

**DEPARTMENT OF LABOR AND ECONOMIC GROWTH**

**OFFICE OF FINANCIAL AND INSURANCE SERVICES**

**INSURANCE POLICY FORMS - DISCRETIONARY CLAUSES**

(By authority conferred on the commissioner of the Office of Financial and Insurance Services by sections 210 and 2236 of the insurance code of 1956, 1956 PA 218, 1969 PA 306, E.R.O. No 2000-2 and E.R.O. No 2003-1; MCL 500.210, MCL 500.2236, MCL 24.231 to MCL 24.233, MCL 445.2003, and MCL 445.2011)

**R 500.2201 Definitions.**

Rule 1. As used in these rules:

(a) "Appeal" means an appeal by a policyholder or other claimant of a claim denial by an insurer. 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 insurer'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 policyholder or other claimant may not appeal a denial of a claim.

(ii) Provides that the insurer's decision to deny policy coverage is binding upon a policyholder or other claimant.

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

(iv) Provides that the insurer's interpretation of the terms of a form is binding upon a policyholder or other claimant.

(v) Provides that on appeal the insurer'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 form identified in MCL 500.2236(1).

(e) Terms defined in the insurance code of 1956, 1956 PA 218, MCL 500.100 to MCL 500.8302, have the same meanings when used in these rules.

History: 2007 AACS.

**R 500.2202 Discretionary Clauses Prohibited.**

Rule 2. (a) A discretionary clause unreasonably reduces the risk purported to be assumed in the general coverage of the policy within the meaning of MCL 500.2236(5).

(b) On and after the first day of the first month following the effective date of these rules, an insurer 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 2236 to disapprove or withdraw approval of any form that contains a discretionary clause.

(e) By the first day of the second month following the effective date of these rules, each insurer 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 an insurer has no such forms in effect, it shall submit a letter to the commissioner reporting and certifying that fact.

History: 2007 AACCS.