Chart Of Discretionary Bans

Attachment A to A Deep Dive Into State Discretionary Bans, PLUS De Novo Review
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State	Discretionary Ban	Effective Date
Alabama	None.	
Alaska	The director shall disapprove a form filed under AS 21.42.120 or withdraw a previous approval of the form only if the form (1) is in any respect in violation of or does not comply with this title; **(2) contains or incorporates by reference, where incorporation is permissible, an inconsistent, ambiguous, or misleading clause, or exception and condition that deceptively affects the risk purported to be assumed in the general coverage of the contract;** (3) has a title, heading, or other indication of its provisions that is misleading; (4) is printed or otherwise reproduced in a manner that renders a provision of the form substantially illegible; (5) provides benefits for Medicare supplement insurance that are unreasonable in relation to the premium charged. Alaska Stat. Ann. § 21.42.130	21.42.120: added 1966 Last am't effective date: July 1, 2009 21.42.130: added 1966 Last am't effective date: 1997
Arizona	None.	
Arkansas	The purpose of this Rule is to prohibit conflicts of interest which may arise when an insurer responsible for providing disability income benefits has discretionary authority to decide what benefits are due. Nothing in this Rule shall be construed as imposing any requirement or duty on any person other than an insurer that offers disability income protection coverage. Code Ark. R. 054.00.101-2 A. "Commissioner" means the Arkansas Insurance Commissioner. B. "Disability income protection coverage" is a policy, contract, certificate or agreement issued by an insurer subject to the insurance laws and regulations of this State, or subject to the jurisdiction of the Commissioner, that provides for periodic payments, weekly or monthly, for a specified period during the continuance of disability resulting from either sickness or injury or a combination of them. C. "Person" means an individual, a corporation, a partnership, an association, a joint venture, a joint stock company, a trust, an unincorporated organization, any similar entity or combination of the foregoing. Code Ark. R. 054.00.101-3	Adopted 1/19/2013; applies to all policies issued or renewed on and after March 1, 2013.

	A. No policy, contract, certificate or agreement offered or issued in this State providing for disability income protection coverage may contain a provision purporting to reserve discretion to the insurer to interpret the terms of the contract, or to provide standards of interpretation or review that are inconsistent with the laws of this State. Code Ark. R. 054.00.101-4 A violation of this Rule shall be subject to the same penalties and remedies authorized to be imposed against an insurer by the Commissioner under Ark. Code Ann. § 23-66-210. Code Ark. R. 054.00.101-5 If any provision of this Rule, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect other provisions or applications of this Rule which can be given effect without the invalid provision or application, and to that end the provisions of this Rule are severable. Code Ark. R. 054.00.101-6 This Rule shall apply to all disability income policies issued in this State which are issued or renewed on and after March 1, 2013. Code Ark. R. 054.00.101-7	
California	(a) If a policy, contract, certificate, or agreement offered, issued, delivered, or renewed, whether or not in California, that provides or funds life insurance or disability insurance coverage for any California resident contains a provision that reserves discretionary authority to the insurer, or an agent of the insurer, to determine eligibility for benefits or coverage, to interpret the terms of the policy, contract, certificate, or agreement, or to provide standards of interpretation or review that are inconsistent with the laws of this state, that provision is void and unenforceable. (b) For purposes of this section, "renewed" means continued in force on or after the policy's anniversary date. (c) For purposes of this section, the term "discretionary authority" means a policy provision that has the effect of conferring discretion on an insurer or other claim administrator to determine entitlement to benefits or interpret policy language that, in turn, could lead to a deferential standard of review by any reviewing court. (d) Nothing in this section prohibits an insurer from including a provision in a contract that informs an insured that as part of its routine operations the insurer applies the terms of its contracts for making decisions, including making determinations regarding eligibility, receipt of benefits and claims, or explaining policies, procedures,	Added: 2011 Effective date: Jan. 1, 2012

