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The Unprofitable Risk Reality

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The concept of realizing profit by calculating the breakeven point of "risk" is fairly unique even though its been around in the United States since the early 1800's. To simplify, if an insurance company sells more policies than have to pay out on, and controls their administrative costs, a profit is realized and stockholders make money. Simple concept, but certainly not accurate in today's markets.

What if just selling and paying out on disability claims by natural risk progression ceases to produce profit? If all the legitimate claims are paid, and all the non-payable claims are NOT paid, is there a profit to be made? Answer – no there isn't.

So, if the pure risk element of selling disability policies is no longer profitable, what then? In order to make the selling of disability policies profitable, all disability insurers MUST proactively devise internal claims strategies producing more claim denials than those that should legitimately be denied. Stop and think about that last sentence for a moment.

Companies like Unum, The Hartford, Prudential and others must DO something over and above the expectation of just denying claims that should not be paid. **In other words, all insurance companies must proactively DO something to deny claims that ordinarily should be paid by making them credibly appear non-compensable.** Dollar for dollar, this is how profit is made in the disability claims industry.

"And, how do insurers do that?", you might ask. The simple answer is, "they produce paper". In order to defend an unjust denial disability insurers must produce credible claim file documentation which supports the fact the claim should not be paid. This is a process I have referred to in the past as "stacking the deck" against the insured. The more documented paper in the claim file, the better the disability insurer can defend the denial to ERISA and other regulators.

Hence, all disability insurers are in the business internally of producing file documentation that "tops" out anything submitted by the insured or their physicians. For example, Board Certified Physicians are more credible than those who are not; Medical Director reviews are more credible than medical walk-ins; Certified Rehabilitation Counselors lend vocational credentials to their reports; and so on. If you've ever read a disability file, these and other credentials are documented everywhere since they **produce the perception of credibility.**

If 420,000 group LTD claims are presented to any disability insurer in a year, it is assumed 10% are fraudulent. That's 42.000 claims that won't be paid leaving 378,000 claims. Another 15% of the claimants will return to work (56,700) and won't be paid. That leaves 321,300 claims. Breakeven for the insurance company is 60% payout so 192,780 claims will be paid. All the rest are denied. (128,520 claims) In the end 227,220 claims out of 420,000 are denied, or 45.9% of claims are paid. Any disability insurer who tells you they pay 98% of claims is creating an Aesop's Fable.

Poor insureds usually pay for the highest credentials they can afford, but a wealthy insurance company literally buys their claim denials by offering internal physicians incentives and bonuses for producing file documentation in support of claim denials. Insurance physician's credentials are usually bought and paid for by the disability insurer, and are well worth the money at the back end.

The more paper in the insured's claim file, the more credible the denial looks to regulators. One would think state insurance commissioners and US Department of Labor officials would have caught on to this deception. Many in the industry believe the DOI "gets it", but just turns a deaf ear in support of bedfellows in the industry.

The important point I'm trying to make is that all disability insurers have to deny SOME legitimate claims in order to make a profit. It is possible to do this by producing what appears to be credible file documentation by medical and vocational specialists claiming benefits are non-compensable. The internal claims review processes of all disability insurers is built around producing claim file documentation supporting the nonpayment of claims. ERISA laws enable the disability insurer to do just that.

It's important to be clear here that disability insurers do not attempt to deny ALL claims since some claims obviously should be paid and would be difficult to challenge. This means the claims process must include some methodology for **targeting** those claims, that with a minimum of paperwork, could be supported for denial even though at close inspection, the claims probably should be paid.

If you play the numbers, not all of the denied claims will be appealed or challenged. Disability insurers count on that and usually win at the crap table!

Total vs. Residual Disability – Illegally Out of Contract

Most of my readers have heard me say many times that disability policies are legal contracts requiring the parties to the contract to fulfill certain duties and obligations. When an IDI policy is accepted by the insured, the disability policy underwriter has an obligation to enforce the provisions of the policy. Likewise, the insured has the legal right to expect the disability insurer will act in good faith and carry out the provisions as written and agreed to.

There are several reasons why any insurer would rather pay "Residual" rather than "Total Disability" benefits. First, most IDI polices contain provisions allowing benefits to an individual who is working only to age 65, while an insured paid for Total Disability may be entitled to Lifetime benefits.

In addition, residual benefits are based on a calculation of the percentage of earned income lost. Therefore, insureds receiving residual benefits will receive reduced amounts, or no benefit at all if the earned monthly income exceeds 80% of pre-disability earnings.

Finally, insureds receiving Residual benefits will receive much less of a settlement "buy-out" offer.

Unfortunately, most disability companies approve Residual benefits very quickly and rely on the insurd to accept the carrier's interpretation of policy provisions. Interestingly, most states decide ambiguous policy language in favor of the insured, but the disability insurer encourages you to look to them for clarification of the policy. Not a good idea.

