Will the Real “Own-Occ” Please Stand Up?

[Editor’s Note: This is a guest post from Lawrence B. Keller, CFP®, CLU®, ChFC®, RHU®, LUTCF, a frequent poster on the site who as a paid advertiser has helped hundreds of WCI readers obtain life and disability insurance over the years. This post gets into the weeds of disability insurance a bit but addresses a question we both get frequently about the all-important definition of disability. First Northwestern Mutual and then Berkshire have made subtle changes to their “own occupation” definition of disability that are worth understanding if you’re in the market for disability insurance.]

The term “Own-Occupation” and the definition of total disability associated with it means different things to different people, all depending upon who you ask. What was once considered the “gold standard” and the crux of a physician’s disability insurance policy was questioned by Northwestern Mutual only a few years ago. Now, Berkshire Life (Guardian), another leader in the disability insurance industry has taken that concept one step further providing a qualifier within the definition in order to clarify some of the confusion that Northwestern Mutual’s definition has
created in the medical market and make it easier for physicians to understand exactly what they are purchasing and what is required in order to qualify for total disability benefits.

“Own-Occupation” Definition of Total Disability

Typically, “total disability” or “totally disabled” means that due to an accident or illness, you are not able to perform the “material and substantial” duties of your occupation. Some companies including Berkshire (Guardian), Standard, Ameritas and Ohio National will even go so far as to state that if you have limited your practice to a single medical specialty, that specialty will be deemed to be your occupation. This definition of total disability makes it possible for you to work in another occupation or medical specialty and still receive your full disability benefits – even if you are earning the same or more income than you were prior to your disability.

The “Medical Occupation” Definition of Total Disability

Northwestern Mutual introduced this definition of total disability and states that it provides both “flexibility and choice” at the time of claim since when an injury or illness prevents a physician from doing the most important duties of
their medical specialty, the physician will have the flexibility to work or not work – whichever choice makes the most sense for them at the time and they can even change their mind after they have made a decision. But does this definition of total disability really provide this or does it penalize physicians for being smart, motivated and resourceful enough to transition to a new occupation and do well financially as a result of their efforts? Let’s see how an orthopedic surgeon might qualify for benefits assuming he was diagnosed with a persistent tremor in his dominant hand and can no longer perform orthopedic surgery, but is still able to diagnose and treat patients. [Editor’s Note: Larry was very careful to use lots of “his/her” type statements in this post with respect to the hypothetical orthopedic surgeon, but since it was awkward to read and 87% of orthopods are guys, I took the liberty to masculinize all the pronouns. If you are a female orthopod, please don’t be offended.]

I will also assume that 60% of his time and income was a result of performing orthopedic surgery and 40% of his time and income was a result of patient care and office visits. Under the “Medical Occupation” definition of total disability, since more than 50% of this surgeon’s time was spent providing direct patient care and services and due to an accident or illness, he can’t perform the principal procedures of his procedure-based board-certifiable specialty, but can still do his other principal duties, Northwestern Mutual’s “Medical Occupation” definition of total disability would leave him with two choices:

# 1 Discontinue working, and qualify as totally disabled in order to receive full benefits.

OR
# 2 Continue working and qualify as partially disabled. He would then receive a benefit proportionate to his loss of income if he earned 20%-80% of his pre-disability income. However, in order to receive full benefits, he would have to earn less than 20% of his pre-disability income.

Personally, I don’t know of many physicians that would not want to continue to work and contribute positively to society if they could but, at the same time, if doing so would jeopardize their ability to continue receiving their disability insurance benefits, does it really make sense for them to work?

Under this definition of total disability, it really all comes down to loss of income. Now, you might remember the United States Army’s slogan, “Be All You Can Be” if you are a history buff, were watching TV from 1980-2001 or decided to serve our country as a result. However, if I was going to create a slogan for the “Medical Occupation” definition of total disability, it would simply be “Don’t be so Much” or “Strive for Mediocrity” so your disability insurance benefits could continue in some way, shape or form. Also note that under this policy you are paying 100% of the premium in order to potentially collect only a portion of the monthly benefit purchased.

Enter the “Enhanced “ True “Own-Occupation” Definition of Total Disability_
Berkshire’s “enhanced” true “Own-Occupation” definition states that “total disability or totally disabled means that, solely due to injury or sickness, you are not able to perform the material and substantial duties of your occupation. You will be totally disabled even if you are gainfully employed in another occupation so long as, solely due to injury or sickness, you are not able to work in your occupation”.

It then defines “Your Occupation” as the occupation (or occupations, if more than one) in which you are gainfully employed during the 12 months prior to the time you become disabled. Your occupation does not mean a specific job title, designation, industry, or job within a certain employer. If you have limited your occupation to the performance of the material and substantial duties of a single medical specialty, we will deem that specialty to be your occupation.

And finally, in their most recent offering, Berkshire adds a qualifier or a threshold that can be met in order to receive full disability insurance benefits if you are a surgeon or invasive practitioner by stating that “if your occupation is limited to a Medical Doctor or Doctor of Osteopathy and more than 50% of income is earned from performing surgical procedures, we will consider you to be totally disabled even if you are gainfully employed in your practice or another occupation so long as, solely due to injury or sickness, you are not able to perform surgical procedures.” This language changes the focus from solely your duties to your source of earnings and provides more ways to qualify for total disability benefits. It continues, “Surgical procedures means the medical interventions involving an incision with instruments performed by you in a clinical or hospital setting normally involving anesthesia and/or respiratory assistance, that you regularly perform, during the 12 months prior to your disability. These procedures can be performed on either an inpatient or outpatient basis. Providing hypodermic injections, in itself, is not a surgical procedure”.

In the previous example, the Orthopedic Surgeon would likely qualify for total disability benefits under a policy with a true “Own-Occupation” definition anyway as long as the occupational analysis showed that just prior to disability his/her main duties were performing surgery and the majority of his office based practice was pre-operative and post-operative patient care. However, under the “Enhanced” true “Own-occupation” definition of total disability, he could be working full-time or part-time anywhere – even if he continued to work in his practice diagnosing and treating patients but unable to perform surgery.

Will this make a big difference for surgeons and influence the way that disability insurance claims are paid? In most cases, I don’t think the ultimate claim decision will be any different. However, for surgeons that earn a substantial amount of income from consulting and/or other professional activities or for those in hybrid medical specialties, which might include Obstetrics & Gynecology, Urology, and Otolaryngology to name a few, it very well may be the difference in terms of receiving full benefits compared to a proportionate benefit or no benefit at all.

Under Berkshire’s new definition, they will not only look at your source of earnings, but also your key duties, including those you were performing in your medical specialty at the time your disability began, to decide whether or not you qualify for total disability benefits. Since your situation will be evaluated from multiple perspectives, it may allow you, as an invasive practitioner, to “Be All You Can Be” if an accident or illness takes away your ability to perform procedures – even if you choose to remain in your practice or pursue another occupation or medical specialty without fear of jeopardizing your disability insurance benefits in the process.

Summary
Over the past few years, the disability insurance marketplace has continued to evolve. Carriers have come and gone, the monthly benefits available have increased and the income required to qualify for them has decreased. This is just one more step in the evolution of the industry and provides guidance to help answer the age old question “If I am a surgeon or perform invasive procedures, and can no longer perform those procedures, will I receive total disability benefits”?

What do you think? Do you own a policy from Northwestern or a new one from Berkshire? What is your opinion of the definition of disability in it? Did that factor into your decision of which policy to buy? Comment below!