

V. ELIGIBILITY FOR BENEFITS - DEFINITIONS OF DISABILITY

Benefits under a DI plan are dependent on the insured meeting the definition of disability that is specified within the plan document. Since there is no statutory or regulatory standard,⁴⁵ this section analyzes the definitions used in policies in force in Massachusetts by examining the definitions that are used in disability income policies, including total disability, partial disability, residual disability, and presumptive/permanent disability. It also includes information on some of the typical limitations or exclusions of disability income policies. It is important for members to understand the definitions and terms that are included in the policy, as the benefits are dependent on these definitions.

A. Total Disability

The disability or total disability definition is usually the major definition of the policy that triggers the income replacement benefit under a policy. Although there is not a standard definition for disability, it appears that carriers predominantly have developed disability definitions that are centered around the insured's inability to perform: (1) any occupation, (2) any occupation reasonably fitted by training or experience, (3) the insured's own occupation or (4) the insured's own specialty.

In general, the "any occupation" language would be used to define a disability as the "inability to perform the duties of any occupation." Certain carriers indicated that they have used the following excerpts from the policy language to specify what would qualify under the "any occupation" definition of disability:

- "Not being able to perform the material and substantial duties of any occupation."

In general, the "any occupation reasonably fitted" language would be used to define a disability as the "inability to perform the duties of an occupation for which the person is reasonably fitted by education, training and experience." Certain of the carriers indicated that they have used the following excerpts from the policy language to specify what would qualify under the "any occupation reasonably fitted" definition of disability:

- "Unable to work at any job for which you are qualified by reason of education, training and experience, and not, in fact, working at any job for pay or benefits, and under the care of a doctor."
- "Any gainful occupation means an occupation, which fits you by education, training or experience and replaces or is expected to replace 60% or more of your prior monthly income."
- "Both unable to perform the material and substantial duties of any occupation for which the insured is reasonably fitted by education, training or experience and not gainfully employed in any occupation."

⁴⁵ According to 211 CMR 42.05(2)(g), all individual disability income policies are to comply with the following: Disability Income Insurance. "Disability income insurance provides weekly or monthly benefits to replace income that is lost due to disability resulting from accident and/or sickness. It also includes business expense insurance and business buy-out insurance policies that condition receipt of benefits upon the disability of the insured. To promote clarity and readability, total disability must be defined to make clear the time, if any, for which an insured must be disabled, whether by being unable to engage in his or her own occupation, or in others, for which he or she is qualified by education, training, and experience, or otherwise. Definitions should avoid hard-to-understand expressions like inability to perform "each and every" or "any and every" duty of an insured's occupation."

- “Any occupation for which you may qualify based on your education, experience and training and that would provide earnings at a level of at least 50% of your prior earnings. Reasonable occupation does not have to be a position related to or similar to your occupation.”
- “Inability of the insured to perform each and every duty of any gainful occupation for which he is qualified by training, education, or experience.”
- “Any occupation means any occupation for which you are qualified by education, training or experience and that has an earnings potential greater than the lesser of 1) the product of the claimant's indexed pre-disability earnings and the benefit percentage; or 2) the maximum monthly benefit.”

In general, the “own occupation”⁴⁶ language would be used to define a disability as the “inability to perform the duties of the occupation the insured was performing at the time of disability.” Certain of the carriers indicated that they have used the following excerpts from the policy language to specify what would qualify under the “own occupation” definition of disability:

- “Complete inability to perform all of the material duties of your business or occupation (usual activities if not employed).”
- “Inability to do an occupation of the same type you were performing when you became disabled; this is not limited to the specific job you were performing when you became disabled or to work at the same location or for the same employer.”
- “Inability of the insured to perform each and every duty of his regular occupation or profession.”
- “Inability to perform the material and substantial duties of insured's full-time job.”⁴⁷
- “Inability to do the material and substantial duties of own occupation - occupation regularly performed immediately prior to disability, and cannot work regularly scheduled hours.”
- “Inability to do job classification previously performing, as defined by Department of Labor.”
- “Inability to perform the essential duties of your occupation.”
- “Inability to work at job, - not necessarily at your place of employment for pay or benefits - and under the care of a doctor.”
- “Inability to do regular occupation that was performing when period of disability commences; occupation is based on work typically performed rather than the duties required by a specific employer or at a specific location.”

