

UP Submits Comments In NY Supporting Proposed Ban On Unfair Wording In Health/Disability Policies

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The NY Insurance Department recently proposed important new regulations, 11 NYCRR 222, banning discretionary clauses in New York. These regulations are immensely important because they will dramatically increase court scrutiny of long term disability denials.

United Policyholders, a non-profit consumer organization which advocates for fairness in insurance transactions, asked Scott M. Riemer to write comments on the proposed regulations to the NY Insurance Department.

Mr. Riemer argued that discretionary clauses are particularly unfair because insurance companies do not provide claimants with adequate notice of their impact. The typical policy does not explain to the insured or even the insured's employer) that the inclusion of the discretionary clause will greatly limit the insured's right to judicial review; that the insured's claim will be restricted to the administrative record and that the court will only search the file to determine whether there is substantial evidence in support of the insurer's determination. Mr. Riemer explained that in his experience prospective litigants are often shocked when he explains to them the impact of the discretionary clause.