

by Larry Schneider

Is your client doing employees a favor by providing group long-term disability (LTD), especially highly compensated employees? Employers might look at other options if they knew about the many deficiencies of these group plans.

Underwriting a group LTD application is easier than underwriting an individual plan. Individual plans are more involved because of all of their guarantees and liberal wording, all of which allows a claim to be paid under more scenarios and thus carries a higher cost. Group plans have less underwriting, at least initially. However, if the carrier's profitability goes down because its claims experience is getting too high, one of two actions can result: the group is canceled or the rates are raised, neither of which is good.

On the flip side, group coverage can be desirable, especially if an employee is uninsurable or has a pre-existing condition that would be excluded from coverage under an individual plan. That being said, the group carrier will do some additional underwriting at claim time to see if the pre-existing conditions have been met, which could then be a surprise to the claimant. At least with a non-cancelable policy, the insured knows the lay of the land when the policy is issued.

There is a word to the wise in connection with pre-existing conditions: When applying for any type of coverage, the applicant must fully disclose all pertinent information since a claim begins with the application. Omissions, misstatements, or fraudulent statements can cause a claim to be denied or a policy to be rescinded. I know this, first hand, as an expert witness and consultant in dozens of lawsuits.

Policy Wording

Definitions, terms, and conditions are generally more liberal in an individual policy. They can provide a true own-occupation definition of total disability. This means that a person can work in another occupation and still be paid benefits versus the restrictive and split defini-

Disability – What Coverage is Best for Employees?

tions found in most group plans. For example, some of the following definitions might be offered depending on the group's occupation classifications. With an "own-occupation and a thereafter definition," it means after the own-occupation period has been exhausted, usually in two or five years. It changes to, "not working in any occupation or unable to work in any reasonable occupation." That means that the claimant must be unable to flip hamburgers, for example, after the initial period in order to continue to collect benefits for the remainder of the benefit period, which might be to age 65.

"Mental" and "nervous" are subjective health conditions, which are only covered for two years with most, if not all, group plans. Some individual plans treat this disability like any other sickness and will pay benefits for the full benefit period.

Renewability

There are several forms of contract renewability. The best are non-cancelable guaranteed renewable or just guaranteed renewable, which are only found in individual plans. Both are noticeably lacking in all group plans, otherwise, these plans would be underwritten aggressively and cost more.

Premium

Only individual coverage offers guaranteed rates. The cost would be much higher if group rates were guaranteed. Group rates can be increased any time and will change as the average age of the group increases.

Participation

Coverage is usually 60% of salary and can go as high as 70%. However, bonuses are usually excluded with a usual maximum cap benefit amount of \$5,000. This creates reverse discrimination against employees whose incomes are beyond \$100,000. An executive earning \$200,000 would only get \$5,000, not \$10,000. Therefore, they would only be compensated at 30%!

Offsets

The following standard offsets or reductions to the benefit amount that are payable from all or most group plans:

1. Worker's Compensation.
2. Social Security disability.
3. Benefits received under a retirement plan, which have been triggered before the retirement date.
4. Other disability income policies. Some carriers do not have this as an offset and will charge a higher premium instead.

Taxation of Benefits

Benefits under an employer-paid group plan are taxable, whereas employee-paid individual plans are tax-free. One way to circumvent this employer paid taxable event is to have the premium paid "indirectly" by the employer and still have the benefits tax-free.

In Conclusion

What can be done to fix some of the above deficiencies in group plans? The easiest fix is to correct the reverse discrimination problem. The way to do that is to have the employer provide a tax-free individual plan for the full amount or past the cap, or provide a tax free individual plan to supplement the taxable coverage. What about other deficiencies, such as portability, renewability, guarantees, and the claimant's inability to sue for punitive damages when the carrier has been acting in bad faith? Unfortunately, there's no cure for these inherent deficiencies in most, if not all, group plans. These deficiencies, which come along with the low cost, can make claim denials more likely and claims harder to collect. □

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