RULE 19 **Agency # 054.00**

UNFAIR SEX DISCRIMINATION IN THE SALE OF INSURANCE

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SECTION 1. PURPOSE

The purpose of this rule is to eliminate the act of denying benefits or coverage on the basis of sex or marital status in the terms and conditions of insurance contracts and in the underwriting criteria of insurance carriers. This rule is directed at eliminating two forms of discrimination: (1) overt discrimination which is the act of explicitly and intentionally denying benefits of coverage on the basis of sex, (2) disparate treatment of the sexes, which is the practice of applying different rules for each sex when the same situation prevails.

SECTION 2. AUTHORITY

This rule is issued pursuant to the power given to the Insurance Commissioner by Ark. Code Ann. §§ 23-61-108, 23-79-109, 23-66-201, *et seq.*, 25-15-201, *et seq*., and other applicable provisions of the Arkansas Insurance Code.

SECTION 3. APPLICABILITY AND SCOPE

This rule shall apply to all contracts delivered or issued for delivery in This State by an insurer on or after the effective date of this rule and to all existing group contracts which are amended or renewed on or after the effective date of this rule, including group contracts issued in another State insofar as their coverage of residents of this State is concerned. This rule does not apply to or affect the right of fraternal benefit societies to determine eligibility requirements for membership. If a fraternal benefit society does, however, admit members of both sexes, this rule is applicable to the insurance benefits available to members thereof.

SECTION 4. EFFECTIVE DATE

This rule shall be effective January 1, 2006. Until that time, Rule 19, effective January 1, 1985, will remain in effect.

SECTION 5. DEFINITIONS

A. "Insurer" means any stock or mutual insurance company, reciprocal insurer, stipulated premium insurer, mutual assessment life or accident and health insurer, farmers mutual aid association, hospital or medical services corporation, health maintenance organization, or fraternal benefit society.

B. "Contract" or "policy" shall mean any contract or policy of insurance, coverage by a health maintenance organization, indemnity, medical or hospital service, suretyship or annuity issued, proposed for issuance, or intended for issuance by any person.

C. The following services will be considered "Complications of Pregnancy":

(1) Hospital confinement required to treat conditions, such as the following, in a pregnant female: (1) acute nephritis; (2) nephrosis; (3) cardiac decompensation;(4) HELLP syndrome; (5) uterine rupture; (6) amniotic fluid embolism; (7) chorioamnionitis; (8) fatty liver in pregnancy; (9) septic abortion; (10) placenta accreta; (11) gestational hypertension; (12) puerperal sepsis; (13) peripartum cardiomyopathy; (14) cholestasis in pregnancy; (15) thrombocytopenia in pregnancy; (16) placenta previa; (17) placental abruption; (18) acute cholecystitis and pancreatitis in pregnancy; (19) postpartum hemmorrhage; (20) septic pelvic thromboplebitis; (21) retained placenta; (22) venous air embolus associated with pregnancy; (23) miscarriage; or (24) an emergency c-section required because of (a) fetal or maternal distress during labor, or (b) severe pre-eclampsia, or (c) arrest of descent or dilitation, or (d) obstruction of the birth canal by fibroids or ovarian tumors, or (e) necessary because of the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity that, in the absence of immediate medical attention, will result in placing the life of the mother or fetus in jeopardy. For purposes of this paragraph, a c-section delivery is not considered to be an emergency c-section if it is merely for the convenience of the patient and/or doctor or solely due to a previous c-section.

(2) Treatment, diagnosis or care for conditions, including the following, in a

pregnant female when the condition was caused by, necessary because of, or aggravated by the pregnancy: (1) hyperthyroidism, (2) hepatitis B 0r C, (3) HIV (4) Human papilloma virus, (5) abnormal PAP, (6) syphilis, (7) chlamydia, (8) herpes, (9) urinary tract infections, (10) thromboembolism, (11) appendicitis, (12) hypothyroidism, (13) pulmonary embolism, (14) sickle cell disease, (15) tuberculosis, (16) migraine headaches, (17) depression, (18) acute myocarditis, (19) asthma, (20) maternal cytomegalovirus, (21) urolithiasis, (22) DVT prophylaxis, (23) ovarian dermoid tumors, (24) biliary atresia and/or cirrhosis, (25) first trimester adnexal mass, (25) hyditidiform mole or (26) ectopic pregnancy.

