

Chapter 9
Insurance Discrimination
(Last Updated: April 2013)

Chapter 9.A Unfair Discrimination Against Subjects of Abuse in Insurance Act

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Sections 44-7401 to 44-7410 shall be known and may be cited as the Unfair Discrimination Against Subjects of Abuse in Insurance Act.

44-7402 Terms, defined.

For purposes of the Unfair Discrimination Against Subjects of Abuse in Insurance Act:

- (1) Abuse means the occurrence of one or more of the following acts by a current or former family member or household member:
 - (a)(i) Attempting to cause or intentionally or knowingly causing another person, including a minor child, bodily injury, physical harm, rape, sexual assault, or involuntary sexual intercourse, or (ii) attempting to cause or recklessly causing another person, including a minor child, bodily injury, physical harm, severe emotional distress, or psychological trauma so as to intimidate or attempt to control the behavior of another person, including a minor child;
 - (b) Knowingly engaging in a course of conduct or repeatedly committing acts toward another person, including a minor child, including following the person or minor child without proper authority, under circumstances that place the person or minor child in reasonable fear of bodily injury or physical harm;
 - (c) Subjecting another person, including a minor child, to false imprisonment; or
 - (d) Attempting to cause or intentionally, knowingly, or recklessly causing damage to property so as to intimidate or attempt to control the behavior of another person, including a minor child;
- (2) Abuse-related claim means a claim under a policy for a loss resulting from an act of abuse;
- (3) Abuse-related medical condition means a medical condition sustained by a subject of abuse which arises in whole or in part out of an act or pattern of abuse;
- (4) Abuse status means the fact or the perception on the part of the insurer that a person is, has been, or may be a subject of abuse, irrespective of whether the person has sustained abuse-related medical conditions or incurred abuse-related claims;
- (5) Confidential abuse information means information about acts of abuse or abuse status of a subject of abuse, the address and home and work telephone number of a subject of abuse or the status of an applicant or insured as a family member, employer, or associate of, or a person in a relationship with, a subject of abuse;
- (6) Director means the Director of Insurance;

(7) Health benefit plan or plan means a policy, contract, certificate, or agreement offered by a health carrier to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services. Health benefit plan includes accident-only, credit accident and health, dental, vision, Medicare supplement, or long-term care insurance, coverage issued as a supplement to liability insurance, short-term and catastrophic health insurance policies, and a policy that pays on a cost-incurred basis. Health benefit plan does not include workers' compensation or similar insurance;

(8) Health carrier means an entity subject to the insurance laws and insurance rules and regulations of this state, or subject to the jurisdiction of the director, 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 prepaid limited health service organization, or any other entity providing a plan of health insurance, health benefits, or health services;

(9) Insured means a party named on a policy as the person with legal rights to benefits provided by such policy, except that for life insurance, insured means the person whose life is covered under the policy. For group plans and group insurance, insured includes a covered person;

(10) Insurer means a person or other legal entity engaged in the business of insurance in this state, including agents, brokers, adjusters, and third-party administrators. Insurer includes a health carrier;

(11) Policy means a contract or certificate of insurance, annuity, or indemnity, including endorsements, riders, and binders, issued, proposed for issuance, or intended for issuance in this state by an insurer. Policy includes a health benefit plan; and

(12) Subject of abuse means a person against whom an act of abuse has been directed (a) who has current or prior injuries, illnesses, or disorders that resulted from abuse or (b) who seeks, may have sought, or had reason to seek (i) medical or psychological treatment for abuse, or (ii) protection, court-ordered protection, or shelter from abuse.

44-7403 Purpose of act.

The purpose of the Unfair Discrimination Against Subjects of Abuse in Insurance Act is to prohibit unfair discrimination by insurers on the basis of abuse.

44-7404 Applicability of act.

The Unfair Discrimination Against Subjects of Abuse in Insurance Act applies to all insurers issuing, providing, delivering, arranging for, or renewing in this state any policy of insurance.

44-7405 Subject of abuse; prohibited acts.

An insurer shall not engage in an unfairly discriminatory act or practice against a subject of abuse.

44-7406 Prohibited acts and practices; enumerated; immunity.