In general, the “own specialty” language would be used to define a disability as the “inability to perform the duties of a professionally recognized specialty.” Certain of the carriers indicated that they have used the following excerpts from the policy language to specify what would qualify under the “own specialty” definition in their DI plans:

- “If your occupation is limited to a single medical specialty certified by the American Board of Medical Specialties, a single dental specialty recognized by the American Dental Association or a professionally recognized specialty in law, and you are performing that specialty, we will deem your specialty to be your regular occupation.”
- “For physicians, the specialty must be recognized by the American Board of Medical Specialties and for attorneys, the specialty may be subject matter or type of practice.”

⁴⁶ It is possible that carriers included those policies that have an “own job” definition within the “own occupation” section of the survey.

⁴⁷ This may be an example of an “own job” definition that has been included within the “own occupation” section of the survey.

Based on policies in force in 2009, the vast majority of policies use an “own occupation” definition to trigger whether the insured is eligible for the stated disability income benefits in the policy.

2009 % of Policies in Massachusetts that Use Each Definition for the Life of the Policy

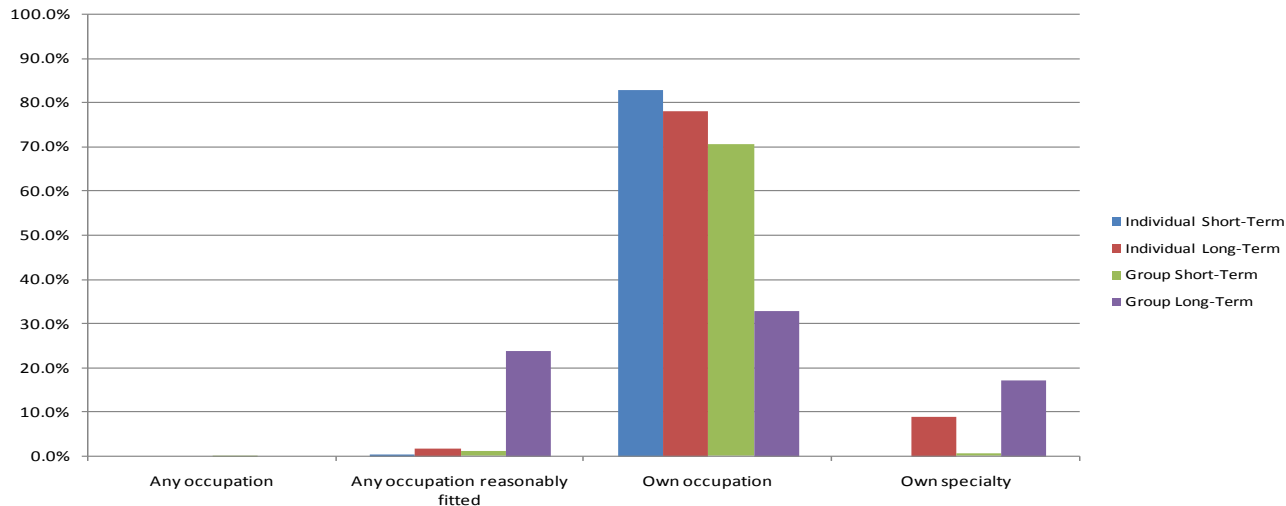


Exhibit 17

Some carriers indicated that when they apply an “own occupation” disability standard, they may apply that definition for a limited period of time and then use a different definition in a later period. For those that use the “own occupation” definition for a limited period of time at the policy inception, and then transition to a second definition thereafter, below are the percentages that use each definition after the limited period of time at policy inception in Massachusetts.

- About 1% of individual short-term⁴⁸ disability policies use two definitions as described above, and of those: 100% of the policies switched the definition to “any occupation” or “any occupation reasonably fitted” after the first twelve months.
- About 61% of individual long-term⁴⁹ disability policies use two definitions as described above, and of those: 77% of the policies switched the definition to “any occupation” or “any occupation reasonably fitted” after the first two years, and 23% switched the definition to “own specialty” after the first two years.⁵⁰
- About 5% of group short-term⁵¹ disability policies use two definitions as described above, and of those: 100% used an “any occupation” or “any occupation reasonably fitted” definition after the first twelve months.
- About 70% of group long-term⁵² disability policies use two definitions as described above, and of those: 99% switched the definition to “any occupation” or “any occupation reasonably

48 Thirteen companies could provide relevant information; the remaining companies were either no longer offering coverage, or they only used one definition for the life of the policy.