	and processes, so long as the provision could not give rise to a deferential standard of review by any reviewing court. (e) This section applies to both group and individual products. (f) The commissioner may adopt regulations reasonably necessary to implement the provisions of this section. (g) This section is self-executing. If a life insurance or disability insurance policy, contract, certificate, or agreement contains a provision rendered void and unenforceable by this section, the parties to the policy, contract, certificate, or agreement and the courts shall treat that provision as void and unenforceable. Cal. Ins. Code § 10110.6	
Colorado	(1) A first-party claimant as defined in section 10-3-1115 whose claim for payment of benefits has been unreasonably delayed or denied may bring an action in a district court to recover reasonable attorney fees and court costs and two times the covered benefit. (2) An insurance policy, insurance contract, or plan that is issued in this state and that offers health or disability benefits shall not contain a provision purporting to reserve discretion to the insurer, plan administrator, or claim administrator to interpret the terms of the policy, contract, or plan or to determine eligibility for benefits. If an insurance policy, contract, or plan contains such a provision, the provision is void. (3) An insurance policy, insurance contract, or plan that is issued in this state shall provide that a person who claims health, life, or disability benefits, whose claim has been denied in whole or in part, and who has exhausted the person's administrative remedies: (a) Is entitled to have the person's claim reviewed de novo in any court with jurisdiction; and (b) Is entitled to a trial by jury. (4) The action authorized in this section is in addition to, and does not limit or affect, other actions available by statute or common law, now or in the future. Damages awarded pursuant to this section shall not be recoverable in any other action or claim. (5) If the court finds that an action brought pursuant to this section was frivolous as provided in article 17 of title 13, C.R.S., the court shall award costs and attorney fees to the defendant in the action. (6) If any provision of this section, or of any subsection or portion of this section, or its application to any person or circumstance is held illegal, invalid, or unenforceable, no other provisions or applications of this section shall be affected that can be given effect without the illegal, invalid, or unenforceable provision or application, and to this end the provisions of this section are severable. (7) The general assembly declares that this section is a law regulating insurance. (8) As used in this section, "issued in this state" refers to every health and disability insurance policy, insurance contract, insurance certificate, and insurance agreement existing, offered, issued, delivered, or renewed in the state of Colorado or providing health or disability benefits to a resident or domiciliary of the state of Colorado and every employee benefit plan covering a resident or domiciliary of the state of Colorado, whether or not on	Amended: Sept. 23, 2020. Retroactive Eff. Date: August 5, 2008 Added: 2008 Eff. Date: Aug. 5, 2008

	behalf of an employer located or domiciled in Colorado, on or after August 5, 2008, notwithstanding any contractual or statutory choice-of-law provision to the contrary. Colo. Rev. Stat. Ann. § 10-3-1116.	
Connecticut	DEPARTMENT POSITION The Department wants to remind health insurers and health care centers writing individual and group health insurance coverage in Connecticut that such clauses cannot be used to improperly 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 Section 38a- 478n of the Connecticut General Statutes; (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. Health insurers and health care centers are also reminded that they are fully subject to Connecticut's unfair insurance practices laws (Sections 38a-815 through Section 38a-819, Connecticut General Statutes), and the Department will take action under these laws if discretionary clauses are misused by a health insurer or health care center. POLICY FORMS The Department does not prohibit this language in policy forms, but the Department will monitor through its Consumer Services and Market Conduct Divisions any inappropriate use of this language in claims handling by health insurers or health care centers. Health Care Bulletin HC-67, 2008 WL 754875 (CT INS BUL)	March 19, 2008 (date of the Bulletin)
Delaware	None.	
D.C.	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: Department Position 1) the right to appeal to the insurer or health care center under contract terms;	6/14/11

	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**. 6/14/11 Notice to Insurers and HMOs licensed to do business in the District of Columbia.	
Florida	None.	
Georgia	None.	
Hawaii	Hawaii Revised Statutes §431:13-102 prohibits unfair methods of competition or unfair or deceptive acts or practices in the business of insurance. A "discretionary clause" granting to a plan administrator discretionary authority so as to deprive the insured of a de novo appeal is an unfair or deceptive act or practice in the business of insurance and may not be used in health insurance contracts or plans in Hawaii. This decision is based upon the rationale underlying NAIC Model Act 42 – to "assure that health insurance benefits are contractually guaranteed, and to avoid the conflict of interest that occurs when the health carrier has unfettered authority to decide what benefits are due." It is also based upon the position taken by the Utah Insurance Commissioner that such clauses are "inequitable, misleading, deceptive, obscure, unfair, not in the public interest, and otherwise contrary to law, and they encourage misrepresentation and violate a statute." Commissioner's Memorandum 2004-13H (Dec. 8, 2004)	431:13-102 Added 1987 Comm. Memorandum date is Dec. 8, 2004

