



Victory for Texas Consumers in Health Insurance Rule Change

Written On December 8, 2010 By [Bob Kraft](#)

In an important and increasingly rare victory for Texas consumers, the Insurance Commissioner, Mike Geeslin, has declared that insurance companies can no longer use “discretionary clauses” in certain policies. This new rule will apply to life, disability, and health insurance, but not to automobile liability insurance.

A discretionary clause essentially gives an insurance company the right to unilaterally decide what the policy covers, and therefore what benefits, if any, should be paid. What this has meant in the past is that regardless of what the insurance agent told you when you bought the policy, and regardless of what seemed to be clear language in the policy, when you filed for benefits you might simply be told that the insurance is not going to pay.

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Mr. Geeslin, in announcing the rule change, said that the discretionary powers of companies “are unjust, encourage misrepresentation and are deceptive because they mislead consumers regarding the terms of coverage” in their policies. The new rule, according to the commissioner, will shield Texas consumers from “incorrect and unfair coverage determinations by insurers and HMOs without a subsequent opportunity for a full and independent review” of their claims. Policy holders now will be able to challenge unfair denials of benefits, either by complaining to state regulators or by filing suits against the insurance companies.

Here is a press release from the Office of Public Insurance Counsel, which pressed for the rule change:

Insurance Commissioner Adopts OPIC’s Rules Prohibiting Discretionary Clauses in Insurance Policies

The Texas Commissioner of Insurance adopted three rules proposed by the Office of Public Insurance Counsel prohibiting discretionary clauses in insurance policies on Friday. Discretionary clauses are contract provisions that provide insurers with sole discretion in deciding if, when, and what benefits are due under the insurance policy. The existence of these provisions alters the way courts review insurer’s decisions on appeal, and make meaningful reviews of an insurer’s decision virtually impossible. In prohibiting discretionary

clauses Commissioner Geeslin wrote [d]iscretionary clauses are unjust, encourage misrepresentation, and are deceptive because they mislead consumers regarding the terms of coverage.”

Public Counsel Deeia Beck said that her agency proposed these rules to “assure that health and life insurance benefits 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.” Members of the Texas Legislature, the American Association of Retired Persons, the Texas Medical Association, the National Multiple Sclerosis Society, the Center for Public Policy Priorities and many others were instrumental in getting the new rules adopted. Ms. Beck said, “It was a privilege and honor to work with these fine people to ensure that Texans will receive the full benefit of the insurance coverage they purchase. I greatly appreciate Commissioner Geeslin’s hard work and decisiveness in adopting these strong rules.”

The new rules take effect on February 1, 2011 for some types of disability insurance, and June 1, 2011 for all other forms of health, life, and disability insurance policies issued in Texas. Twenty-three states

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and the National Association of Insurance Commissioners have now adopted statutes, rules, or policies prohibiting discretionary clauses.

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