



STATE OF CONNECTICUT

INSURANCE DEPARTMENT

BULLETIN HC-67
March 19, 2008

TO: All Health Insurers and Health Care Centers Authorized To Conduct Business
in Connecticut

RE: Use of Discretionary Clauses

Background

The Department understands there have been complaints in other states about health insurers' use of discretionary clauses which are frequently included in individual health insurance policies and in group health insurance policies and certificates. An example of a discretionary clause is as follows:

“We have full discretion and authority to determine eligibility for benefits and to construe and interpret all terms and provision of the Policy.”

Department Position

The Department wants to remind health insurers and health care centers writing individual and group health insurance coverage in Connecticut that such clauses cannot be used to improperly deny claims or to restrict any rights an insured has under the policy, including but not limited to:

- (1) the right to appeal to the insurer or health care center under contract terms;
- (2) the right to an external appeal for certain managed care determinations as specified in Section 38a-478n of the Connecticut General Statutes;
- (3) the right to proceed to litigation against the insurer or health care center.

Discretionary clauses cannot in any way override policy definitions and policy terms, but rather may only be used as reasonable and appropriate in unusual situations where there is no specific language in the policy. Such clauses cannot be used to deny a claim which is otherwise properly payable under policy terms.

Health insurers and health care centers are also reminded that they are fully subject to Connecticut's unfair insurance practices laws (Sections 38a-815 through Section 38a-819, Connecticut General Statutes), and the Department will take action under these laws if discretionary clauses are misused by a health insurer or health care center.

Policy Forms

The Department does not prohibit this language in policy forms, but the Department will monitor through its Consumer Services and Market Conduct Divisions any inappropriate use of this language in claims handling by health insurers or health care centers.

Questions

Questions may be directed to the Department's Consumers Affairs Division at (860) 297-3900 or toll free, 800-203-3447.

A handwritten signature in black ink, appearing to read "Thomas R. Sullivan". The signature is written in a cursive style with a horizontal line underneath it.

Thomas R. Sullivan
Insurance Commissioner