Idaho	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. Idaho Admin. Code r. 18.01.29.011	Final rule date: May 8, 2009
Illinois	No policy, contract, certificate, endorsement, rider application or agreement offered or issued in this State, by a health carrier, to provide, deliver, arrange for, pay for or reimburse any of the costs of health care services or of a disability may contain a provision purporting to reserve discretion to the health carrier to interpret the terms of the contract, or to provide standards of interpretation or review that are inconsistent with the laws of this State. Ill. Admin. Code tit. 50, § 2001.3 It has come to the attention of the Department that, with respect to insurance policies originally issued before the July 1, 2005 effective date of the regulation, certain insurers continue to exercise discretionary clauses against their policyholders. Typically this is done under the theory that the regulation has no retroactive application. Such conduct does not comply with the law in that it does not properly take into account the renewal of the policy. Policies offering accident, health and disability benefits typically are renewed annually. The Department's regulation prohibiting discretionary clauses was adopted five years ago next month. It is therefore unlikely that there are any policies in existence that have not been either renewed or issued subsequent to the effective date of the regulation. Illinois case law requires that statutory provisions in effect at the time of issuance or renewal are incorporated into the policy: When an insurance policy is issued or renewed, applicable statutory provisions in effect at the time are treated as part of the policy. EIPERT V. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,189 Ill.App.3d 630, 637, 545 N.E.2d 497, 501 (1st Dist. 5th Div. 1989). It is clearly the law of this State that a contract of annually renewable insurance forms a new contract at each renewal for the purpose of incorporating into the contract statutory provisions enacted after the creation of the original contract relationship. THIEME V. UNION LABOR LIFE INSURANCE COMPANY, 12 Ill.App.2d 110, 115, 138	Title 50 sec. 2001.3: Eff. Date: July 1, 2005 Bulletin 2010-5 issued on June 28, 2010

	N.E.2d 857, 860 (1st Dist. 2nd Div. 1956). Correspondingly, whatever version of the applicable statutory provisions is in force when the policy is issued or renewed determines any questions arising under that policy and is normally controlling throughout the policy's term. BOYD V. MADISON MUTUAL INSURANCE CO., 146 Ill.App.3d 420, 425, 496 N.E.2d 555,558 (5 TH Dist. 1986). This rule of law requiring incorporation of existing statutes into the policy upon issuance or renewal also applies to administrative rules and regulations. Administrative rules and regulations have the force and effect of law, and must be construed under the same standards which govern the construction of statutes. PEOPLE V. EX REL. MADIGAN V. ILLINOIS COMMERCE COMMISSION, 231 Ill.2d 370, 380, 899 N.E.2d 227, 232 (2008). Similarly, it has long been held that administrative rules have the force of statute. WILLIAMS V. NEW YORK CENTRAL R. COMPANY, 402 Ill. 494, 501, 84 N.E.2d 399, 403 (1949). Since insurance policies are deemed to incorporate statutory provisions in force when the policy is issued or renewed, and administrative rules have the force of statute and are governed by the same standards of construction, issuance or renewal of an insurance policy also incorporates into the policy administrative rules and regulations in force at the time the policy is issued or renewed. The regulation prohibiting discretionary clauses is accordingly applicable to all currently issued and outstanding accident, health, and disability insurance policies in that all such policies will have either been issued or renewed since the effective date of the regulation. Insurers who do not comply with the absolute prohibition on discretionary clauses contained in 50 Ill. Admin. Code 2001.3 will be held accountable and subject to regulatory action. Bulletin 2010-5, 2010 WL 2609380 (IL INS BUL)	
Indiana	The Department finds, however, that in group accident and sickness insurance policies governed by state law, these provisions are inequitable and deceptive, and tend to mislead consumers. Under state law, an insurance policy is subject to the same rules of interpretation and construction as other contracts, and where the policy is ambiguous or silent, it is construed by courts against the company that drafts it. Meridian Mutual Insurance Co. v. Cox, 541 N.E. 2d 959 (Ind. App. 1989), transfer denied. These provisions could lead consumers and companies to believe that the company has the last word on whether benefits will be paid, regardless of other terms in the contract, and contrary to the right of the insured group to have a court interpret the contract. To the extent that insurers wish to include such language in policies issued to employee benefit plans, they may include a statement substantially similar to the following: 'This provision applies only where the interpretation of this Policy is governed by the Employee Retirement Income Security Act (ERISA), 29 U.S.C. 1001 et seq.' Otherwise, forms including a full and final discretion clause will be subject to objection and disapproval by the Department of Insurance under Ind. Code §27-8-5-1.	Bulletin 103 issued on May 8, 2001 27-8-5-1: Added 1953 Last am't 2013, eff July 1, 2013

