DEPARTMENT OF LABOR AND ECONOMIC GROWTH

OFFICE OF FINANCIAL AND INSURANCE SERVICES

CERTIFICATES - DISCRETIONARY CLAUSES

(By authority conferred on the commissioner of the office of financial and insurance services by sections 422 and 617 of the nonprofit health care corporation reform act, 1980 PA 350, 1969 PA 306, and E.R.O. No 2003-1; MCL 550.1422, MCL 550.1617, MCL 24.231 to MCL 24.233, and MCL 445.2011)

R 550.111   Definitions.

Rule 1. As used in these rules:

(a) "Appeal" means an appeal by a subscriber or other claimant of a claim denial by a health care corporation. It includes appeals to administrative agencies, arbitrators, courts, and mediators.

(b) "Commissioner" means the commissioner of the office of financial and insurance services.

(c) "Discretionary clause" is a provision in a form that purports to bind the claimant to or grant deference in subsequent proceedings to the health care corporation's decision, denial, or interpretation on terms, coverage, or eligibility for benefits including, but not limited to, a form provision that does any of the following:

(i) Provides that a subscriber or other claimant may not appeal a denial of a claim.

(ii) Provides that the health care corporation's decision to deny policy coverage is binding upon a subscriber or other claimant.

(iii) Provides that on appeal the health care corporation's decision-making power as to policy coverage is binding.

(iv) Provides that the health care corporation's interpretation of the terms of a form is binding upon a subscriber or other claimant.

(v) Provides that on appeal the health care corporation's interpretation of the terms of a form is binding.

(vi) Provides that or gives rise to a standard of review on appeal that gives deference to the original claim decision.

(vii) Provides that or gives rise to a standard of review on appeal other than a de novo review.

(d) "Form" means a certificate defined in section 104(3) of the nonprofit health care corporation reform act, 1980 PA 350, MCL 550.1104(3).

(e) Terms defined in the nonprofit health care corporation reform act, 1980 PA 350, have the same meanings when used in these rules.

History: 2007 AACS.

R 550.112   Discretionary clauses prohibited.

Rule 2. (a) A discretionary clause is unjust, unfair, inequitable, misleading, deceptive, and encourages misrepresentation of the coverage within the meaning of section 607(3)(b) of the nonprofit health care corporation act, 1980 PA 350, MCL 550.1607(3)(b).

(b) On and after the first day of the first month following the effective date of these rules, a health care corporation shall not issue, advertise, or deliver to any person in this state a policy, contract, rider, indorsement, certificate, or similar contract document that contains a discretionary clause. This does not apply to a contract document in use before that date, but does apply to any such document revised in any respect on or after that date.

(c) On and after the first day of the first month following the effective date of these rules, a discretionary clause issued or delivered to any person in this state in a policy, contract, rider, indorsement, certificate, or similar contract document is void and of no effect. This does not apply to contract documents in use before that date, but does apply to any such document revised in any respect on or after that date.

(d) Nothing in this rule limits the commissioner's authority under section 607(5) of the nonprofit health care corporation reform act, 1980 PA 350, MCL 550.607(5), to disapprove any form that contains a discretionary clause.

(e) By the first day of the second month following the effective date of these rules, each health care corporation transacting insurance in this state shall submit to the commissioner a list of all forms in effect in Michigan that contain discretionary clauses and shall submit a certification that the list is complete and accurate. If a health care corporation has no such forms in effect, it shall submit a letter to the commissioner reporting and certifying that fact.

History: 2007 AACS.