49 Twenty companies could provide relevant information; the remaining companies were either no longer offering coverage, or they only used one definition for the life of the policy.

50 Carriers may also offer a change in definition after three years or five years.

51 Ten companies could provide relevant information; the remaining companies were either no longer offering coverage, or they only used one definition for the life of the policy.

52 Twenty-one companies could provide relevant information; the remaining companies were either no longer offering coverage, or they only used one definition for the life of the policy.

fitted” after the first two years, and 1% switched the definition to “own specialty” after the first two years.⁵³

B. Partial Disability

Many policies include reduced benefits when the insured does not meet a total disability definition, but does meet a specified definition of “partial disability.”⁵⁴ In most cases, a majority of the policies that were issued in Massachusetts in 2009 include coverage for partial disability⁵⁵ as illustrated below.

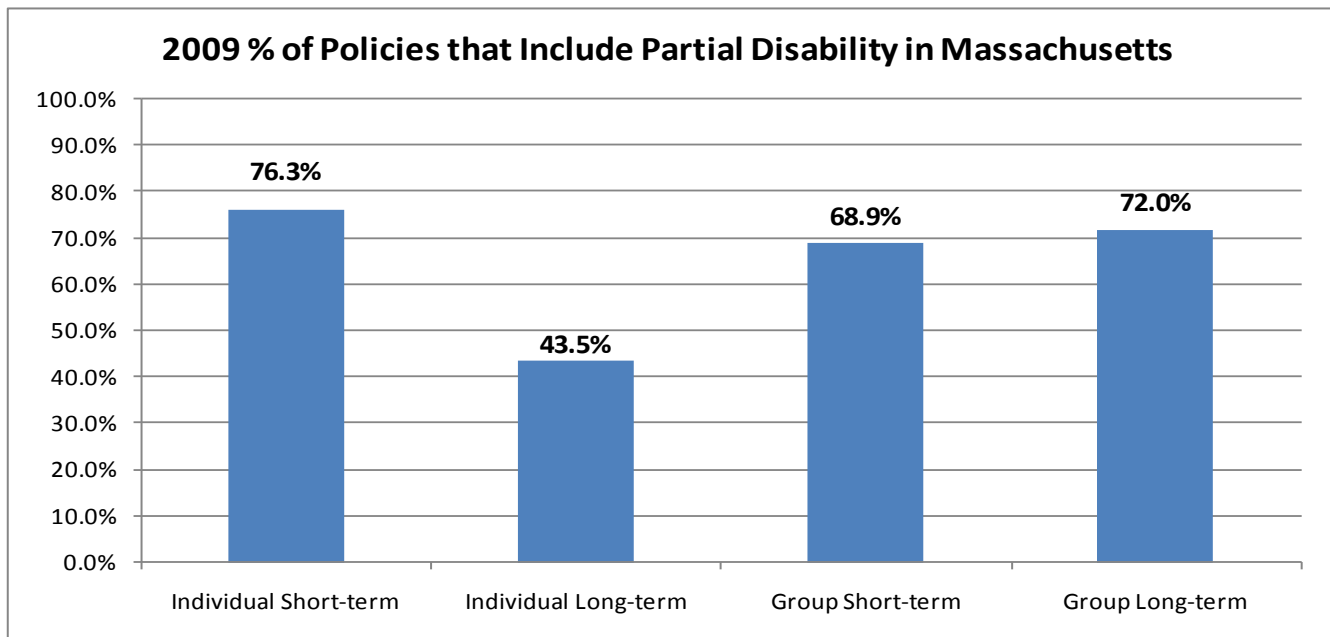


Exhibit 18

Of the policies that were issued in Massachusetts in 2009 that include partial disability, the way “partial disability” is defined in the policy varies widely by market segment and duration of policy.⁵⁶ In general, partial disability applies in cases where the insured is not totally disabled but may be unable to do substantial elements of the prior job. Although there is not a standard definition for disability, it appears that carriers predominantly have developed partial disability standards that are centered around the insured’s disability causing: (1) a reduction in the number of hours the insured can work, (2) a reduction in the number of important duties of a job that the insured can do, (3) a reduction in overall wages or salary that the insured can earn, or (4) a reduction in overall income that can be earned.