	Bulletin 103, 2001 WL 35670606 (IN INS BUL)	
Iowa	None.	
Kansas	None.	
Kentucky	KRS 304.14-130(1)(b) instructs the Department to disapprove any form filed if the form 'contains or incorporates by reference...any inconsistent, ambiguous, or misleading clauses, or exceptions and conditions which deceptively affect the risk purported to be assumed in the general coverage of the contract.' **Discretionary clauses by their nature alter the risk and terms of the agreement by allowing the insurer to have final authority to interpret and construe the eligibility and benefits under the contract. It is the Department's position that discretionary clauses deceptively affect the risk purported to be assumed in any policy and as such, any forms containing discretionary clauses may be disapproved.** Advisory Opinion 2010-1, 2010 WL 798041 (KY INS BUL)	304.14-130: Added 1970 - repealed Added 1990, eff. Date: July 13,1990 Last am't: 2010, eff. July 15, 2010 Adv. Opinion 2010-1 issued March 9, 2010
Louisiana	None.	
Maine	A group health insurance policy, contract or certificate, including, but not limited to, a group disability income insurance policy, contract or certificate, may not contain a provision purporting to reserve sole or absolute discretion to the insurer to interpret the terms of the contract, to provide standards of interpretation or review, to determine eligibility for benefits, to determine the amount of benefits or to resolve factual disputes. An insurer may not enforce a provision in a policy, contract or certificate that was offered, executed, delivered or issued for delivery in this State and has been continued or renewed by a group policy holder in this State that purports to reserve sole or absolute discretion to the insurer to interpret the terms of the contract, to provide standards of interpretation or review, to determine eligibility for benefits, to determine the amount of benefits or to resolve factual disputes. Credits Me. Rev. Stat. tit. 24-A, § 2847-V 11. Absolute discretion clauses. The use and enforcement of an absolute discretion clause is governed by this subsection. A. A policy, contract, certificate or agreement offered, delivered, issued or renewed for delivery in this State by a carrier to provide, deliver, arrange for, pay for or reimburse any of the costs of health care services may	§ 2847-V added 2019, eff. Sept. 19, 2019 24-A sec. 4303: Added: 1995, eff. Jan. 1, 1997 Last am't 2019, eff. Sep. 19, 2019 § 2770 added 2019, eff. Sept. 19, 2019

	not contain a provision purporting to reserve sole or absolute discretion to the carrier to interpret the terms of the contract or to provide standards of interpretation or review that are inconsistent with the laws of this State. B. A carrier may not enforce a provision in a policy, contract, certificate or agreement that was offered, delivered or issued for delivery in this State and has been continued or renewed by a group policy holder or individual enrollee in this State that purports to reserve sole or absolute discretion to the carrier to interpret the terms of the contract or to provide standards of interpretation or review that are inconsistent with the laws of this State. Me. Rev. Stat. tit. 24-A, § 4303(11) An individual health insurance policy, contract or certificate, including, but not limited to, a disability income insurance policy, contract or certificate, may not contain a provision purporting to reserve sole or absolute discretion to the insurer to interpret the terms of the contract, to provide standards of interpretation or review, to determine eligibility for benefits, to determine the amount of benefits or to resolve factual disputes. An insurer may not enforce a provision in a policy, contract or certificate that was offered, executed, delivered or issued for delivery in this State and has been continued or renewed by an individual policy holder in this State that purports to reserve sole or absolute discretion to the insurer to interpret the terms of the contract, to provide standards of interpretation or review, to determine eligibility for benefits, to determine the amount of benefits or to resolve factual disputes. Me. Rev. Stat. tit. 24-A, § 2770	
Maryland	Carrier defined (a) In this section, "carrier" means: (1) an insurer; or (2) a nonprofit health service plan. Discretion of carrier to interpret terms of policy (b) **A disability insurance policy may not be sold, delivered, or issued for delivery in the State by a carrier if the policy contains a clause that purports to reserve sole discretion to the carrier to interpret the terms of the policy or to provide standards of interpretation or review that are inconsistent with the laws of the State.** Md. Code Ann., Ins. § 12-211	Added 2011, eff. Oct. 1, 2011

Massachusetts	None.	
Michigan	(a) A discretionary clause unreasonably reduces the risk purported to be assumed in the general coverage of the policy within the meaning of MCL 500.2236(5). **(b) On and after the first day of the first month following the effective date of these rules, an insurer shall not issue, advertise, or deliver to any person in this state a policy, contract, rider, indorsement, certificate, or similar contract document that contains a discretionary clause. This does not apply to a contract document in use before that date, but does apply to any such document revised in any respect on or after that date.** **(c) On and after the first day of the first month following the effective date of these rules, a discretionary clause issued or delivered to any person in this state in a policy, contract, rider, indorsement, certificate, or similar contract document is void and of no effect. This does not apply to contract documents in use before that date, but does apply to any such document revised in any respect on or after that date.** (d) Nothing in this rule limits the commissioner's authority under section 2236 to disapprove or withdraw approval of any form that contains a discretionary clause. (e) By the first day of the second month following the effective date of these rules, each insurer transacting insurance in this state shall submit to the commissioner a list of all forms in effect in Michigan that contain discretionary clauses and shall submit a certification that the list is complete and accurate. If an insurer has no such forms in effect, it shall submit a letter to the commissioner reporting and certifying that fact. Mich. Admin. Code R 500.2202 (a) A discretionary clause is unjust, unfair, inequitable, misleading, deceptive, and encourages misrepresentation of a policy within the meaning of section 13 of the credit insurance act. (b) On and after the first day of the first month following the effective date of these rules, an insurer shall not issue, advertise, or deliver to any person in this state a policy, contract, rider, indorsement, certificate, or similar contract document that contains a discretionary clause. This does not apply to a contract document in use before that date, but does apply to any such document revised in any respect on or after that date. (c) On and after the first day of the first month following the effective date of these rules, a discretionary clause issued or delivered to any person in this state in a policy, contract, rider, indorsement, certificate, or similar	Rule 500.2202: Feb. 23, 2007 Rule 500.302: Feb. 23, 2007

