

Dear Senators ANDREASON, Coiner & Werk, and
Representatives BLACK, Henderson & Elaine Smith:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the Idaho Dept.of Insurance: IDAPA 18.01.29 - Restrictions on Discretionary Clauses & Maximum Benefit Limits in Health Insurance Contracts (Docket #18-0129-0801) - New Chapter.

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative Services. The final date to call a meeting on the enclosed rules is no later than 7-11-08. If a meeting is called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis from Legislative Services. The final date to hold a meeting on the enclosed rules is 8-8-08.

_____The germane joint subcommittee may request a statement of economic impact with respect to a proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement, and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has been held.

To notify Research and Legislation, call 334-2475, or send a written request to the address or FAX number indicated on the memorandum enclosed.

MEMORANDUM

TO: Subcommittees for Administrative Rules Review of the Senate Commerce and Human Resources Committee and the House Business Committee

FROM: Eric Milstead, Principal Research Analyst

DATE: June 17, 2008

SUBJECT: Idaho Department of Insurance - IDAPA 18.01.29 (Docket No. 18-0129-0801)

The Idaho Department of Insurance has submitted notice of temporary and proposed rulemaking at IDAPA 18.01.29 -- Restrictions on Discretionary Clauses and Maximum Benefit Limits in Health Insurance Contracts. According to the Department, negotiated rulemaking was not conducted because an advance draft of the rule was circulated to the trade organization representing health insurers doing business in Idaho and the comments from insurers were taken into consideration in finalizing the proposed rule. The proposed rule is applicable to every health insurance contract that is issued or renewed on or after May 1, 2009. (See Proposed Rule, Section 013.01.)

Principally, the temporary and proposed rule implements the following two provisions:

- Defines and prohibits the use of discretionary clauses in health insurance contracts. Discretionary clauses are language in insurance contracts that purport to give the insurer the sole discretion to determine an insured's eligibility for benefits under the insurance contract or to interpret the terms and provisions of the health insurance contract. (See Proposed Rule, Sections 010.02 and 011.01.) The proposed rule also requires that each health carrier transacting insurance in Idaho file with the director a list of all health insurance contracts in effect that contain discretionary clauses.
- Prohibits insurers from reducing the lifetime maximum benefit available under a health insurance contract by amounts paid under a separate health insurance contract. Specifically, the proposed rule states that a health insurance contract

that imposes a limitation on the maximum amount of benefits that may be paid under the contract shall not take into consideration benefits paid to the covered person under a separate health insurance contract for the purpose of determining whether the maximum benefit limit has been met. The proposed rule also defines “separate health insurance contracts.” (See Proposed Rule, Sections 012.01 and 012.02.)

The proposed rule appears to be within the authority granted to the Department under Sections 41-211, 41-1302, and 41-1813, Idaho Code.

cc: William W. Deal, Director
& Shad Priest

IDAPA 18 - DEPARTMENT OF INSURANCE

18.01.29 - RESTRICTIONS ON DISCRETIONARY CLAUSES AND MAXIMUM BENEFIT LIMITS IN HEALTH INSURANCE CONTRACTS

DOCKET NO. 18-0129-0801 (NEW CHAPTER)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 41-211 and Title 41, Chapters 13 and 18, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 16, 2008.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The proposed rule defines and prohibits the use of discretionary clauses in health insurance contracts and prohibits insurers from reducing the lifetime maximum benefit available under a health insurance contract by amounts paid under a separate health insurance contract. Discretionary clauses are clauses in insurance contracts that purport to give the insurer the sole discretion to determine an insured's eligibility for benefits under the insurance contract.

FEE SUMMARY: The following is a descriptive summary of the fee or charge being imposed or increased: The rule does not impose or increase a fee.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: No fiscal impact.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because an advance draft of the rule was circulated to the trade organization representing health insurers doing business in Idaho and the resulting comments from insurers were taken into consideration in preparing the proposed rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Shad Priest, 208-334-4214.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 23, 2008.

DATED this 29th day of May, 2008.

William W. Deal, Director
Idaho Department of Insurance
700 West State Street, 3rd Floor
Boise, Idaho 83720-0043
Phone: (208) 334-4250
Fax: (208) 334-4398

THE FOLLOWING IS THE TEXT OF DOCKET NO. 18-0129-0801

**IDAPA 18
TITLE 01
CHAPTER 29**

**18.01.29 - RESTRICTIONS ON DISCRETIONARY CLAUSES AND MAXIMUM
BENEFIT LIMITS IN HEALTH INSURANCE CONTRACTS**

000. LEGAL AUTHORITY.

This rule is promulgated and adopted pursuant to the authority vested in the director under Title 41, Chapters 2, 13 and 18, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. This rule shall be cited in full as Idaho Department of Insurance Rule IDAPA 18.01.29, "Restrictions on Discretionary Clauses and Maximum Benefit Limits in Health Insurance Contracts". ()

