(only the Italian version is authentic)

IVS IVsAPIC
Reg. Uff. P

Prot. no. 0068218/18 of 28 February 2018

IVASS
ISTITUTO PER LA VIGILANZA SULLE ASSICURAZIONI

CONSUMER PROTECTION DEPARTMENT
DIVISION OF SALES PRODUCTS AND PRACTICES

Ref. to note no. *of*

Classification III 2 1

Attachments:

To the insurance undertakings whose head offices are located in Italy,
TO THEIR PREMISES

To the Italian Branches of insurance undertakings whose head offices are located in a non E.E.A. State
TO THEIR PREMISES

To insurance undertakings whose head offices are located in another Member State of the E.E.A. carrying on business under the right of establishment or the freedom to provide services
TO THEIR PREMISES

Re: Accident and sickness insurance contracts. Procedure for ascertaining disability and non-transferability to heirs of the right to benefits.

IVASS (the Italian insurance supervisory authority) has found on the market policies relating to accident and sickness insurance containing some clauses that are penalizing for the insured, if not even unfair.

These are, in particular, clauses establishing the deadline – calculated from when the claim is reported – by which the insurance company reserves the right to assess the permanent sequelae of the disability derived from the illness or the accident, and providing for the non-transferability to heirs of the right to benefits - in the event of the death of the insured for causes other than the one that generated the disability, and prior to the expiry of said deadline.

The clauses base the non-transferability of the benefits upon non-stabilization of the sequelae, as the deadlines set by the company for carrying out the medical/legal assessment has not passed.

Therefore, by virtue of these clauses, the contract excludes the possibility of paying the benefits to the heirs, even when the disability of the deceased had already become established prior to the death, merely because this permanent disability had yet to be ascertained by the company through its appraisals or medical examinations.

Those clauses determine a significant imbalance of rights and obligations arising from the contract, to the detriment of the insured and his/her heirs, since while the commitment of the insured (payment of the premium) is actually certain and definite, the company's commitment is conditional on the performance of the medical/legal assessment within the deadlines established by the contract, which are generally quite long (up to 18 months); a condition whose realisation depends on the company's will alone.

As to the unfair nature of similar clauses, AGCM (the Italian Antitrust Authority) issued measure no. 26661 of 28 June 2017; before that, the Supreme Court of Cassation (Corte Suprema di Cassazione) in its ruling no. 395 of 11 January 2007, had declared as unfair any contract clause that – in a manner similar to that represented above – excluded the transferability to the heirs of the right to collect benefits, since this contractual provision clearly limits the insurer's economic liability by excluding such liability in the event of supervening death of the insured prior to the assessment of the stabilization of the invalidating sequelae by the insurance company, and alters the normal balance in the relationship to the insurer's advantage.

This imbalance is all the more significant since, even when the insured's heirs possess medical documentation attesting to the existence of the permanent disability during the period prior to the death, coming from sources other than the company itself (e.g. INAIL or INPS certification, hospital certification, or various forms of certification from the family doctor), companies do not consider such documentation as relevant and make the payment of the benefit and its transferability conditional upon the assessment made exclusively by their own trusted professionals.

This is without prejudice to the fact that the insured's death taking place for a cause other than the one causing the disability, before it was verified by the insurance company, cannot deprive the heirs of their rights whenever said disability has at any rate been ascertained in some other way (medical report, health records, etc.).

In light of the above, we draw the above undertakings' attention on the need to verify whether the policy conditions in their accident and sickness insurance products contain clauses of the type described, deemed not to be in line with the principles of fairness and transparency pursuant to art. 183 of the Private Insurance Code (CAP) – and, where applicable, to review these clauses at the earliest opportunity, and at any rate no later than 120 days after this letter. If the company intends to avail itself of a minimum period for the assessment of permanent sequelae, the review shall allow the insured's heirs – should he or she die in advance of said deadline or of the company's medical/legal assessment – the possibility to demonstrate the existence of the right to benefits, through the delivery of other documentation providing evidence of the stabilization of the sequelae.

Companies that have no contractual provisions regulating said situations are asked to regulate them along these lines.

For the management of the contracts already in force containing similar clauses, insurance companies are required to adopt a claims settlement policy in line with the indications hereof.

Yours faithfully

By delegation
of the Joint Directorate

Digitally signed by
RICCARDO CESARI

Decision no. 28/2018