(1) The following acts or practices by an insurer are prohibited as unfairly discriminatory:

(a) Denying, refusing to issue, renew, or reissue, canceling, or otherwise terminating, restricting, or excluding coverage on or adding a premium differential to any policy on the basis of the applicant's or insured's abuse status;

(b) Excluding or limiting coverage for losses, denying benefits, or denying a claim incurred by an insured as a result of abuse on the basis of the insured's abuse status except as otherwise permitted or required by the laws of this state relating to acts of abuse committed by a life insurance beneficiary;

(c) Terminating group health coverage for a subject of abuse because coverage was originally issued in the name of the abuser and the abuser has divorced, separated from, or lost custody of the subject of abuse, or the abuser's coverage has terminated voluntarily or involuntarily;

(d) In the case of a property and casualty insurer, (i) denying or limiting payment for a covered loss or denying a covered claim incurred as a result of abuse by a person other than a coinsured or (ii) failing to pay losses arising out of abuse to an innocent first-party claimant to the extent of such claimant's legal interest in the covered property if the loss is caused by the intentional act of an insured or using other exclusions or limitations on coverage which the director has determined unreasonably restrict the ability of subjects of abuse to be indemnified for such losses. Subdivision (1)(d) of this section does not require payment in excess of the loss or policy limits. Nothing in subdivision (1)(d) of this section shall be construed to prohibit an insurer from applying reasonable standards of proof to claims under such subdivision;

(e) When the insurer has information in its possession that clearly indicates that the applicant, insured, or claimant is a subject of abuse, disclosing or transferring by a person employed by or contracting with the insurer of confidential abuse information for any purpose or to any person, except:

(i) To a subject of abuse or a person specifically designated in writing by the subject of abuse;

(ii) To a health care provider for the direct provision of health care services;

(iii) To a licensed physician identified and designated by the subject of abuse;

(iv) When ordered by the director or a court of competent jurisdiction or otherwise required by law;

(v) When necessary for a valid business purpose to transfer information that includes confidential abuse information, confidential abuse information may be disclosed only to the following persons:

(A) A reinsurer that seeks to indemnify or indemnifies all or any part of a policy covering a subject of abuse and that cannot underwrite or satisfy its obligations under the reinsurance agreement without such disclosure;

(B) A party to a proposed or consummated sale, transfer, merger, or consolidation of all or part of the business of the insurer;

(C) Medical or claims personnel contracting with the insurer, including parent or affiliate companies of the insurer that have service agreements with the insurer, only when necessary to process an application or perform the insurer's duties under the policy or to protect the safety or privacy of a subject of abuse; and

(D) With respect to address and telephone number, an entity with whom the insurer transacts business when the business cannot be transacted without the address and telephone number;

(vi) To an attorney who needs the information to represent the insurer effectively, if the insurer notifies the attorney of its obligations under the Unfair Discrimination Against Subjects of Abuse in Insurance Act and requests that the attorney exercise due diligence to protect the confidential abuse information consistent with the attorney's obligation to represent the insurer;

(vii) To the policy owner or assignee, in the course of delivery of the policy, if the policy contains information about the abuse status; and

(viii) To any other entity deemed appropriate by the director; and

(f) Requesting information about acts of abuse or abuse status, or making use of such information, however obtained, except:

(i) For the limited purpose of complying with legal obligations;

(ii) When verifying a person's claim to be a subject of abuse or to have sustained an abuse-related medical condition or incurred an abuse-related claim; or

(iii) When cooperating with a subject of abuse in seeking protection from abuse or facilitating the treatment of an abuse-related medical condition.

(2) Nothing in subdivision (1)(c) of this section prohibits the health carrier from requiring the subject of abuse to provide satisfactory evidence that he or she is a subject of abuse, from requiring the subject of abuse to pay the full premium for coverage under the health benefit plan from the date of termination of the group coverage forward, or from requiring as a condition of coverage that the subject of abuse reside or work within its service area, if the requirements are applied to all insureds of the health carrier. The subject of abuse shall make application for the continuation coverage required by subdivision (1)(c) of this section within sixty days after termination of the group coverage. Any continuation coverage required by subdivision (1)(c) of this section shall cease upon termination of the underlying group coverage. The health carrier may terminate the continuation coverage required by subdivision (1)(c) of this section after it has been in force for eighteen months, if the health carrier offers conversion to an equivalent individual plan. The continuation coverage required by subdivision (1)(c) of this section shall be satisfied by coverage required under 29 U.S.C. 1161 et seq. provided to a subject of abuse and is not intended to be in addition to coverage provided under 29 U.S.C. 1161 et seq.