Certain of the carriers have indicated the use of the following policy language to specify what would qualify as “partially disabled” based on a “specific reduction of work hours:”

- Unable to work more than 25 hours per week;

⁵³ Carriers may also offer a change in definition after three years or five years.

⁵⁴ According to 211 CMR 42.05(2)(g), “[t]o promote clarity and readability, partial disability, if included, shall be defined in relation to the insured person’s inability to perform some part or all of the “major,” “important” or “essential” duties of employment or occupation. If a policy covers both total and partial disability, the partial disability benefit will be considered to be in compliance with the provisions of M.G.L. c. 176D, if it is not contingent upon prior payments for total disability benefits.

⁵⁵ Seven companies offer partial disability in their policies for individual short-term, thirteen companies offer partial disability in their policies for individual long-term, twenty-seven companies offer partial disability in their policies for group short-term, and twenty-nine companies offer partial disability in their policies for group long-term.

⁵⁶ Some carriers use more than one of these definitions (specific reduced number of hours, reduced number of duties, reduced wages/salary, some level of reduced income) in their policies to define partial disability.

- Unable to work more than 20 hours per week;
- Unable to work more than half-time;
- Unable to work more than 30 hours per week;
- Unable to work at regular occupation or a new occupation no more than 50% of the hours worked before becoming disabled;
- Unable to work more than 80% of hours worked at regular occupation as before disability; and
- Unable to perform one or more, but not all, of the material and substantial duties of his or her occupation on a full-time or part-time basis.

Certain of the carriers have indicated the use of the following policy language to specify what would qualify as “partially disabled” based on “reduced number of duties:”

- Unable to perform one or more material duty;
- Unable to perform one or more of the important duties of the insured's occupation;
- Unable to perform one or more of the material and substantial duties of any occupation for which you are reasonably suited because of education, training, or experience;
- Able to perform at least one, but not all of the material and substantial duties of your regular occupation or any other occupation;
- Able to perform some, but not all of the substantial and material duties of their regular occupation;
- Able to do some, but not all of the main duties of his/her regular occupation or a new occupation;
- Unable to perform one or more but not all the material and substantial duties of the regular occupation;
- Able to do one or more but not all of the main duties of your occupation; and
- Unable to perform some or all of the material and substantial duties of his occupation.

One carrier has indicated the use of the following policy language to specify what would qualify as “partially disabled” based on “reduced wages/salary:”

- This means the employee is earning less than 80% of their weekly earnings from just prior to the medical condition causing the disability.

Certain of the carriers have indicated the use of the following policy language to specify what would qualify as “partially disabled” based on “reduced level of income:”

- Loss of monthly income is at least 20% of your prior monthly income.
- Less than 80% of base pay earnings at time of disablement.
- Earning less than 100% of your pre-disability Income.
- Earning more than 20% but less than 80% of their pre-disability earnings.

The following charts⁵⁷ illustrate how carriers that include benefits for “partial disability” within their policies have applied the use of the partial disability definitions:

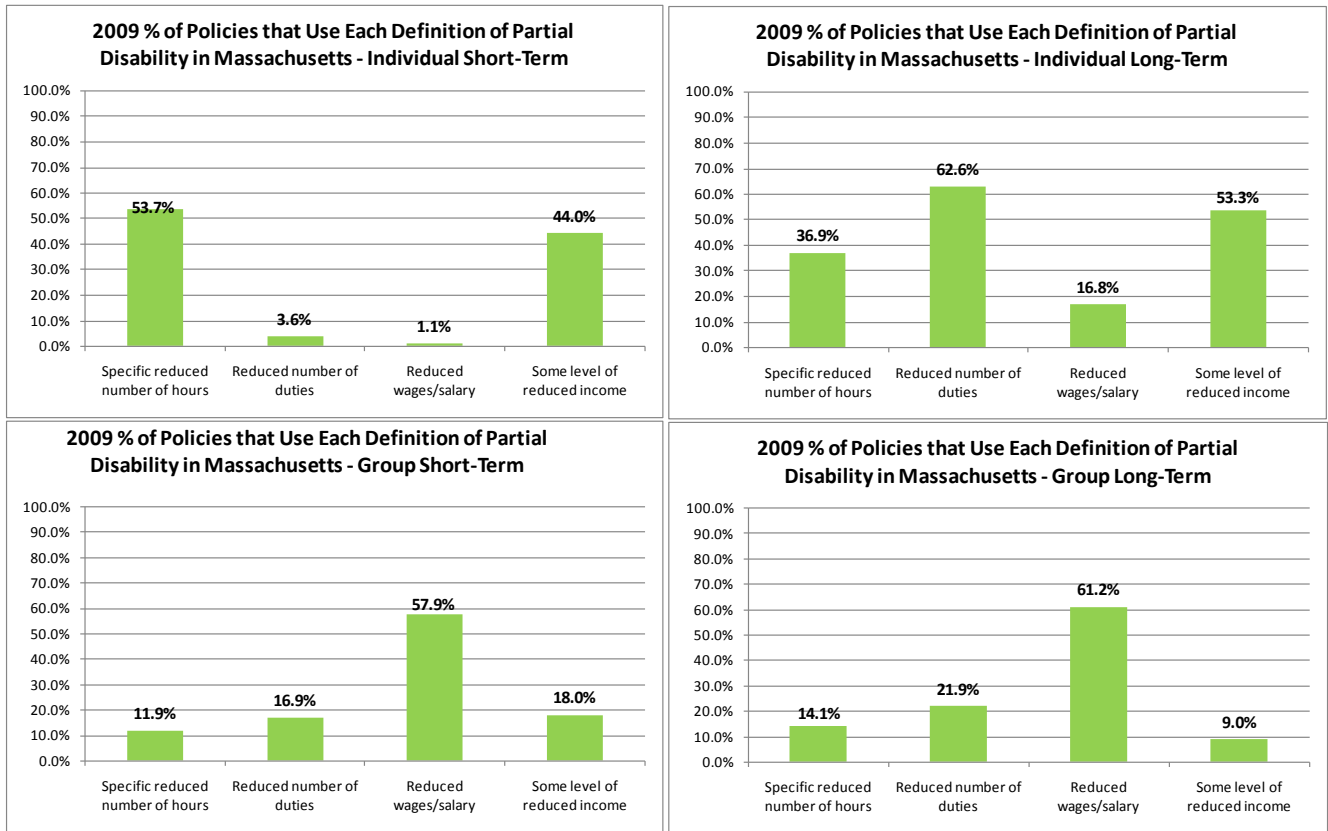


Exhibit 19

⁵⁷ Some carriers use more than one of these definitions (specific reduced number of hours, reduced number of duties, reduced wages/salary, some level of reduced income) in their policies to define partial disability.

C. Residual Disability

Many policies include a benefit separate from the benefits for “total disability” or “partial disability” when the insured is able to return to work due to a residual disability.

The percentage of policies that were issued in Massachusetts in 2009 and that include residual disability varies by market segment and duration of policy.

