

MODEL REGULATION ON UNFAIR DISCRIMINATION IN LIFE AND HEALTH INSURANCE ON THE BASIS OF PHYSICAL OR MENTAL IMPAIRMENT

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Section 1. Authority

This regulation is promulgated pursuant to the authority granted by [cite law enacting Section 12 of the NAIC Model Unfair Trade Practices Act].

Drafting Note: The Model Regulation On Unfair Discrimination In Life and Health Insurance On The Basis Of Physical Or Mental Impairment is designed to implement Section 4G of the Model Unfair Trade Practices Act. This section prohibits “any unfair discrimination between individuals of the same class and equal expectation of life in ... any contract of life insurance or of life annuity” and “any unfair discrimination between individuals of the same class and essentially same hazard in ... any policy or contract of health insurance ...”

Section 2. Purpose

The purpose of this regulation is to identify specific acts or practices in life and health insurance which are prohibited by Section 4G(1) and (2) of the Unfair Trade Practices Act cited in Section 1 of this regulation.

Drafting Note: The need for a model regulation has arisen because of questions as to whether life and health insurers are, in all cases, making fair determinations of which individuals are “of the same class and equal expectation of life” (or “essentially the same hazard”). The main purpose of the model regulation is to make clear that life and health insurers cannot classify individuals arbitrarily without a rational basis for each decision.

Section 3. Unfairly Discriminatory Acts or Practices

The following are hereby identified as acts or practices in life and health insurance which constitute unfair discrimination between individuals of the same class: refusing to insure, or refusing to continue to insure, or limiting the amount, extent or kind of coverage available to an individual, or charging a different rate for the same coverage solely because of a physical or mental impairment, except where the refusal, limitation or rate differential is based on sound actuarial principles or is related to actual or reasonably anticipated experience.

Drafting Note: This model regulation sets forth standards which require that life and health insurers be objective and fair in placing individuals with physical or mental impairments in various risk classifications.

The model regulation does not restrict a life or health insurer’s choice of the number and size of rating classes which it will use. Many life and health insurer’s have a number of extra premium classes. Some life and health insurers, however, have relatively simple underwriting procedures and only two risk classes: accept and reject. In group insurance elaborate underwriting procedures and a multiplicity of rating classes are not available because this is not consistent with the overall aim of group insurance of providing insurance to many people at low administrative cost. Similar simplicity is desirable in some other marketing situations (e.g., individual policy pension plans and direct mail business).

The regulation is not intended to mandate the inclusion of particular coverages, such as benefits for normal pregnancy, or of levels of benefits such as for mental illness, in a company’s policies or contracts. In virtually every state, mandates of any coverages or benefits are the subject of separate legislation. The model unfair trade practices act has never been interpreted to provide the basis for such mandates but rather to assure that such coverage and benefits as are offered by insurers are provided on a basis which is not unfairly discriminatory among individuals of the same class.

To make life and health insurance available to as many individuals as possible, the regulation does not restrict the use of riders (“waivers”) which exclude from coverage risks related to impairments which existed prior to the date on which the individual’s coverage became effective. Also, it does not restrict the use of preexisting condition limitations in health insurance contracts.

Chronological Summary of Actions (all references are to the Proceedings of the NAIC).

1979 Proc. II 31, 34, 252, 258, 262-263 (adopted).