	contract document is void and of no effect. This does not apply to contract documents in use before that date, but does apply to any such document revised in any respect on or after that date. (d) Nothing in this rule limits the commissioner's authority under sections 13 and 15 of the credit insurance act, 1958 PA 173, MCL 550.613 and MCL 550.615, to disapprove or withdraw approval of any form that contains a discretionary clause. (e) By the first day of the second month following the effective date of these rules, each insurer transacting insurance in this state shall submit to the commissioner a list of all forms in effect in Michigan that contain discretionary clauses and shall submit a certification that the list is complete and accurate. If an insurer has no such forms in effect, it shall submit a letter to the commissioner reporting and certifying that fact. Mich. Admin. Code R 550.302	
Minnesota	Beginning January 1, 1999, no health plan, including the coverages described in section 62A.011, subdivision 3, clauses (7) and (10), may specify a standard of review upon which a court may review denial of a claim or of any other decision made by a health plan company with respect to an enrollee. This section prohibits limiting court review to a determination of whether the health plan company's decision is arbitrary and capricious, an abuse of discretion, or any other standard less favorable to the enrollee than a preponderance of the evidence. Minn. Stat. Ann. § 62Q.107 No policy, contract, certificate, or agreement offered or issued in this state providing for disability income protection coverage may contain a provision purporting to reserve discretion to the insurer to interpret the terms of the contract or provide a standard of review that is inconsistent with the laws of this state, or less favorable to the enrollee when a claim is denied than a preponderance of the evidence standard. Minn. Stat. Ann. § 60A.42 (West) Minn. Stat. 60A.42. "This section is effective January 1, 2016, and applies to policies issued or renewed on or after that date." 2015 Minn. Sess. Law Serv. Ch. 59 § 1 (S.F. 997).	Minn. Stat. Ann. § 62Q.107 Added: 1998, eff. Jan. 1, 1999 Minn. Stat. Ann. § 60A.42 Added: 2015, eff. Jan. 1, 2016
Mississippi	None.	
Missouri	None.	

Montana	No specific statute, but Mont.Code Ann. § 33–1–502 requires the Commissioner of Insurance to "disapprove any [insurance] form ... if the form ... contains ... any inconsistent, ambiguous, or misleading clauses or exceptions and conditions which deceptively affect the risk purported to be assumed in the general coverage of the contract..." In *Standard Ins. Co. v. Morrison*, the Ninth Circuit held that the Commissioner of Insurance's practice of disapproving of insurance policies with discretionary clauses was not preempted by ERISA's exclusive remedial scheme. *Standard Ins. Co. v. Morrison*, 584 F.3d 837 (9th Cir. 2009).	Added 1959 Last am't 2017, eff. Oct. 1, 2017
Nebraska	None.	
Nevada	None.	
New Hampshire	Discretionary clause are permissible, subject to certain conditions and approval: (l) Discretionary clauses relating to life, accident, or health policies shall be approved by the department only when such clauses: (1) Are contained in a separate endorsement containing no other language, terms or provisions; (2) Are offered on an optional basis to the plan sponsor; (3) Implement a policy governed by the Employment Retirement Income Security Act (ERISA), 29 U.S.C. 1001 et seq. and those policies contain the following language: "The following applies only when the administration of the policy is governed by the Employee Retirement Income Security Act (ERISA), 29 U.S.C. 1001 et seq.: Under ERISA, [the Company] is hereby designated by the plan sponsor as a claim fiduciary with discretionary authority to determine eligibility for benefits and to interpret and construe the terms and provisions of the policy. As claim fiduciary, [the Company] has a duty to administer claims solely in the interest of the [participants and beneficiaries] of the employee benefit plan and in accordance with the documents and instruments governing the plan. This assignment of discretionary authority does not prohibit a participant or beneficiary from seeking judicial review of [the Company's] benefit eligibility determination after exhausting administrative remedies. The assignment of discretionary authority made under this provision may affect the standard of review that a court will use in reviewing the appropriateness of [the Company's] determination. In order to prevail, a plan participant or beneficiary may be required to prove that [the Company's] determination was arbitrary and capricious or an abuse of discretion"; and (4) Pursuant to (l)(3) above, if a health carrier, as this term is defined in RSA 420-J:3, is a claim fiduciary, the following sentence shall be included at the end of the second paragraph in (l)(3) above,:"This designation as a claim fiduciary under ERISA does not apply to determinations that health carriers make	Ins. Rule 401.04 (Original: effective date Jan. 1, 1982 Expired Oct. 29, 1999) Newly added eff. Sep. 18, 2006 Last am't eff. March 8, 2017