2009 % of Policies that Include Residual Disability in Massachusetts

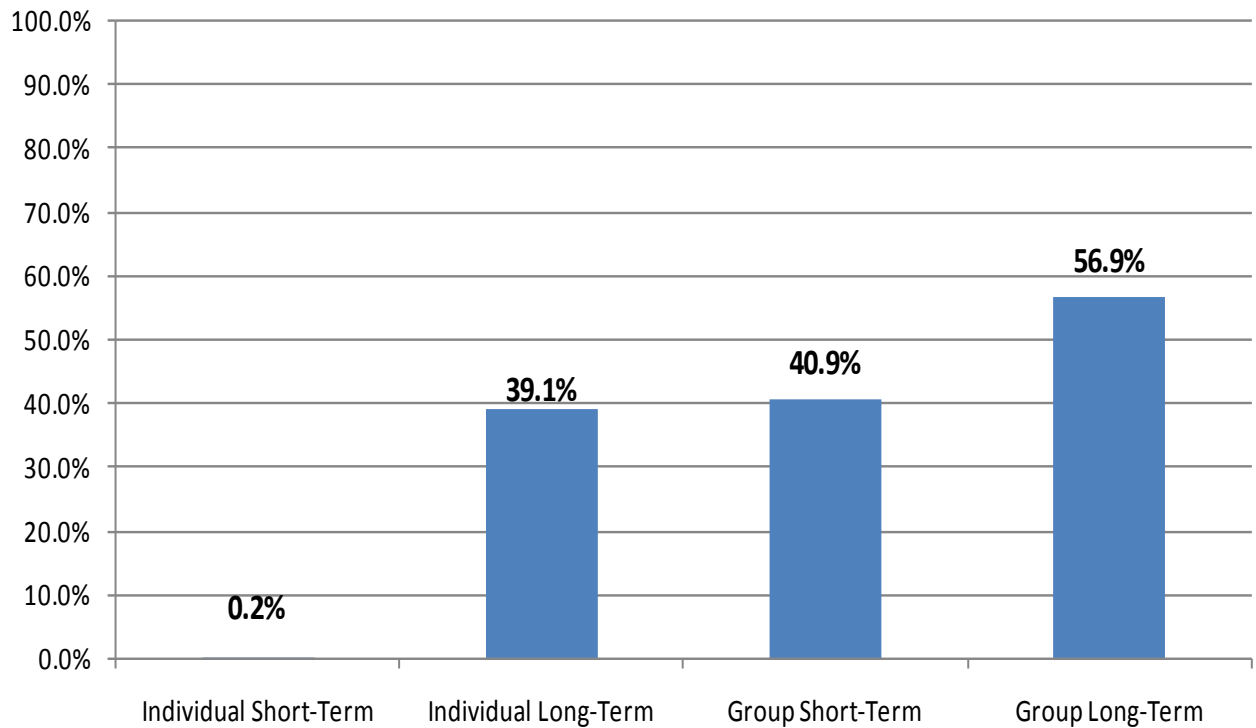


Exhibit 20

D. Presumptive/Permanent Disability

Similar to residual disability, certain carriers include a benefit specific to the permanent loss of use of a particular body part.

Of the policies that were issued in Massachusetts in 2009 that include presumptive/permanent disability, the way presumptive/permanent disability is defined in the policy is shown below based on a loss of the use of the following body parts.

	# of Companies			
	<u>Individual Short-term</u>	<u>Individual Long-term</u>	<u>Group Short-term</u>	<u>Group Long-term</u>
One hand or arm	1	2	2	6
Two hands	10	29	1	6
One foot or leg	1	2	1	6
Two feet	10	29	1	6
One hand & one foot	10	29	1	6
Two hands & two feet	5	8	1	6
Speech	6	26	1	2
Hearing	7	27	1	2
Smell	0	0	0	0
Sight	10	26	1	6

The following chart illustrates the proportion of policies that include a benefit for a presumptive or permanent disability:

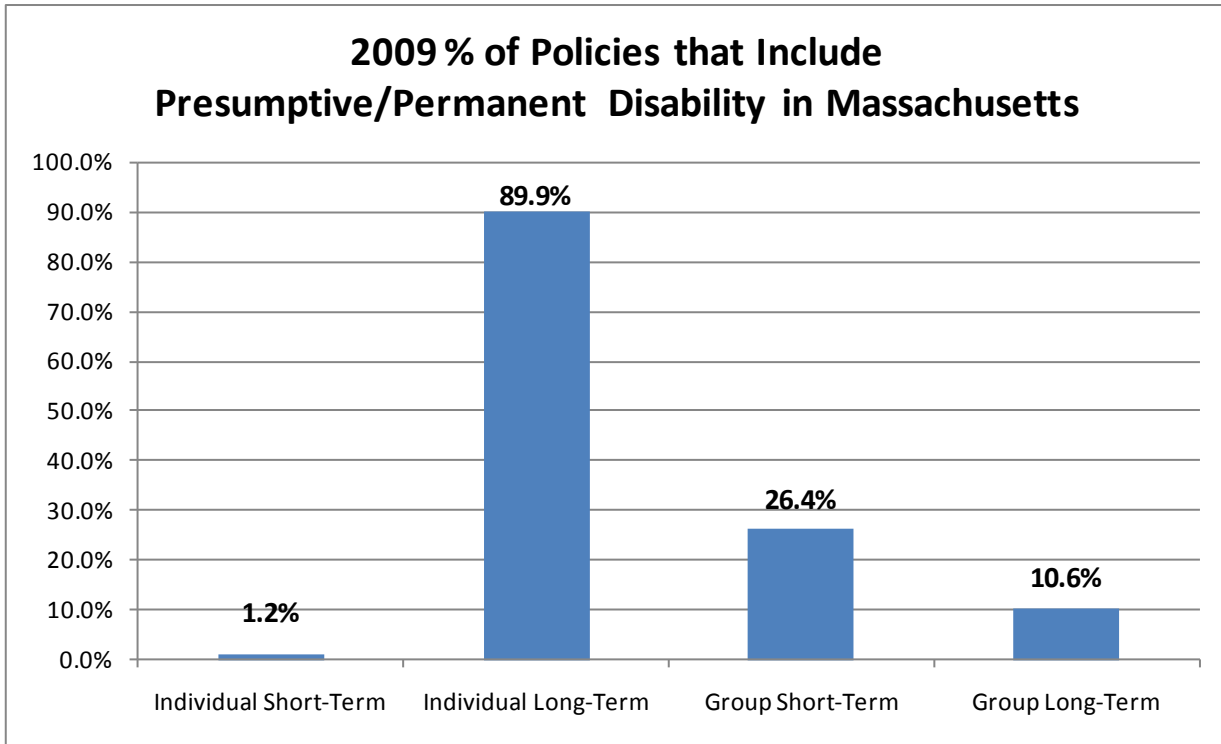


Exhibit 21

E. Limitations and Exclusions

Other than policies issued in the group short-term market, a majority of the policies issued in Massachusetts in 2009 include a pre-existing condition limitation.

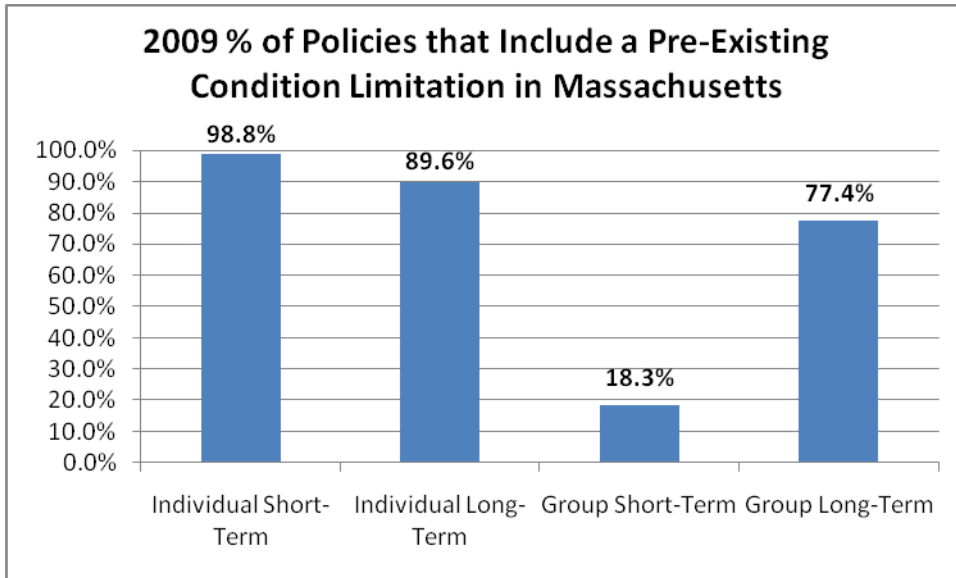


Exhibit 22

Many policies include an elimination period (sometimes referred to as a waiting period) that the insured must satisfy before the policy begins paying benefits. The elimination period is similar to a deductible, but is based on a set number of days instead of a set dollar amount. The following chart shows the percentage of policyholders who purchased coverage in Massachusetts in 2009 that include the following elimination periods. As is expected, the short-term plans tend to have shorter elimination periods, and the long-term plans tend to have longer elimination periods.