Some disability insurers literally make up the rules to Residual Disability provisions as they go along. Unum Life Insurance, for example, paid IDI insureds permanent 50% residual disability benefits when no such policy provisions existed to allow that. This same company also arbitrarily pays insureds residual disability when they NEVER RETURNED TO WORK AND ARE NOT WORKING.

This doesn't even make sense because the insured receives a Total Disability benefit, but is considered Residually impaired for all of the above reasons. Unless insureds are knowledgeable of what's going on, the disability insurers make hundreds of millions of dollars on this practice alone.

Good News.....

DCS is happy to report the over turn of five ERISA denials and one IDI denial from The Hartford, Aetna, CIGNA, and Unum (2). These are cases which have were extremely devastating for the claimants, one of which was a single mother. All four individuals will receive complete and total reinstatement and reimbursement of their benefits. This is *really* good news for DCS clients!

Editorial - Unum Complaint Department – Don't Bother!

For the last year or so I've been trying to work my way through the so-called Unum Customer Relations Department located on Congress St in Portland, ME. This department is typically promoted as Unum's complaint venue comprised of several interesting characters, none of whom seem to be able to address claimant problems or issues with claim review.

This is not the first time we've attempted to file internal complains with Unum only to find the following: 1) The Customer Relations Department does not have the authority to direct or instruct claims directors concerning the review of any claim 2) members of the department respond with letters regurgitating the position of the claims handler 3) there is no investigation into the facts of the complaint and 4) there is never a resolution of the complaint.

Mr. Arthur Hackett, a product of Unum's invention subsequent to the multistate settlement, sits at the top of the heap and is equally powerless to affect real time solutions to difficulties with claims. One might describe his responses as "company line" and "politic", but basically uneventful and frankly, useless.

The manager of Unum's Customer Relations Department is Deborah Jewett, but I'm wondering If she's a figment of corporate imagination since complaints are always handed down to Nancy Mello. Were it not for the fact that Deb Jewett worked for Unum at the same time I did, I would in fact be inclined to conclude she just didn't exist.

Bottom line, there's no effective complaint procedure in place at Unum Group. A Department is set up to give the semblance of propriety for customer complaints, but none of the players have the power to solve problems. Perhaps it is more profitable for Unum NOT to solve problems or change claim review practices that aren't fair. No company needs a proper complaint department more than Unum, but let's not hold our breath.

Disability Insurance Authorizations – A Closer Look.....

Most individual claimants feel compelled to sign the overly broad authorizations required by most disability insurers. The threat of not paying the claim is written in the document with the statement, *"You are not required to sign the authorization, but if you do not, (Unum) may not be able to evaluate or administer your claims(s)."* So, you sign the document. But, let's take a closer look and examine what information you are allowing the insurer to have access to.

Here is what you are agreeing to if you sign Unum's Authorization (or any other disability insurer's) with the statement:

"I authorize any health care provider including, but not limited to:

1. **...any health care professional –** This is a very broad definition since many people could be construed as health care professionals. Certainly, doctors, dentists, and surgeons are "health care professionals", but so are RNs, LPNs, Dieticians, X-ray Technicians, Lab Technicians, Medical Records Clerks, Nurses Aides, Pharmacy Techs, Drug and Supply Salesmen, in fact anyone with some type of medical training, certification or employment in the health care industry could be considered a "health care professional" including the custodial staff in a hospital, if it came down to that.

2. **...hospital, clinic, laboratory, pharmacy** - The question here is "what clinic?" Is Planned Parenthood a clinic? As a young adult did you go to Planned Parenthood seeking birth control or an abortion? Have you ever had a sexually transmitted disease and visited a community clinic for assistance? Have you ever tried to get help from a local drug outreach or clinic? Have you ever had fertility testing done by a laboratory? Pregnancy testing? Plastic surgery and breast implants? Vasectomy? Clinics and laboratory disclosures can easily reveal very private and sensitive information for most people.

3. **... or other medically related facility or service** - This includes physical therapy facilities, special physician groups such as Bone and Spine Centers, Sports Medicine facilities, home health care or home nursing or day care services related to a medical impairment. This also includes any state Medicaid provider or medically related state subsidized service or facility.

4. **...health plan** - The disability insurer may contact your health insurance provider HMO, PPO, COBRA, Medicaid, Medicare, or employer if your health insurance is self-insured. Even discount cards, AARP Supplemental Insurance Plan, or Dental health coverage, self-employed health plans, Kaiser-Permanente, is included in the "health plan" definition.

5. **...rehabilitation professional or vocational evaluator** – Did you receive vocational counseling in college? Are you currently trying to take a course at your local community college to help you develop a new career? Were you required to speak with a career counselor at any time? What about unemployment services? Any and all contacts you've had with counselors is subject to disclosure including the 4 weeks of rehab you had when you broke your leg several years ago, or had that hip replaced.

6. **...insurance company or reinsurer or third party administrator** – This includes any insurance companies who insured you in the past, or who are currently insuring you including any others hired to administer your claims.