	as to whether a health care service, supply, or drug meets requirements for medical necessity, appropriateness, health care setting, level of care, or effectiveness." N.H. Code Admin. R. § 04	
New Jersey	No individual or group health insurance policy or contract, individual or group life insurance policy or contract, individual or group long-term care insurance policy or contract, or annuity contract, delivered or issued for delivery in this State may contain a provision purporting to reserve sole discretion to the carrier to interpret the terms of the policy or contract, or to provide standards of interpretation or review that are inconsistent with the laws of this State. A carrier may include a provision stating that the carrier has the discretion to make an initial interpretation as to the terms of the policy or contract, but that such interpretation can be reversed by an internal utilization review organization, a court of law, arbitrator or administrative agency having jurisdiction. N.J. Admin. Code § 11:4-58.3	Adopted 2007, effective May 7, 2007
New Mexico	None.	
New York	The Superintendent may disapprove any accident and health insurance policy form, life insurance policy form, annuity contract form or subscriber contract if 'the same contains any provision...which is likely to mislead the policyholder, contract holder or certificate holder.' The Superintendent may disapprove any life insurance policy form, or any form of annuity contract or group annuity certificate, if 'its issuance would be prejudicial to the interests of policyholders or members or it contains provisions which are unjust, unfair or inequitable.' The Superintendent may disapprove any accident and health insurance policy forms, or subscriber contracts that 'encourage misrepresentation or are unjust, unfair, inequitable, misleading, deceptive, or contrary to law or to the public policy of this state.' See New York Insurance Law Sections 3201(c) and 4308(a). Additionally, pursuant to Article 24 of the Insurance Law, no person shall engage in this state in any unfair or deceptive act or trade practice. The Department believes that the use of discretionary clauses are contrary to Sections 3201(c) and 4308(a) and Article 24. **Accordingly, the Department is drafting regulations that would prohibit the use of discretionary clauses in all new and existing accident and health insurance policies, life insurance policies, annuity contracts and subscriber contracts upon renewal, modification, alteration or amendment on or after the effective date of the regulation.** Circular Letter 2006-14, 2006 WL 2106913 (NY INS BUL).	Circular Letter 2006-14 issued March 27, 2006, but withdrawn June 29, 2006.
North Carolina	None.	
North Dakota	None.	

Ohio	None.	
Oklahoma	None.	
Oregon	(1) (a) As used in this rule, "discretionary clause" means a policy provision that purports to bind the claimant, or to grant deference to the insurer, in proceedings subsequent to the insurer's decision, denial or interpretation of terms, coverage or eligibility for benefits. "Discretionary clause" includes a policy provision that provides any of the following: (A) An insured or other claimant may not appeal a denial of a claim; (B) The insurer's decision to deny coverage is binding upon a policyholder or other claimant or is otherwise entitled to deference upon appeal or review; (C) On appeal or review the insurer's decision-making power as to coverage is binding or otherwise entitled to deference; (D) The insurer's interpretation of the terms of a policy is binding upon a policyholder or other claimant or is otherwise entitled to deference; (E) On appeal the insurer's interpretation of the terms of a policy is binding or is otherwise entitled to deference; (F) A legal standard of review on appeal that gives deference to the original claim decision, or gives rise to such legal standard of review; or (G) The insurer has sole discretion to determine whether a claim is compensable or its interpretation of the provisions of the policy is entitled to deference in a subsequent proceeding. (b) Nothing in this section prohibits a carrier from including a provision in a contract that informs an insured that as part of its routine operations the carrier applies the terms of its contracts for making decisions, including making determination regarding eligibility, receipt of benefits and claims or explaining its policies, procedures and processes. (2) A policy, contract or agreement offered or issued in this state by an insurer to provide, deliver, arrange for, pay for or reimburse claim costs may not contain a discretionary clause or other language purporting to reserve discretion to the insurer to interpret the terms of the contract, or to provide standards of interpretation or review that are inconsistent with the laws of this state. (3) This rule does not prevent a policy provision that addresses alternative dispute resolution as allowed by law. (4) This rule is self-executing. The rule applies to policies, contracts and agreements issued or renewed on or after the date the rule is adopted. If a policy, contract or agreement is renewed and contains a provision rendered void and unenforceable by this rule, the parties to the policy, contract or agreement and the courts shall treat that provision as void and unenforceable. Or. Admin. R. 836-010-0026	Filed and effective March 12, 2015

