

**Connecticut Senate Bill 1031 An Act Concerning The Insurance Department's
Authority To Protect Consumers.**

**Statement of
America's Health Insurance Plans
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**Connecticut Insurance and Real Estate Committee Public Hearing
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America's Health Insurance Plans (AHIP) is a national trade association representing the health insurance industry. AHIP is opposed to Senate Bill 1031.

Section 4 of the bill would prohibit the use of discretionary clauses, provisions that reserve discretionary authority to the insurer, or an agent of the insurer, to determine eligibility for benefits or coverage, and to interpret the terms of the policy, contract, certificate, or agreement. We believe this would be a mistake, as it is based on a misunderstanding of the role of discretionary clauses.

A discretionary clause, a contractual right established by the Employee Retirement Income Security Act (ERISA), is a common feature of group insurance plans. Such clauses vest in the plan fiduciary the responsibility to review all evidence and documentation submitted by a beneficiary who is making a claim for coverage and allows the fiduciary to exercise a level of discretion in interpreting the plan documents. One of the principal advantages of permitting fiduciaries discretion is that the plan administrators typically make expert determinations based on uniform standards of review. Thus, discretionary clauses allow the fiduciary to provide for the efficient and effective plan administration that is contemplated under ERISA.

Discretionary clauses provide consumers with uniform standards to ensure that decisions are made consistently, equitably and in a non-discriminatory manner. Should discretionary clauses be prohibited, plan participants within the same plan may have different claim determinations based on de novo review by separate courts rendering varying interpretations of identical provisions of a contract. Such varying interpretations will only lead to greater confusion in determining coverage and an increase in litigation and the costs associated with litigation.

Bills that prohibit the use of discretionary clauses are based on the incorrect assumption that discretionary clauses allow insurers to exercise unfettered discretion. This statement is simply not accurate. If an insurance contract contains a discretionary clause, insurers do not have unfettered discretion in making claim determinations, as both federal and state law place limitations on an insurer's discretion and ensure that policyholder rights are protected.

On the federal level, ERISA places significant duties and obligations upon fiduciaries, including the duty to act prudently and solely in the interest of plan participants. The discretion granted to plan administrators is governed by plan fiduciary rules, regulatory determinations, and federal case law. The ERISA framework mandates that where discretion has been granted, claim decisions cannot be arbitrary, capricious, or an abuse of discretion. The appeal process must be fair, independent and protect the consumer as it requires the appeal to be decided by a fiduciary who is not the initial claim reviewer; the appeal cannot give deference to the original claim decision; the claimant has the right to representation and the claimant has the right to certain specific information.

Additionally, state unfair trade and unfair claim settlement practice laws, external review laws and mandated benefit laws remain in force and are not affected by the inclusion of discretionary clause language. Further, the Department of Insurance regulates the conduct of insurers.

Finally, prohibitions on discretionary clauses may disproportionately impact small and medium-sized employers. As self-funded plans under ERISA are specifically exempt from any state regulation (including bans on discretionary clauses), those states that enact such bans may find employers choosing to "self-fund." Employers may opt to "self-fund" their employee health benefit plan to avoid the risk of increased litigation and costs as a result of a lack of uniformity in benefit determinations that comes along with discretionary clause bans. Small and medium-sized employers rarely have the resources to self-fund, thus these employers are more likely to bear the brunt of higher costs caused by the inefficiencies of a discretionary clause ban.

For these reasons, AHIP asks that you not pass Senate Bill 1031 as presently drafted.