

## **DEPARTMENT OF INSURANCE**

Statutory Authority: 18 Delaware Code, Section 311 (18 Del.C. §311)  
18 DE Admin. Code 1217

### **FINAL**

### **ORDER**

Proposed Regulation 1217 relating to unfair discrimination in life insurance, annuities and health insurance on the basis of physical or mental impairment was published in the Delaware *Register of Regulations* on July 1, 2007. The comment period remained open until August 6, 2007. There was no public hearing on proposed Regulation 1217. Public notice of the proposed Regulation 1217 in the *Register of Regulations* and two newspapers of general circulation was in conformity with Delaware law.

### **Summary of the Evidence and Information Submitted**

Public comment was received from the Governor's Advisory Council For Exceptional Citizens ("Council") and from the American Council of Life Insurers ("ACLI"). The Council suggested that since the proposed regulation covers three areas of insurance, governed by two separate chapters of Title 18, there should be two regulations. The Council also notes that allowing insurers to refuse coverage based on "actual or reasonably anticipated experience" may violate Section 2316 of Title 18 which prohibits such a standard in cases involving blindness or deafness. Finally, the Council questions the use of the words "related to" as too broad and raises a concern that permitting the use of "data" could give rise to the use of genetic information.

ACLI observes that the regulation is identical to the Model Regulation on the same subject, with the exception of the regulation's failure to use the phrase "on sound actuarial principles". The ACLI suggests uniformity is critical when states use model regulations and proposes the regulation be changed to include the deleted phrase.

### **Findings of Fact**

Based on Delaware law and the record in this docket, I make the following findings of fact:

1. It is in the public interest that discrimination on the basis of mental or physical impairment be prohibited in life insurance, annuities, and health insurance and that such acts or practices be identified.
2. In order to be consistent with other states in the National Association of Insurance Commissioners, it is appropriate to adopt the Model Regulation, modified to conform with Delaware law.
3. The proposed regulation meets the requirements of and is not in conflict with Delaware law.

### **Decision and Effective Date**

Based on the provisions of 18 Del.C. §§311(a) and the record in this docket, I hereby adopt Regulation 1217 and as may more fully and at large appear in the version attached hereto to be effective on February 11, 2008.

### **Text and Citation**

IT IS SO ORDERED this     day of January 2008.

Matthew Denn, Insurance Commissioner

**1217 Unfair Discrimination in Life Insurance, Annuities and Health Insurance on the Basis of Physical or Mental Impairment**

**1.0 Authority**

1.1 This regulation is promulgated pursuant to the authority granted by 18 Del.C. §§311, 2312 and 29 Del.C. Chapter 101.

**2.0 Purpose**

2.1 The purpose of this regulation is to identify specific acts or practices in life insurance, annuities, and health insurance which are prohibited by 18 Del.C. §2304(13).

**3.0 Unfairly Discriminatory Acts or Practices**

3.1 The following are hereby identified as acts or practices in life and health insurance and annuities which constitute unfair discrimination between individuals of the same class: Refusing to insure, or refusing to continue to insure, or limiting the amount, extent or kind of coverage available to an individual, or charging a different rate for the same coverage solely because of a physical or mental impairment, except where the refusal, limitation or rate differential is based on [sound actuarial principles or is related to] actual or reasonably anticipated experience.

**4.0 Effective Date**

4.1 This regulation shall become effective October 1, 2007.

11 DE Reg. 1060 (02/01/08) (Final)