Pennsylvania	None.	
Rhode Island	(a) No new or existing policy or certificate issued by an insurer or health care entity may contain any provision: (1) Purporting to reserve sole discretion to the insurer or health care entity to determine eligibility for benefits or interpret the terms of a policy or certificate; or (2) Specifying or affecting a standard of review upon which a court may review denial of a claim or any other decision made by an insurance company with respect to a policyholder or certificate holder. (b) For purposes of this section, "health care entity" means a health insurance company or nonprofit hospital or medical or dental service corporation or plan or health maintenance organization which operates or administers a health plan in this state. (c) Any such clause or language included in a contract, policy or certificate issued to or covering a resident of this state that is contrary to or inconsistent with the provisions of this section is void and unenforceable. (d) Nothing in this section prohibits an insurer from including a provision in a contract that informs an insured that as part of its routine operations the insurer applies the terms of its contracts for making decisions, including making determinations regarding eligibility, receipt of benefits and claims, or explaining policies, procedures, and processes, so long as the provision could not give rise to a deferential standard of review by any reviewing court. 27 R.I. Gen. Laws Ann. § 27-18-79 (as applied to accident and sickness insurance policies) (a) No new or existing policy or certificate may contain any provision: (1) Purporting to reserve sole discretion to the insurance company to determine eligibility for benefits or interpret the terms of a policy or certificate; or (2) Specifying or affecting a standard of review upon which a court may review denial of a claim or any other decision made by an insurance company with respect to a policyholder or certificate holder. (b) Any such clause or language included in a contract, policy or certificate issued to or covering a resident of this state that is contrary to or inconsistent with the provisions of this section is void and unenforceable. (c) Nothing in this section prohibits an insurer from including a provision in a contract that informs an insured that as part of its routine operations the insurer applies the terms of its contracts for making decisions, including making determinations regarding eligibility, receipt of benefits and claims, or explaining policies, procedures, and processes, so long as the provision could not give rise to a deferential standard of review by any reviewing court. 27 R.I. Gen. Laws Ann. § 27-34.2-22 (as applied to long term care insurance)	27-18-79: Added 2013, eff. June 17, 2013 27-34.2-22: Added 2013, eff. June 17, 2013

South Carolina	None.	
South Dakota	A discretionary clause is not permitted in any individual or group health policy. No policy offered or issued in this state by a health carrier or plan to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services may contain a discretionary clause or similar provision purporting to reserve discretion to the health carrier or plan to interpret the terms of the policy or to provide standards of interpretation or review that are inconsistent with the laws of this state. The provisions of this rule apply to any health insurance policy issued or renewed after June 30, 2008. Nothing in this section limits the director's authority under SDCL 58-11-19 to 58-11-21, inclusive, to disapprove or withdraw approval of any policy that contains a discretionary clause or to otherwise disapprove any practice involving a discretionary clause. S.D. Admin. R. 20:06:52:02	Effective date Sep. 8, 2008
Tennessee	None.	
Texas	(a) An evidence of coverage may not contain a discretionary clause provision. (b) A discretionary clause provision includes a provision that: (1) purports or acts to bind the enrollee to, or grant deference in subsequent proceedings to, adverse eligibility or benefit decisions or interpretations of the evidence of coverage by the health maintenance organization; or (2) specifies: (A) that an enrollee or other claimant may not contest or appeal a denial of a benefit; (B) that the health maintenance organization's interpretation of the terms of an evidence of coverage or other form or its decision to deny coverage or the amount of benefits is binding on an enrollee or other claimant; (C) that in an appeal, the health maintenance organization's decision-making power as to the interpretation of the terms of an evidence of coverage or other form, or as to coverage, is binding; or (D) a standard of review in any appeal process that gives deference to the original benefit decision or provides standards of interpretation or review that are inconsistent with the laws of this state, including the common law. Tex. Ins. Code Ann. § 1271.057 (a) This subchapter applies to any form filed under the Insurance Code Chapters 1701 or 1271, including forms filed by Lloyd's plans and fraternal benefit societies. (b) Except as specified in subsections (c) and (d) of this section, this subchapter applies to forms offered, issued, renewed, or delivered on or after June 1, 2011, including forms that include premium waiver provisions based upon a disability determination.	Ins. Code 1271.057: Added 2011, effective date June 17, 2011 28 TAC 3.1201 and 3.1203: Effective date Dec. 23, 2010

