

**DATE:** July 16, 2012  
**TO:** IIPRC Management Committee  
**FROM:** Industry Advisory Committee  
**SUBJECT:** Group Term Life Policy/Certificate Standards Dated  
June 19 2012: Discretionary Clauses

In response to the June 21, 2012 memo from the PSC to the Management Committee, and with specific reference to the Discretionary Clause comments, we provide the following comments:

### ***DISCRETIONARY CLAUSES***

We support the Discretionary Clause standards that are currently included in the Group Term Life Policy and Certificate Standards dated June 19, 2012.

We understand that several regulator-only discussions have taken place regarding this standard at PSC meetings, and that a few states have expressed a preference that any and all Discretionary Clause provisions be prohibited.

***We believe that such a general prohibition would be overly broad, vague and ambiguous – unless we define what a “discretionary clause” is, the term would be open to interpretation by all.***

Merriam-Webster defines discretion in part as "the quality of having or showing discernment or good judgement; the ability to make responsible decisions; individual choice or judgement; the result of separating or distinguishing." In other words, anytime that a person makes a decision, he or she ***is exercising some discretion***. In the insurance world, examples of decision making that include at least some element of discretion include: underwriting and insurability evaluations, eligibility determinations, the processing of benefit payments, etc. When a certificate states that “the company will review your claim”, this review involves an evaluation of the sufficiency of the claim and proof of loss to establish a contractual obligation on the part of the insurer to pay the claimant. This evaluation of necessity requires the application of some degree of discretion. ***Without being able to apply some element of discretion to make decisions, insurance companies would be unable to conduct their business.***

The question is not whether insurers should be allowed to use discretion in the conduct of their business. Rather, the focus of our concern should be on how to prevent the abuse of the discretion that insurers need in order to conduct their business. Discretion only becomes a problem when it is “unfair”, when a company would treat an insured person other than as agreed to in the group policy or certificate.

States already have regulatory tools at their disposal, such as anti-discrimination laws and Unfair Trade Practices Acts, to regulate the unfair application of discretion, because such application results in unfair discrimination or an unfair trade practice. This coupled with the discretionary clause standards in the current proposed Group Term Life Policy and Certificate Standards should be sufficient to give Compacting States sufficient ability to address any "discretion related problems".

We are looking forward to a full discussion of this issue.

Submitted by:

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