

# Risk Management

## DISABILITY INSURANCE: WHAT A UROLOGIST SHOULD KNOW BEFORE AN UPGRADE OR PURCHASE

### Overview

As a physician, you have probably heard that the disability insurance policies available today are drastically different from those available a few years ago. Although this is true, especially if you perform invasive procedures, you can still find quality disability coverage if you know what to look for and understand how such individual policies are offered.

### How Policies are Offered

#### *Types*

Disability insurance can be purchased on an individual or group basis. Group insurance is usually provided by an employer or purchased individually from a sponsoring medical association. Although initially low in cost, group policies have several limitations. They can be canceled (by the association or insurance company), rates increase as you get older and premiums are subject to adjustments based on the claims experience of the group. In addition, group and association contracts often contain restrictive definitions of disability and less-generous contract provisions.

### *Coverage Limits*

Most insurance companies will issue disability insurance coverage equal to approximately 60 percent of earned income. Unfortunately, due to adverse claims experience, insurance companies have decreased the amount of individual coverage available to physicians, regardless of their earnings. The most common maximum monthly benefit is now \$10,000. However, some companies, depending on your medical specialty, might allow you to purchase up to a total of \$15,000 combined with individual disability coverage that you already own with another company.

### The Cost of Disability Insurance

The premium rates are based on several factors including age, gender, monthly benefit amount, added riders and the occupational classification that the insurance company assigns to your profession or medical specialty.

The younger you are when the purchase is made, the lower the cost of the insurance. Therefore, you should purchase a policy as early in your career as possible to lock in lower premium rates.

Although women are better risks for life insurance, this is not the case with disability insur-

ance. Rates for females are substantially higher and their policies can cost 50 to 75 percent more than men. However, unisex rates may be available to urology groups using an administrative procedure called a “list bill,” where the insurance company provides a single bill for a group of policies. This arrangement typically requires that three or more policies be purchased by individuals employed by the same institution or medical practice. Unfortunately, the unisex rate is often higher for men, so one must consider any potential savings based upon the overall makeup of the practice and the individuals who will be insured.

The occupational classification assigned by the insurance company will have a significant impact on your premium rates, as well as the provisions of your policy. Generally, if you perform invasive procedures, you will be placed in the “surgical” category where the definition of disability made available will not only be more restrictive, the premiums charged will be higher as compared to a non-invasive, non-surgical physician. Each insurance company has their own occupational classification guide and insurance companies may treat the same occupation or medical specialty differently.

Although it is a surgical specialty, urology is unique in that some companies do not place urologists in the “surgical” category. As a result, the definition of disability made available to an urologist can be more liberal and the premium rates charged are lower than if classified as a surgeon.

## Key Provisions to Look for in a Disability Policy

### ***Renewability Provision***

The renewability provision is one of the key features of an individual disability income insurance policy. This provision defines your rights when it comes to keeping your disability policy in force. In general, a disability policy can be Guaranteed Renewable only or both Non-cancelable and Guaranteed Renewable.

### ***Guaranteed Renewable***

If a policy is Guaranteed Renewable only, the insurance company may not cancel or change any provisions of the policy as long as you continue to pay your premiums. However, the insurance company does reserve the right to increase premiums with state approval for an entire class of policies in the event of poor claims experience.

### ***Non-cancelable and Guaranteed Renewable***

If a policy is both Non-cancelable and Guaranteed Renewable, the insurance company cannot cancel, change any provisions or increase the premiums for the life of the policy. Therefore, a policy that is both Non-cancelable and Guaranteed Renewable is preferable as it provides you with an added level of security.

### ***Definition of Total Disability***

Arguably, the definition of disability is the most important aspect of a disability policy. As a physician, you must pay careful attention to the definition of disability found in your policy as it will ultimately determine how any claim you make for benefits will be judged. There are three definitions of “disability” commonly found in the insurance industry, and each has significant differences.

### ***“Own-occupation”***

“Own-Occupation” (also known as “true”

or “pure”) is clearly the definition of choice for urologists as it is the most liberal definition of total disability available. This type of policy pays benefits if you are disabled and “not able to perform the material and substantial duties of your occupation.”

Therefore, you would collect full disability benefits if you could no longer practice urology and/or perform urologic surgery, even if you decided to work in another occupation or medical specialty, earning the same or more income than you did as a urologist.

### ***Modified “Own-occupation”***

This type of disability policy has become the most prevalent in the industry today and typically pays benefits if you are “unable to perform the substantial and material duties of your occupation and you are not working.” Although benefits are still contingent upon your ability to practice urology and/or perform urologic surgery, this definition will not allow you to continue receiving full disability benefits if you are working in another occupation or medical specialty.