	(c) For forms that include disability income protection coverage providing for periodic payments during disability due to sickness and/or accident, whether provided through a policy, certificate, or rider, this subchapter applies to forms offered, issued, renewed, or delivered on or after February 1, 2011. (d) For forms issued or delivered prior to the effective date of this subchapter that do not contain a renewal date, this subchapter applies on or after the effective date of any rate increase applicable to the form or any change, modification, or amendment of the form occurring on or after June 1, 2011. (e) If any section or portion of a section of this subchapter is held to be invalid for any reason, all valid parts are severable from the invalid parts and remain in effect. If any section or portion of a section is held to be invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications. To this end, all provisions of this subchapter (relating to Discretionary Clauses) are declared to be severable. 28 Tex. Admin. Code § 3.1201 Inclusion of a discretionary clause in any form to which this subchapter applies is prohibited. 28 Tex. Admin. Code § 3.1203	
Utah	The Utah Administrative Code previously included a ban on discretionary clauses (Utah Adm. Code Section 590-218) but this was repealed effective June 7, 2019.	
Vermont	(c) No policy, contract, certificate, or agreement offered or issued in this State by a health insurer to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services may contain a provision purporting to reserve discretion to the health insurer to interpret the terms of the contract or to provide standards of interpretation or review that are inconsistent with the laws of this State, and on and after July 1, 2012, any such provision in a policy, contract, certificate, or agreement shall be null and void. (d) No policy, contract, certificate, or agreement offered or issued in this State providing for disability income protection coverage may contain a provision purporting to reserve discretion to the insurer to interpret the terms of the contract or to provide standards of interpretation or review that are inconsistent with the laws of this State, and on and after July 1, 2012, any such provision in a policy, contract, certificate, or agreement shall be null and void. (e) No policy, contract, certificate, or agreement of life insurance offered or issued in this State may contain a provision purporting to reserve discretion to the insurer to interpret the terms of the contract or to provide standards of interpretation or review that are inconsistent with the laws of this State, and on and after July 1, 2012, any such provision in a policy, contract, certificate, or agreement shall be null and void.	Adopted 2011, effective date July 1, 2012

	Vt. Stat. Ann. tit. 8, § 4062f	
Virginia	None.	
Washington	(1) No disability insurance policy may contain a discretionary clause. "Discretionary clause" means a provision that purports to reserve discretion to an insurer, its agents, officers, employees, or designees in interpreting the terms of a policy or deciding eligibility for benefits, or requires deference to such interpretations or decisions, including a provision that provides for any of the following results: (a) That the insurer's interpretation of the terms of the policy is binding; (b) That the insurer's decision regarding eligibility or continued receipt of benefits is binding; (c) That the insurer's decision to deny, modify, reduce or terminate payment, coverage, authorization, or provision of health care service or benefits, is binding; (d) That there is no appeal or judicial remedy from a denial of a claim; (e) That deference must be given to the insurer's interpretation of the contract or claim decision; and (f) That the standard of review of an insurer's interpretation of the policy or claim decision is other than a de novo review. (2) Nothing in this section prohibits an insurer from including a provision in a policy that informs an insured that as part of its routine operations the insurer applies the terms of its policies for making decisions, including making determination regarding eligibility, receipt of benefits and claims, or explaining its policies, procedures, and processes.	Filed Aug. 5, 2009, effective date Sep. 5, 2009
West Virginia	None.	
Wisconsin	None.	
Wyoming	(a) No policy, contract, certificate or agreement offered or issued in this state by a health carrier to provide, deliver, arrange for, pay for or reimburse any of the costs of health care services may contain a provision purporting to reserve discretion to the health carrier to interpret the terms of the contract, or to provide standards of interpretation or review that are inconsistent with the laws of this state. This subsection shall not apply to a policy, contract, certificate or agreement subject to and meeting the requirements of subsections (b) and (c) of this section. (b) Any group policy, contract, certificate or agreement subject to the federal Employee Retirement Income Security Act and offered or issued in this state by a health carrier to provide, deliver, arrange for, pay for or reimburse any of the costs of health care services and which contains a provision purporting to reserve discretion to the health carrier to interpret the terms of the contract or to provide standards of interpretation or review shall contain the following language highlighted in bold in not less than twelve (12) point type: This benefit plan contains a discretionary clause. Determinations made by (insurer name) pursuant to the discretionary clause do not prohibit or prevent a claimant from seeking judicial review in court of (insurer	Added 2009, eff. July 1, 2009

	name's) decisions. By including this discretionary clause (insurer's name) agrees to allow a court to review its determinations anew when a claimant seeks judicial review of (insurer name's) determinations of eligibility of benefits, the payment of benefits or interpretations of the terms and conditions applicable to the benefit plan. (c) Any group policy, contract, certificate or agreement containing a discretionary clause as authorized in subsection (b) of this section shall contain a provision entitling any person denied benefits in whole or in part to have the determination reviewed de novo in any court with jurisdiction. Wyo. Stat. Ann. § 26-13-304	