months from commencement of the insured being *Totally Disabled*.

(c) **Substantive Change Item 6 – Definition of Preexisting Condition.** The PSC reviewed draft language that did not change the definition of *Preexisting Condition*, but added language in the Permissible Limitations and Exclusions section, similar to that found in Model #171 that a policy shall not exclude coverage for a *Preexisting Condition* for a

period greater than twelve months following issuance of the policy if the application doesn't ask about prior medical history and the *Preexisting Condition* is not specifically excluded. The Committee agreed that the following language would add clarity:

### §3 F. PERMISSIBLE LIMITATIONS OR EXCLUSIONS

#### (13) Preexisting Conditions.

- (a) Any provision included in a policy limiting or excluding coverage for losses incurred or disabilities arising from *Preexisting Conditions* shall clearly define the limitation or exclusion and disclose such limitation or exclusion in the policy. The policy shall not exclude or limit coverage for a loss due to a preexisting condition for a period greater than twelve months following issuance of the policy where the application for the insurance does not seek disclosure of prior illness, disease or physical conditions or prior medical care and treatment and the preexisting condition is not specifically limited or excluded by the terms of the policy.
- (b) For a disease or physical condition that has not been excluded from coverage by name or specific description effective on the date of loss, losses incurred or disabilities commencing on or after the coverage effective date due to that disease or physical condition shall be covered immediately when:
- (i) The disease or physical condition is an *Injury* or *Sickness* as described in the Definitions and Concepts section and is not a *Preexisting Condition* as described in the Definitions and Concepts section; or
  - (ii) The disease or physical condition is disclosed in the application, but the company has taken no express underwriting action for the disease or physical condition.
- (d) **Substantive Change Item 10 - Suspension of Coverage While Unemployed.** The PSC discussed the Compact office draft revisions to the proposed language offered by the IAC, and noted that it does address the concern that some language in the IAC draft may be too prescriptive. Following some edits, the PSC agreed to seek comment on the following recommendation for a new optional provision for Suspension of Coverage while the insured is unemployed:

#### SUSPENSION OF COVERAGE WHILE INSURED IS UNEMPLOYED

- (1) If an insured has been covered for *Disability* benefits under the policy for at least one (1) year the time period specified in the policy and then becomes unemployed, and receives eight (8) weeks of government unemployment benefits, the company may allow the insured to suspend coverage under the policy.

(2) Any minimum period of unemployment, requirements for upon receipt of a written request from the insured for such suspension and the insured's certification that he or she is unemployed, and required evidence of unemployment shall be specified in the policy and has received eight (8) weeks government unemployment benefits. The suspension will begin on the date that the company receives the written request, and certification documentation specified in the policy. Premiums must be paid up to the date of suspension.

(23) During any policy suspension, the company will not accept Premiums and benefits or options previously available under the policy, as well as any attached riders, endorsements or amendments may not be exercised.

(34) If any Premiums were paid for a period beyond the date of suspension, the company shall refund such Premiums on a pro-rata basis.

(5) The policy shall specify the maximum period for which the policy may be suspended;

(46) The suspension will end on the date any of the following events occur:

(a) The date the insured dies;

(b) The maximum period of suspension permitted under the policy and of a period not exceeding twelve (12) months following the date of suspension; or

(c) The date the company receives the insured's written request to end the suspension and evidence satisfactory to the company that the insured is gainfully employed;

(57) If suspension ends under (46)(b) above, the company will notify the insured that the policy will be back in force if the insured resumes Reinstatement of the policy following a period of suspension may be contingent upon payment of Premium.

**(e) Clarification Item 6 - Date Policy Ends. The PSC agree to expose the following Termination provision for public comment:**

**Termination of Insurance Under the Policy**

- (1) The policy shall include a provision stating how and when insurance under the policy may end. The provision may include termination, A policy will end, as applicable, at the earliest of:
- (a) The expiry date shown in the policy, unless an insured renews the policy as provided in the renewal provisions of the policy;
  - (b) The end of the period for which *Premium* has been paid, if *Premium* is not paid by the end of the grace period;
  - (c) The date the company receives the owner's written request to end the policy;
  - (d) ~~The date the policy ends under the expiration of applicable Suspension of Coverage While in Military Service and period(s) specified in the policy if the insured does not request that suspension end before the five (5) year suspension period would otherwise expire such expiration; or~~
  - (e) ~~The date the policy ends under the Suspension of Coverage While Unemployed if the insured does not resume *Premium* payment when the suspension benefit ends; or~~
  - (f) The date the insured dies.

**Agenda Item 3. Any Other Matters.** The Chair noted that the PSC will have a public call on October 24<sup>th</sup> to obtain comments and feedback on the Committee's recommendations and questions to date.