### ***“Any Occupation”***

This definition is the most restrictive of the three described and is commonly found in group or association policies. Under this definition, you are eligible to receive benefits only if you are found to be “unable to work in any occupation which you are reasonably suited to by your education, training or experience.” Unfortunately, it is the insurance company that makes this determination and physicians, being as educated and well-trained as they are, will find it extremely difficult to collect benefits on this type of policy. You should take every precaution to avoid purchasing a policy that contains this definition.

### ***Hybrid Definitions***

Many policies offered to physicians today might incorporate an “Own-occupation” with a Modified “Own-occupation” definition. Here, the policy would contain a true “Own-occupation” definition for a limited time period (typically one, two, or five years), and then convert to the more restrictive Modified “Own-occupation” definition described above.

A policy with a hybrid definition might read like this: “Until we have paid benefits for five years in the same claim, total disability means that, because of sickness or injury, you are not able to perform the material and substantial duties of your occupation. After that in the same claim, total disability means that, because of sickness or injury, you are not able to perform the material and substantial duties of your occupation and you are not at work in any occupation.” Although this definition is not as liberal as a policy with a true “Own-occupation” definition for the entire benefit period, after five years of receiving benefits (in the same claim), it is the insured’s decision to continue collecting disability benefits or to return to work in another occupation or specialty. Merely being able to work in another occupation or specialty would not affect your disability benefits. You would actually have to engage in another occupation to have your benefits reduced or eliminated. Unfortunately, in certain states such as California and Florida and for specific medical specialties this is often the best definition available.

Of course, a policy with a hybrid definition could be more restrictive and incorporate a Modified “Own-Occupation” with an “Any Occupation” definition. Astonishingly, a plan sponsored by a well-known medical

association even reads like this “If a covered illness or injury prevents you from practicing your specific medical specialty, which you were performing the day before disability begins, you may qualify for total disability benefits for up to 60 months. If you remain totally disabled after 60 months, benefits will continue if you are unable to perform the duties of any gainful job for which you are fit by training or experience.”

### **Optional Riders**

The following sections describe types of optional riders:

#### ***Residual Disability Rider (also known as partial disability)***

Unless your policy contains a residual (or partial) disability rider, you may have to be totally disabled to collect any benefits. While an “Own-occupation” policy protects your ability to practice urology and/or perform urologic surgery, it may not sufficiently protect your income level. There are many disabilities that might allow you to continue working in your occupation, on a limited basis, while suffering a loss of income. Adding a residual disability rider to your policy would allow you to continue receiving benefits proportionate to your loss of income if you returned to urology on a part-time basis.

Furthermore, with policies such as Modified “Own-Occupation” or “Any Occupation, this rider might allow you to continue receiving benefits if you decided to work in another occupation, or if the insurance company determined that you could work in another “reasonable” occupation with reduced earnings. Generally, to qualify for residual disability benefits, you must experience an income loss of 20 percent or more

compared to your pre-disability earnings. Additionally, if your loss of earnings is equal to or greater than 75 percent or 80 percent, depending upon rider provisions, then 100 percent of your monthly disability benefit would be paid.

#### ***Cost of Living Adjustment (COLA) Rider***

A COLA rider is designed to help your benefits keep pace with inflation after your disability has lasted for 12 months. This adjustment can be a flat percentage or tied to the Consumer Price Index. Ideally you want a COLA that is adjusted annually on a compound interest basis with no “cap” on the monthly benefit. Although important, if cutting the cost of coverage is an issue, this might be the first optional rider to consider excluding from your policy.

#### ***Future Increase Option Rider***

This rider is a must for young physicians. It offers the ability to increase your disability coverage, regardless of your future health, as your income rises. It is important to know when you can increase your coverage, as well as by what increments, on any given option date. Some companies may allow you to use your entire option in one year as long as your then-current income warrants the increase; Others, however, may limit the amount that you can purchase based upon the monthly benefit that you originally started with when you purchased the policy.

### **Strategies to Maximize Economic Benefits**

#### ***Reduce the Tax Burden***

Personal disability insurance benefits are generally received on an income tax-free basis. However, if your practice provides you with coverage and takes a tax deduction for the premiums paid on your behalf, the benefits are

taxable when received. This means that you could lose as much as 50 percent of your benefits at the time you need them most. A better alternative would be to forego the tax deduction or have your practice give you a bonus equal to the policy's premium at the end of the year. You will owe taxes on the bonus, but the practice retains its tax deduction and your benefits remain income tax-free.

