

# **COLORADO DEPARTMENT OF REGULATORY AGENCIES**

## **Division of Insurance**

### **3 CCR 702-4**

#### **LIFE ACCIDENT AND HEALTH**

##### **New Regulation 4-2-62**

##### **CONCERNING INSURANCE UNFAIR PRACTICES ACT PROHIBITIONS ON DISCRIMINATION BASED UPON SEXUAL ORIENTATION OR GENDER IDENTITY**

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##### **Section 1 Authority**

This regulation is promulgated and adopted by the Commissioner of Insurance under the authority of §§ 10-1-109, 10-3-1110, and 10-16-109, C.R.S.

##### **Section 2 Scope and Purpose**

The purpose of this regulation is to establish requirements to ensure compliance with the prohibitions on discrimination in health coverage based upon an individual's sexual orientation. Such discrimination shall be considered an unfair method of competition and an unfair or deceptive act or practice in the business of insurance as found at § 10-3-1104(1)(f), C.R.S.

##### **Section 3 Applicability**

The provisions of this regulation shall apply to all carriers that market policies of sickness and accident insurance and/or health coverage plans in the state of Colorado.

##### **Section 4 Definitions**

- A. "Carrier" shall have the same meaning as found at § 10-16-102(8), C.R.S., and shall, for the purposes of this regulation, include a pharmacy benefit management firm contracted by a carrier.
- B. "Policy" means, for the purpose of this regulation, both a health coverage plan, as defined at § 10-16-102(34), C.R.S., and a policy of sickness and accident insurance, as defined at § 10-16-102(50), C.R.S.
- C. "Sexual orientation" shall have the same meaning as found at § 2-4-401(13.5), C.R.S.

##### **Section 5 Rules**

- A. Carriers shall not engage in unfair discrimination due to sexual orientation or gender identity between individuals of the same class in:
  - 1. The amount of premium charged for any policy of sickness and accident insurance or health coverage plan;
  - 2. The amount of any policy fees, or rates charged for any policy of sickness and accident insurance or health coverage plan;
  - 3. The benefits payable under such policy;
  - 4. The terms or conditions of the policy; and
  - 5. Any other manner that may be perceived as discriminatory.
- B. Carriers shall not inquire about or make an investigation concerning, directly or indirectly, an applicant's, a proposed insured, or a beneficiary's sexual orientation or gender identity in an application for coverage.
- C. Carriers shall not use information about gender, marital status, medical history, or occupation to determine sexual orientation or gender identity.
- D. Carriers shall not use sexual orientation or gender identity in the underwriting process or when making a determination of insurability.
- E. Carriers are prohibited from denying, canceling, limiting, or refusing to issue or renew a policy because of a person's sexual orientation or gender identity. A carrier shall not:
  - 1. Impose any differential in premium rates or charges with regard to an applicant or covered person's sexual orientation or gender identity;
  - 2. Designate an individual's sexual orientation or gender identity as a pre-existing condition for the purpose of denying or limiting coverage; and
  - 3. Deny, exclude, or otherwise limit coverage for medically necessary services, in accordance with generally accepted professional standards of care, based upon a person's sexual orientation or gender identity.
- F. The violation of any of the provisions in Section 5.A. through E. shall be considered unfair discrimination, an unfair method of competition and an unfair or deceptive act or practice in the business of insurance, pursuant to § 10-3-1104(1)(f), C.R.S.

## **Section 6 Severability**

If any provision of this regulation or the application of it to any person or circumstance is for any reason held to be invalid, the remainder of this regulation shall not be affected.

## **Section 7 Enforcement**

Noncompliance with this regulation may result in the imposition of any of the sanctions made available in the Colorado statutes pertaining to the business of insurance, or other laws, which include the imposition of civil penalties, issuance of cease and desist orders, and/or suspensions or revocation of license, subject to the requirements of due process.

## **Section 8 Effective Date**

This regulation shall become effective on April 1, 2019.

**Section 9      History**

New regulation effective April 1, 2019.