02. Scope. This rule sets forth uniform requirements regarding the use of discretionary clauses and maximum benefit limitations to be followed by health carriers transacting insurance in Idaho. ()

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretation of the rules of the chapter, or to the documentation of compliance with the rules of this chapter. These documents will be available for public inspection and copying, at cost, in the main office and each regional or district office of this agency. ()

003. ADMINISTRATIVE APPEALS.

All administrative appeals shall be governed by Title 41, Chapter 2, Idaho Code, the Idaho Administrative Procedure Act, Title 67, Chapter 52, Idaho Code, and IDAPA 04.11.01, Idaho Rules of Administrative Procedure of the Attorney General -- General Provisions. ()

004. INCORPORATION BY REFERENCE.

No documents are incorporated by reference. ()

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS, STREET ADDRESS AND WEB SITE.

01. Office Hours. The Department of Insurance is open from 8 a.m. to 5 p.m. except Saturday, Sunday and legal holidays. ()

02. Mailing Address. The department's mailing address is: Idaho Department of Insurance, P.O. Box 83720, Boise, ID 83720-0043. ()

03. Street Address. The principal place of business is 700 West State Street, 3rd Floor, Boise, Idaho 83720-0043. ()

04. Web Site Address. The department's web address is <http://www.doi.idaho.gov>. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

Any records associated with these rules are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. ()

007. -- 009. (RESERVED).

010. DEFINITIONS.

As used in this rule, the following terms shall have the following meanings. ()

01. Director. “Director” means the Director of the Idaho Department of Insurance. ()

02. Discretionary Clause. “Discretionary clause” means any health insurance contract provision that provides the health carrier with sole discretionary authority to determine eligibility for benefits or to interpret the terms and provisions of the health insurance contract. ()

03. Health Care Services. “Health care services” means services for the diagnosis, prevention, treatment, cure or relief of a health condition, illness, injury, or disease. ()

04. Health Carrier. “Health carrier” means an entity subject to regulation under Title 41, Chapters 21, 22, 32, 34, 39, 40, 41, 47, 52 or 55, Idaho Code. ()

05. Health Insurance Contract. “Health insurance contract” means any policy, contract, certificate, agreement, or other form or document providing, defining, or explaining coverage for health care services that is offered, delivered, issued for delivery, continued, or renewed in this state by a health carrier. ()

011. DISCRETIONARY CLAUSES.

01. Discretionary Clauses Prohibited. No health insurance contract may contain a discretionary clause. ()

02. Required Filing. By the first day of the second month following the effective date of this rule, each health carrier transacting insurance in this state shall submit to the director a list of all health insurance contracts in effect in Idaho that contain discretionary clauses and shall submit a certification that the list is complete and accurate. If a health carrier has no health insurance contracts in effect, the health carrier shall submit a letter to the director reporting and certifying that fact. ()

012. MAXIMUM BENEFIT LIMITS.

01. Limitation of Benefits. A health insurance contract that imposes a limitation on the maximum amount of benefits that may be paid under the health insurance contract shall not take into consideration benefits paid to or on behalf of the covered person under a separate health insurance contract for the purpose of determining whether the maximum benefit limit has been met. ()

02. Separate Health Insurance Contracts. For the purposes of Section 012, the following shall not be considered a separate health insurance contract when there is no change in the health carrier providing the health insurance contract: ()

a. A renewal, continuation or replacement of an individual health insurance contract where renewal, continuation or replacement is at the request of the insured and the insurer is prohibited by contract or by law from imposing underwriting criteria whereby coverage of a person currently insured could be cancelled, nonrenewed or denied in whole or in part because of the person’s age, health, or medical or claims history; ()

b. Moving from one health insurance contract within a multiple employer welfare arrangement as defined in Section 41-4002, Idaho Code, to another health insurance contract within the same multiple employer welfare arrangement; or ()

c. A change in group benefits or product under an employer-sponsored health insurance contract offered through the same employer. ()

013. EFFECTIVE DATE; EXISTING CONTRACTS; GROUNDS FOR DISAPPROVAL.

01. Effective Date of Rule. This rule is applicable to every health insurance contract that is issued or renewed on or after May 1, 2009. ()

02. Contract Compliance. A health insurance contract that was issued before the effective date of this rule shall be brought into compliance with this rule by the anniversary date or renewal date of the plan following the effective date of this rule. ()

03. Grounds for Disapproval. Any health insurance contract containing terms inconsistent with the provisions of this rule is misleading, inequitable and unfairly prejudicial to the policyholder and the insurance-buying public. In addition to any other sanction or remedy afforded by Title 41, Idaho Code, the use of provisions inconsistent with this rule in a health insurance contract shall be grounds for the director to disapprove the health insurance contract in accordance with Section 41-1813, Idaho Code. ()

014. -- 999. (RESERVED).