D. "Accident and health insurer" means any insurer which issues "accident and health" insurance as defined in Ark. Code Ann. § 23-62-103, a hospital or medical services corporation or a health maintenance organization.

SECTION 6. UNDERWRITING

Availability of any contract shall not be denied to an insured or prospective insured on the basis of sex or marital status of the insured or prospective insured. However, nothing in this rule shall prohibit an insurer from taking marital status into account for the purpose of defining persons eligible for dependent's benefits. Specific examples of practices prohibited by this rule include but are not limited to the following:

A. Denying coverage to females gainfully employed at home, employed part time or employed by relatives when coverage is offered to males similarly employed.

B. Denying benefits offered by policy riders to females when the riders are available to males.

C. Requiring the purchase of family coverage under individual or group accident and health policies providing hospital or medical expense benefits as a prerequisite to obtaining maternity benefits.

D. Denying, under group contracts, coverage as dependents to husbands of female employees, when similar dependent coverage is available to wives of male employees.

E. Denying disability income contracts to employed females when coverage is offered to males similarly employed.

SECTION 7. CONTRACT TERMS AND CONDITIONS

The amount of benefits payable, or any term, condition or type of coverage shall not be restricted, modified, excluded, or reduced on the basis of the sex or marital status of the insurer or prospective insured. Specific practices prohibited by this rule shall include but not be limited to the following:

A. Treatment of complications of pregnancy on a different basis from any other illness or sickness under the contract. Pregnancy on the effective date of the contract may be considered a pre-existing condition to the complication of pregnancy.

B. Restriction, reduction, modification or exclusion of benefits for disorders of the genital organs of only one sex.

C. Application of arbitrary waiting period to maternity benefits in such a way as to exclude coverage for premature births when normal maternity benefits are included in the contract.

D. Offering of lower maximum benefits to females than to males who are in the same risk classifications, solely because of sex.

E. Providing more restrictive benefit periods or more restrictive definitions of the risk assumed under the contract to one sex than to the other.

F. Establishing different conditions under which the policyholder may exercise benefit options contained in a contract where the differences are determined by the sex of the insured.

G. Limiting the amount of coverage an insured or prospective insured may purchase based on the insured's or prospective insured's marital status.

H. Denying benefits for normal pregnancy to an unmarried female when such benefits are available to a married female. However, this does not mandate coverage for normal pregnancy benefits for dependent children.

SECTION 8. RATES

When rates are differentiated on the basis of sex, the insurer must justify in writing to the satisfaction of the Commissioner, the rate differential. All rates shall be based on sound actuarial principles and a valid classification system and must be related to actual loss

statistics, and must use proven loss statistics, where possible.

SECTION 9. CONVERSION

A. If a dependent spouse becomes ineligible for continuation of coverage under a group insurance contract due to change in marital status, the dependent spouse will be eligible to convert to an individual policy subject to the conditions of the group policy dealing with conversion privileges.

B. Change in marital status shall not be used as a reason for denying group conversion coverage to group members who wish to exercise their group conversion privileges.

SECTION 10. REVISION OF POLICY FORMS AND CERTIFICATION

A. All policy forms previously filed and approved by the Department need not be refiled if such forms meet the requirements of this rule. Any previously approved forms which are to be used in this State and which do not comply must be revised and resubmitted in duplicate, with a duplicate letter of transmittal, in accordance with this rule.

B. All new or revised filings submitted must contain a certification that the submission meets the provisions of this rule as well as all applicable requirements of this Department.

SECTION 11. SEVERABILITY

Any section or provisions of this rule held by a court to be invalid or unconstitutional will not affect the validity of any other section or provision of this rule.

(Signed by Julie Benafield Bowman)

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JULIE BENAFIELD BOWMAN
INSURANCE COMMISSIONER
STATE OF ARKANSAS

(signed November 28, 2005)

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DATE