

ENROLLED ACT NO. 34, SENATE

SIXTIETH LEGISLATURE OF THE STATE OF WYOMING
2009 GENERAL SESSION

AN ACT relating to insurance; creating the Discretionary Clause Prohibition Act; providing definitions; specifying the purpose and intent of the act; prohibiting discretionary clauses in specified health insurance contracts; requiring disclosure and additional provisions in insurance contracts covered by the federal Employee Retirement Income Security Act; providing penalties for violations of the act; providing for severability; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 26-13-301 through 26-13-305 are created to read:

ARTICLE 3
DISCRETIONARY CLAUSE PROHIBITION ACT

26-13-301. Short title.

This act shall be known and may be cited as the "Discretionary Clause Prohibition Act."

26-13-302. Purpose and intent.

The purpose of this act is to assure that health insurance benefits not subject to the federal Employee Retirement Income Security Act are contractually guaranteed, and to avoid the conflict of interest that occurs when the carrier responsible for providing benefits has discretionary authority to decide what benefits are due. This act is also intended to assure that health insurance benefits contracts subject to the federal Employee Retirement Income Security Act which contain a discretionary clause provide appropriate disclosure of the clause and additional

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provisions to assure a fair determination of contract benefits. Nothing in this act shall be construed as imposing any requirement or duty on any person other than a health carrier.

26-13-303. Definitions.

(a) As used in this act:

(i) "Commissioner" means as defined in W.S. 26-1-102(a)(viii);

(ii) "Health care services" means services for the diagnosis, prevention, treatment, cure or relief of a health condition, illness, injury or disease;

(iii) "Health carrier" means an entity subject to the insurance laws and regulations of this state, or subject to the jurisdiction of the commissioner, that contracts or offers to contract to provide, deliver, arrange for, pay for or reimburse any of the costs of health care services, including a sickness and accident insurance company, a health maintenance organization, a nonprofit hospital and health service corporation, or any other entity providing a plan of health insurance, health benefits or health services;

(iv) "Person" means as defined in W.S. 8-1-102(a)(vi);

(v) "This act" means W.S. 26-13-301 through 26-13-305.

26-13-304. Discretionary clause prohibited.

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(a) No policy, contract, certificate or agreement offered or issued in this state by a health carrier to provide, deliver, arrange for pay for or reimburse any of the costs of health care services may contain a provision purporting to reserve discretion to the health carrier to interpret the terms of the contract, or to provide standards of interpretation or review that are inconsistent with the laws of this state. This subsection shall not apply to a policy, contract, certificate or agreement subject to and meeting the requirements of subsections (b) and (c) of this section.

(b) Any group policy, contract, certificate or agreement subject to the federal Employee Retirement Income Security Act and offered or issued in this state by a health carrier to provide, deliver, arrange for, pay for or reimburse any of the costs of health care services and which contains a provision purporting to reserve discretion to the health carrier to interpret the terms of the contract or to provide standards of interpretation or review shall contain the following language highlighted in bold in not less than twelve (12) point type:

This benefit plan contains a discretionary clause. Determinations made by (insurer name) pursuant to the discretionary clause do not prohibit or prevent a claimant from seeking judicial review in court of (insurer name's) decisions. By including this discretionary clause (insurer's name) agrees to allow a court to review its determinations anew when a claimant seeks judicial review of (insurer name's) determinations of eligibility of benefits, the payment of benefits or interpretations of the terms and conditions applicable to the benefit plan.

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(c) Any group policy, contract, certificate or agreement containing a discretionary clause as authorized in subsection (b) of this section shall contain a provision entitling any person denied benefits in whole or in part to have the determination reviewed de novo in any court with jurisdiction.

26-13-305. Penalties.

Any person who violates this act is subject to the penalty provided in W.S. 26-1-107, or as provided by any other applicable law which provides a greater penalty.

Section 2. This act is effective July 1, 2009.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the Senate.

Chief Clerk