

October 27, 2015

IIPRC Management Committee and Commission
444 North Capitol Street, Suite 700
Washington, District of Columbia 20001

By Electronic Mail to: comments@insurancecompact.org

Re: Comments on Group Disability Insurance Uniform Standards

Dear Members of the Committee and Commission:

The following comments on the Group Disability Insurance Uniform Standards are submitted on behalf of US^{ABLE} Life. US^{ABLE} Life has carefully reviewed the proposed standards, and would first congratulate the IIPRC on its outstanding efforts to bring uniformity to the standards applicable to group disability products. US^{ABLE} Life recognizes the enormity of the project the IIPRC has undertaken and appreciates the service it is providing to the disability insurance industry.

Our review at US^{ABLE} Life has identified the following issues to which we would direct the Committee's and the Commission's attention, and request that these issues be given additional consideration before the standards are finalized and implemented. These issues relate to the application of the grace period (Section 1(J) in the August 14, 2015 version of the Proposed Standards).

The language giving rise to the majority of these issues is located in Sections 1(J)(1)(c) through (f), which provide, in pertinent part:

(c) The provision shall state that if the Premium is not paid by the due date, the insurance company shall give written notification to the policyholder that if the Premium is not paid by the end of the grace period, the policy will end on the last day of the grace period. If the insurance company fails to give such written notice, the insurance provided under the policy will continue in effect until the date such notice is given;

(d) The provision shall state that the policyholder shall be liable to the insurance company for the payment of a pro rata Premium for the time the policy was in force during such grace period;

(e) The provision shall state that if the policyholder replaces the policy with another group policy but does not give the insurance company written notice of intent to end the policy, the grace period provisions of the policy and certificate will apply;

(f) The policy shall state that Premiums shall be paid for any grace period, any extension of such period, and any period for which insurance under this policy was in effect and Premium was not paid[.]

We believe that these provisions as currently drafted present the potential for a number of problems.

For better or worse, the application of grace period provisions is not uncommon. One scenario in which the grace period provisions of a policy arise is when a policyholder seeks to transition its disability coverage from one carrier to another on relatively short notice (often without giving substantial notice to the incumbent carrier). In situations in which the employer/policyholder ultimately determines that the new coverage will not meet its needs (or in which the new insurer rejects the employer's application for group coverage), the grace period provision gives the employer a 31-day period to pay the premium and reinstate, renew, or continue coverage with the incumbent insurer.

The first issue stems from the fact that this term provides for coverage to end on the later of the expiration of the grace period, or the date on which the insurance company gives written notice of the expiration of coverage for non-payment of the required premium. This provision (Section 1(J)(1)(c)) effectively imposes liability on the incumbent insurer for claims incurred during a period of at least 31 days after the policyholder ceases paying the requisite premium (as when a group moves its coverage to a new insurer).

This provision also puts the insurance company in a pay-and-chase situation with respect to a former policyholder. That the insurer may institute collection efforts is not a workable solution, as it puts the insurer and the policyholder (who the insurer will often hope to see return as a policyholder in the future) in an unnecessarily adversarial position. This provision also reduces (or potentially eliminates) any incentive for the policyholder to pay the premium for the grace period, even if a claim is incurred during the grace period. Frankly, this provision unfairly burdens an insurer with the obligation to pay claims for which the premium has not been (and without collection action may never be) paid.

Furthermore, this provision has the potential to create disputes relating both to coverage and the amount of benefits payable. If a policyholder transitions from one carrier to another, and the first month of coverage with the new carrier is also the grace period for the incumbent carrier, it is possible that a claim arising in that month would arguably cause a benefit to be payable by both carriers. Subsection 1(J)(1)(e) does not alleviate this situation. To the contrary, that provision makes clear that the grace period provisions of the policy (as mandated by the remainder of Section 1(J)) would continue to apply, making coverage by the incumbent carrier effective for at least the first 31 days of coverage under the new carrier's policy. We do not believe that the Committee or the Commission intended the potential windfall that might result.

Moreover, even in the event that a claim arising in that month implicates benefits from both insurers, the result could be a dispute over the amount payable by both insurers. Many disability policies contain provisions that reduce the benefits payable by the amount of other benefits received (see Section 9(2)(c) of the Proposed Standards), subject to a minimum periodic benefit. In the event a claimant were covered under both policies, it is possible that, rather than a full benefit, both carriers might assert that its benefit should be reduced by the amount of the other carrier's benefit, and that the claimant is therefore entitled to only the minimum benefit under both policies. Again, the Committee and the Commission could not possibly have intended such an unfortunate result.

We ask that the Committee and the Commission consider revising this provision (Section 1(J)(1)(c)) to allow the policy (and the certificate) to provide that if the premium is not paid by the end of the grace period, coverage will end as of the last day for which the premium has been paid, rather than the last day of the grace period. This would balance the equities between the parties. The policyholder still has the 31-day grace period (or longer, if the insurer agrees (see Section 1(J)(2)) within which to remit the premium. It would, however, relieve insurers of liability for claims arising during a period for which the premium has not been paid. It also has the advantage of delineating the responsibilities of the carriers as employer groups transition between them.

Such an operational look-back period is neither uncommon nor unworkable. Group health plans and their insurers have implemented such provisions for decades in administering coverage under the mandates of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA).

Finally, we also note that the Proposed Standards would require the Company to include the grace period provision in the certificate issued to the Covered Person only "if the Covered Person is paying Premiums directly to the insurance company." (see Section J(1)(g)) We submit that inclusion of the grace period provision in the certificate is a commendable concept, regardless of who is paying the premium. In the event coverage is cancelled for failure to pay the premium within the grace period, it is no less advisable for the insurance company to be able to direct the Covered Person to the certificate term relating to that issue. US[®]Able Life would include the grace period provision in the certificate, regardless of the payor of the premium, and believes that implementation of a uniform standard to that effect is in the best interest of consumers.

Respectfully submitted,

Brian D. Black
Vice President and
Assistant General Counsel

cc: Ms. Anne Marie Narcini (by e-mail)