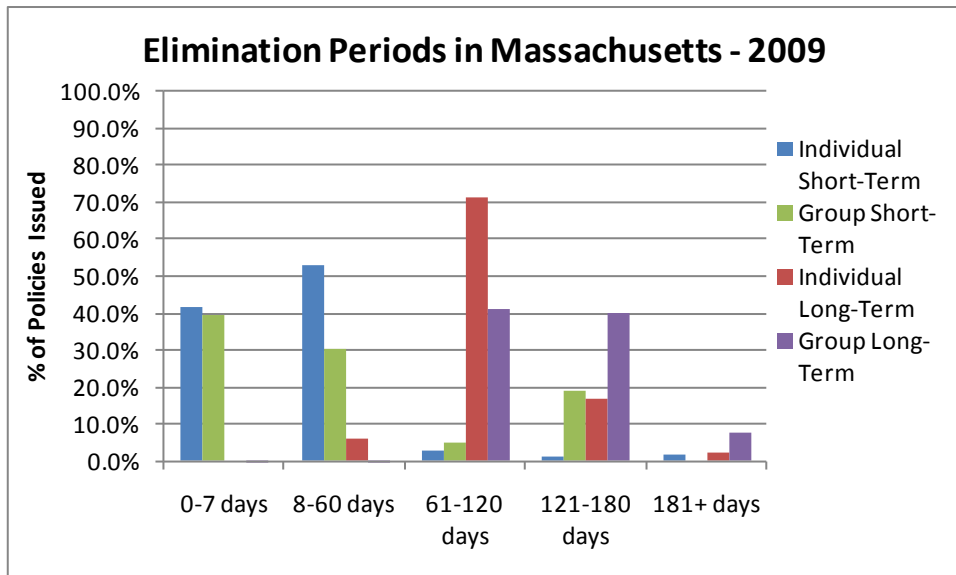


Exhibit 23

F. Social Security Offset Features

Many long-term disability income policies include a social security offset benefit where the policy will consider the amount of social security that the insured is receiving and reduce the benefits received under the disability income policy accordingly. This reduces the benefits that are paid by the insurer, but it also reduces the overall premium cost of the policy.

The percentage of policies issued in Massachusetts in 2009 that include this social security offset benefit in their policies varies by market segment and duration of policy.

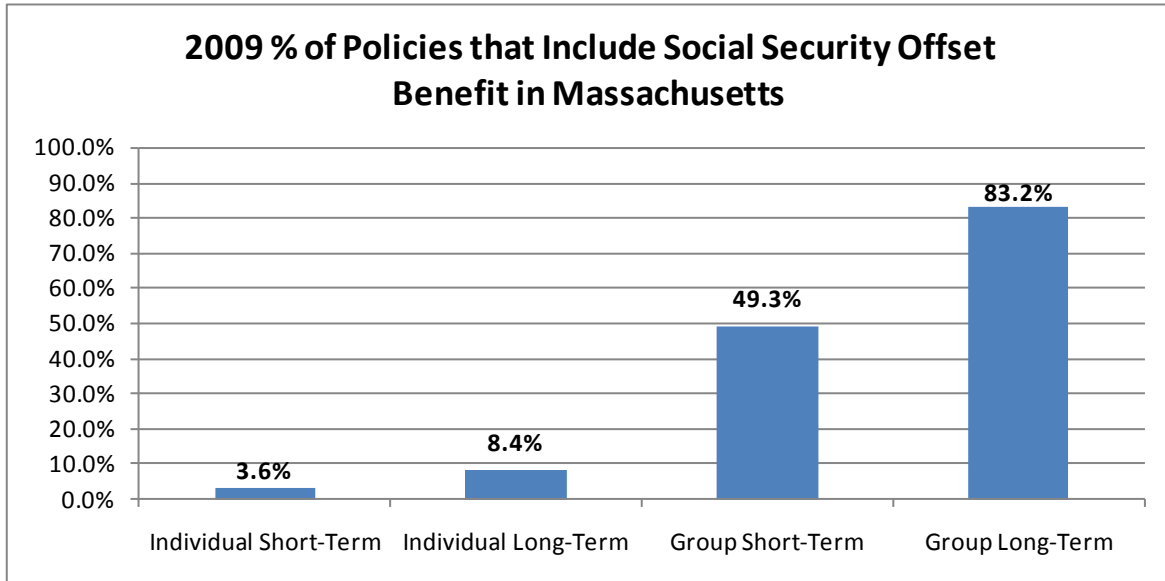


Exhibit 24