7. **...insurance service provider** – An "insurance service provider" is an agent, broker, or sales person with whom you have had or have any contact with. Anytime you contact an insurance agent for insurance including car insurance, air and travel indemnity insurance, term life insurance, school insurance coverage for kids, sports insurance etc. These are all subject to disclosure.

8. **... producer** – Although this term is unclear, it is generally taken to mean "producer of insurance policies" such as underwriters, actuaries, financial underwriters, travel insurance underwriters, financial planners etc.

9. **Medical Information Bureau** – The MIB is an industry trade "consumer reporting agency" owned by 470 member insurance companies. Their mission is to "detect and deter fraud that may occur in the course of obtaining life, health, disability income, critical illness and long-term care insurance." This organization boasts savings to its member companies of an estimated $1 billion by allowing them to avoid fraudulent insurance applications and early claims. As a consumer reporting agency, MIB communicates information bearing on a consumer's eligibility for insurance including information on a proposed medical condition and avocation. Information from the MIB is limited to IDI claims for disability, life or health for the previous 7 years. Insureds are entitled to receive 1 free copy of their MIB file annually by calling 1-866-692-6901. Insureds are entitled to receive: 1) the nature and substance of information MIB has in its files about you; 2) the names of member insurance companies that reported to MIB about you; and 3) the names of member companies that received a copy of your MIB file in the last 12 months.

10. **Disability Insurance Record System (DIRS) –** This is an industry shared 5-year data base of application history that tracks "applied for" and "in-force" coverage. members search the DIRS data base for prior activity as an "alert" to potential over insurance and insurance abuse. This company advertises a "find ratio" of 25% to companies like Unum and claims a 30-year record of deterring speculative purchases of disability income insurance, over insurance and fraud.

11. **GENEX Services** – GENEX used to be a wholly owned subsidiary of Unum. Currently, GENEX is still employed by Unum as an outside resource for the processing of Social Security claims, IMEs, Transferable Skills Analysis and Labor Market Surveys. Anyone working at GENEX would have access to your complete disability file.

12. **Association of Life Insurance Companies; Health Claims Index; or Disability Income Record System** – Unum really needs to update their authorizations. Despite research I was unable to locate this organization although I suspect Unum does have access to actuarial and history information from the National Association of Insurance Commissioners and the American Health Insurance Association.

13. **…government organization** – Technically, the IRS and Social Security are government organizations, but thankfully these two agencies will not honor Unum's Authorization, since they have their own federal forms for requests. This includes, Worker's Compensation, state records, driver's license information, basically any information about you that is kept by any agency of the federal or state government. Do you have a military file? have you ever been to a VA Hospital? Are there fingerprint records about you in any federal agency subject to the Freedom of Information Act? These are all subject to disclosure when you sign Unum's authorization.

14. **…employers with information about your health** – This includes self-insured plans with employers. This could include a prior employer who terminated you for any reason, especially for health reasons.

15. **…financial or credit history; earnings and wages** – Information from credit reporting agencies and employers is included here for disclosure. FICA checks are most common. State Incorporation and licensing information is also subject to disclosure.

16. **…other information to persons who administer claims for Unum, its insurance subsidiaries and duly authorized representation of Unum.** – Any other individual working for Unum, at any location, or any department could have access to your claim information. This includes field reps, surveillance teams etc.

17. **…disorders of the immune system including HIV and AIDS** – If you have been diagnosed with AIDS or HIV, this authorization grants permission to obtain medical information.

18. …**use of drugs and alcohol mental and physical history, condition, device or treatment (but not psychotherapy notes) –** Any diagnosis or treatment at a mental health facility is subject to disclosure. The only thing Unum is NOT entitled to are actual psychotherapy notes.

While it is fair to say all disability insurers have the right to obtain information about **1) your occupation; 2) your earnings; and 3) your medical history for your claimed disability only**, they also do NOT have the right to obtain information you wish to keep as Protected Health Information ("PHI") under the HIPAA statutes. Most insurance "Authorizations" also contain the following statement, " I further understand that the information is subject to redisclosure and might not be protected by certain federal regulations governing the privacy of health information (HIPAA). In other words, ONCE IT'S OUT THERE, IT'S OUT THERE, and it is no longer protected as Private Health Information.

Disability insurers have the right to investigate the extent of your disability and how it prevents you from performing your material and substantial duties of the occupation. Preventing or withholding of pertinent and relevant information is not in any insureds best interest since the insurance company will claim you prejudiced their investigation. However, Authorizations requested by most disability insurers are designed to permit disclosure of information that goes way beyond the investigative claim review process.

At DCS we sign physician and physician specific HIPAA approved authorizations which allow the insurer to obtain medical, employment and earnings information it needs, but at the same time protects the insured from opening the door to unfounded credibility and medical information leaks. We strongly recommend to readers who are not DCS clients that they read Authorizations carefully and make informed decisions about the signing of these documents.

As always, if you have any questions concerning this issue, please feel free to contact us.

Linda