(3) Subdivision (1)(e) of this section does not preclude a subject of abuse from obtaining his or her insurance records.

(4) A subject of abuse may provide evidence of abuse to a health carrier for the limited purpose of facilitating treatment of an abuse-related medical condition or demonstrating that a medical condition is abuse-related, and this section does not authorize the health carrier to disregard that information.

(5) This section does not prohibit a life insurer from declining to issue a life insurance policy if the applicant or prospective owner of the policy is or would be designated as a beneficiary of the policy, and if:

(a) The applicant or prospective owner of the policy lacks an insurable interest in the prospective insured;

(b) The applicant or prospective owner of the policy is known, on the basis of medical, police, or court records, to have committed an act of abuse against the prospective insured; or

(c) The insured or prospective insured is a subject of abuse, and that person, or a person who has assumed the care of that person if a minor or incapacitated, has objected to the issuance of the policy on the ground that the policy would be issued to or for the direct or indirect benefit of the abuser.

(6) This section does not prohibit a property and casualty insurer from denying a property claim when the damage or loss is the result of intentional conduct by a named insured

who commits an act of abuse, except that the property and casualty insurer shall make payment on such a claim to an innocent coinsured subject of abuse to the extent of the innocent coinsured's interest in the property and within the limits of coverage when the damage or loss was proximately related to and in furtherance of abuse. A property and casualty insurer paying such a claim shall be subrogated to the rights of the innocent coinsured subject of abuse to recover for any damages paid by the insurance.

(7) This section does not prohibit an insurer from asking an applicant or insured about a medical condition or a claim or from using information thereby obtained to underwrite or to evaluate and carry out its rights and duties under the policy, even if the information is related to a medical condition or claim that the insurer knows or has reason to know is abuse-related, to the extent otherwise permitted under the act and other applicable law.

(8) An insurer shall not be held civilly or criminally liable for the death of or injury to an insured resulting from any action taken in a good faith effort to comply with the requirements of the act. However, this subsection does not prevent an action by the director to investigate or enforce a violation of the act or to assert any other claims authorized by law.

(9) An insurer shall not be liable for a violation of the act by a person who is a contractor with the insurer unless the insurer directed the act, practice, or omission that constitutes the violation.

44-7407 Adverse effect on subject of abuse; explanation required.

An insurer that takes an action that adversely affects a subject of abuse on the basis of a medical condition or on the basis of claims history or other underwriting information that the insurer knows or has reason to know is abuse-related shall explain the reason for its action to the applicant or insured in writing and shall be able to demonstrate that its action, and any applicable policy provision:

- (1) Does not treat abuse status as a medical condition or underwriting criterion;
- (2) Is otherwise permissible by law and applies in the same manner and to the same extent to all applicants and insureds with a similar medical condition or a similar claim or claims history without regard to whether the condition is or the claims are abuse-related; and
- (3) Except for claims actions, is based on a determination, made in conformance with sound actuarial principles or otherwise supported by actual or reasonably anticipated experience, that there is a correlation between the medical condition and a material increase in insurance risk.

44-7408 Violation of act; unfair trade practice.

In addition to any other remedies available under the laws of this state, each violation of the Unfair Discrimination Against Subjects of Abuse in Insurance Act and any rules and regulations adopted and promulgated thereunder shall be an unfair trade practice in the business of insurance subject to the Unfair Insurance Trade Practices Act.

44-7409 Rules and regulations.

The director may adopt and promulgate rules and regulations to carry out the Unfair Discrimination Against Subjects of Abuse in Insurance Act.

44-7410 Applicability to actions on or after July 15, 1998.

The Unfair Discrimination Against Subjects of Abuse in Insurance Act applies to all actions taken on or after July 15, 1998, except as otherwise explicitly stated. Nothing in the act shall require an insurer to conduct a comprehensive search of its contract files existing on July 15, 1998, solely to determine which applicants or insureds are subjects of abuse.