#### ***Sidestep the \$10,000 (or even \$15,000) Maximum Monthly Benefit Level***

If you have an old policy with a future purchase option rider, you might be subject to the rules that applied at the time you bought the policy. In that case, you might be able to purchase coverage in excess of \$10,000 per month. Another possibility might be to supplement your existing individual policy with a group disability policy or purchase additional disability policies that protect your retirement plan contributions, your overhead expenses and/or your ownership interest in the practice.

#### ***Group Long-Term Disability (LTD) Insurance***

If your existing employer makes group LTD (Long-Term Disability) available, or if you are changing employers, you may have the opportunity to supplement your individual disability insurance coverage. Once you own an individual policy, it would not be affected by subsequently enrolling in a group LTD plan. However, if your individual policy is not already at its maximum benefit level, this strategy might prohibit you from increasing your individual policy further.

#### **Disability Insurance Protection for Retirement Plan Contributions**

Group and individually owned disability insurance plans are traditionally designed only to replace a portion of your current income. They are not meant to replace monthly contributions into company or individual defined con-

tribution retirement plans. However, a few disability insurers have developed programs designed specifically to replace lost retirement savings.

The most effective approach uses an individual disability insurance policy that pays benefits into a trust set up specifically for the benefit of the insured individual. If a disability occurs, monthly benefits from the policy are paid directly into the trust. The trustee, with input from the disabled individual, then invests the monies received into mutual funds or individual securities until the insured (the trust beneficiary) reaches age 65. At that point, the trust's assets are distributed to the individual to provide supplemental income for retirement.

Policy benefits and trust earnings are subject to the normal rules that govern the taxation of trusts and individual disability income insurance. Trust earnings are generally taxable to the insured as the beneficiary of the trust. As mentioned previously, disability insurance policy benefits are either taxable or tax-free, depending on who paid the premiums.

#### **Protecting Your Practice, as Well as Yourself**

##### ***Disability Overhead Expense Insurance***

If you are a physician in private practice and are responsible for some or all of the monthly expenses to keep your office open, you should consider purchasing a Business Overhead Expense (BOE) policy in addition to a personal disability policy. A BOE policy provides reimbursement for the expenses of operating your practice if you or one of your partners are sick or hurt and cannot work. These expenses may include staff salaries, office rent or mortgage payments, utilities, malpractice insurance premiums and other fixed costs normal to the operation of your business. In addition, some policies may even provide benefits for you to

hire a member of your profession to replace you or a colleague during a disability. This way, the practice's expenses are covered until either you or the disabled partner returns to the practice, or yours or your disabled partner's share in the practice can be sold. Premium payments for BOE insurance are tax-deductible as a reasonable and necessary business expense. As such, benefits received during disability, while taxable upon receipt, are used to pay practice related expenses which are tax-deductible. The net tax result is a "wash."

### **Disability Buy-out Insurance**

Physicians who are partners in a group practice will also want to consider a policy known as Disability Buy-out (DBO) insurance. Due to the specific skills each physician brings to a medical practice, attorneys often recommend a buy-sell agreement which details what is to occur upon the death, disability or retirement of a partner/owner. With a proper buy-sell agreement in place before disability occurs, hard feelings and the conflicts of interest that can result from a partner's disability can be avoided. The agreement should set forth the purchase price to be paid or should provide a formula for determining the price. Perhaps most importantly, the agreement must have a mechanism for providing the funds needed to make the purchase. DBO Insurance is designed to help provide funds toward the purchase of a disabled partner's ownership interest when, due to a lengthy disability, he or she is no longer capable of being a productive member of the practice.

Furthermore, in conjunction with the disabled partner's individual disability income insurance and BOE insurance, a DBO policy will allow the business to continue to generate an income for the healthy partner, while the disabled partner is supported by the benefits from his or her

individual disability policy. Any continuing share of business expenses is reimbursed by the disabled partner's BOE policy until the buyout is effected.

Premiums paid for DBO policies are never tax-deductible, whether paid by corporations, partnerships or individuals.

### **Summary**

Purchasing a high-quality disability insurance policy has never been easy. Unfortunately, the individual disability insurance marketplace has become even more complicated for physicians. The policies available today vary greatly in terms of definitions, maximum benefit limits and premium rates. It is more important than ever that you take the time compare the contract provisions of the policies you are considering, and understand how and why they differ. The best approach is to employ the services of a professional insurance agent who specializes in working with physicians. He or she will not only be familiar with your occupation, but with which companies' policies are best suited to your particular specialty. Then you and the agent can decide which insurance company's policy or policies best meet your individual and/or your practice's insurance needs.

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