

**Government of the District of Columbia**  
**Department of Insurance, Securities and Banking**



**William P. White**  
**Commissioner**

**NOTICE**

**TO:** Insurers and Health Maintenance Organizations Licensed to Do Business in the District of Columbia

**RE:** Use of Discretionary Clauses/Language

**DATE:** June 14, 2011

**Background**

The DC Department of Insurance, Securities and Banking is monitoring complaints and reviewing form filings submitted to the District of Columbia that have discretionary clauses, which are frequently included in insurance policies, insurance applications, amendments/endorsements 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 is alerting Insurers, Health Maintenance Organizations and Consumers that insurance policies with situs in the District of Columbia that have such clauses will be examined to determine if any discretionary clause can be used improperly to 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 District of Columbia Statutes; and
- 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. Insurers and consumers are also reminded that they are fully subject to District of Columbia Unfair Insurance Trade Practices Law, DC Code § 31-2231.01. The Department will take action under this law if discretionary clauses are misused by any insurer or Health Maintenance Organization.

**Policy Forms Review**

The Department does prohibit Sole Discretionary language and other types of Discretionary Clauses in policy forms, and will request changes to the policy form. All lines of insurance will be monitored for such practice and usage of Discretionary language or clauses. Use of such language could cause delay or rejection in the form filing process.

**Questions**

Questions may be directed to the DC Department of Insurance, Securities and Banking, Insurance Products, Forms and Analysis Branch. Please contact Life/Annuities (202-442-7796), Property and Casualty (202-442-7798) and Accident and Health (202-442-7797).