



Bulletin No. B-4.49

Insurance Unfair Practices Act Prohibitions on Discrimination Based Upon Sexual Orientation

I. Background and Purpose

The purpose of this bulletin is to provide guidance about the anti-discrimination provisions of state law, and particularly the application of CRS 10-3-1104, **Unfair methods of competition – unfair or deceptive acts or practices**, based on sexual orientation as defined in CRS 2-4-401(13.5).

Bulletins are the Colorado Division of Insurance's ("Division") interpretations of existing insurance law or general statements of Division policy. Bulletins themselves establish neither binding norms nor finally determine issues or rights.

II. Applicability and Scope

This bulletin is intended for carriers, consumers and health service providers to advise them of the prohibitions in Colorado law on discrimination in health coverage based on an individual's sexual orientation as defined in CRS 2-4-401(13.5) and including heterosexuality, homosexuality, bisexuality, and transgender status.

III. Division Position

Colorado law defines "sexual orientation" as "a person's orientation toward heterosexuality, homosexuality, bisexuality, or transgender status or another person's perception thereof" and such definition applies to every statute. CRS 2-4-401(13.5).

Existing law CRS 10-3-1104(1)(f)(III) defines as an unfair method of competition and unfair or deceptive act or practice in the business of insurance, the "making or permitting to be made any classification solely on the basis of marital status or sex, unless such classification is for the purpose of insuring family units or is justified by actuarial statistics." CRS 10-3-1104(1)(f)(VI) prohibits "inquiring about or making an investigation concerning, directly or indirectly, an applicant's, an insured's, or a beneficiary's sexual orientation in: (A) An application for coverage." Further, CRS 10-3-1104(1)(f)(VII) prohibits "using information about gender, marital status, medical history, occupation, . . . to determine sexual orientation" and CRS 10-3-1104(1)(f)(VIII) further prohibits use of sexual orientation in the underwriting process or determination of insurability. Finally, CRS 10-3-1104(1)(f)(XIII) prohibits any unfair discrimination "between individuals of the same class . . . in the amount of premium, policy fees, or rates charged for any policy of sickness and accident insurance, in the benefits payable under such policy, in the terms or conditions of the policy, or in any other manner."

The Division interprets the above provisions of law to prohibit the denial, cancellation, limitation, or refusal to issue or renew health coverage because of a person's sexual orientation. For purposes of applying these provisions, based on a person's sexual orientation, a carrier may not:

- impose any differential in premium rates or charges with regard to an applicant or covered person's sexual orientation;

- designate an individual's sexual orientation as a pre-existing condition for the purpose of denying or limiting coverage;
- deny, exclude, or otherwise limit coverage for medically necessary services, as determined by an individual's medical provider, if the item or service would be provided based on current standards of care to another individual without regard to their sexual orientation.

Provisions of other laws about the procedures and processes for appeal and review of denials of coverage, benefits or adverse determination apply. The Division interprets that the provisions of CRS 10-16-113 and 113.5 and Insurance Regulations 4-2-17 and 4-2-21 would govern the appeal of any denial of coverage or benefits or adverse determination on the grounds of utilization review or medical necessity.

IV. Additional Division Resources

A. For More Information

Colorado Division of Insurance
 Consumer Affairs
 1560 Broadway, Suite 850
 Denver, CO 80202
 Tel. 303-894-7499
 Internet: <http://www.dora.state.co.us/insurance>

B. Related Division Regulations

V. History

- Issued March 18, 2013