



AMERICAN ACADEMY *of* ACTUARIES

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March 29, 2021

Honorable Janet Buckner
Colorado State Capitol
200 E. Colfax Ave., Rm. 346
Denver, CO 80203

Dear Senator Buckner:

On behalf of the Health Practice Council of the American Academy of Actuaries¹, I would like to offer input on Colorado Senate Bill 21-169, a bill to protect consumers from unfair discrimination in insurance practices. The bill would prohibit the consideration of certain personal characteristics, such as race, ethnicity, sex, and disability, in any insurer practices. It would also prohibit the use of external data, algorithms, or predictive models that unfairly discriminate against individuals with these characteristics. Our comments focus on the potential impact to health insurance.

The Academy's Health Practice Council supports the goal of eliminating unfair discrimination in insurance. However, we are concerned that the legislation is overly broad and may result in unintended consequences. As specified in the legislation, insurer practices include "marketing, underwriting, pricing, utilization management, reimbursement methodologies, claims settlement, and fraud detection." An absolute prohibition on using personal characteristics such as race, ethnicity, sex, and disability in these practices could run counter to appropriate actuarial practices and could interfere with efforts to reduce health disparities. For example, with respect to major medical coverage:

- Although health insurers are not allowed to vary premiums for individuals by race, ethnicity, sex, or the other factors specified in the bill, in some instances, actuaries may incorporate some of these factors when projecting utilization and costs for the market as a whole. Prohibiting the incorporation of these factors in projections could lead to overall premiums that are either excessive or inadequate.

¹ The American Academy of Actuaries is a 19,500-member professional association whose mission is to serve the public and the U.S. actuarial profession. For more than 50 years, the Academy has assisted public policymakers on all levels by providing leadership, objective expertise, and actuarial advice on risk and financial security issues. The Academy also sets qualification, practice, and professionalism standards for actuaries in the United States.

- Prohibiting the consideration of race, ethnicity, sex, or disability could make it more difficult for insurers to target efforts to improve care and health outcomes for underserved populations and to measure progress towards equity goals. Additionally, it might prohibit care management programs related to services and conditions among certain segments of the population (e.g., pregnancy, prostate cancer screening).
- Prohibiting the consideration of personal characteristics in provider reimbursement methods, such as value-based purchasing, could reduce the ability for insurers to tie provider compensation to patient outcomes. For instance, it may be appropriate to adjust patient outcomes for patient characteristics.

Related to the aim of eliminating unfair discrimination, the Health Practice Council has formed the Health Equity Work Group, whose goal is to contribute to efforts to reduce health disparities and improve health equity. As a main component of its charge, the work group is examining health actuarial practices and methods to assess the extent to which they may affect health disparities and recommend changes as appropriate. As such, it is exploring many of the issues discussed above. We would be happy to keep you informed of our health equity initiative as its work progresses.

We would welcome the opportunity to speak further about these comments. If you wish to follow up with us to discuss matters pertaining specifically to health policy, please contact the Academy's senior health policy analyst, Matthew Williams, at williams@actuary.org. If you would like to discuss the Academy's input more generally across practice areas, please feel free to contact Craig Hanna (hanna@actuary.org), director of public policy.

Sincerely,

Al Schmitz, MAAA, FSA
Vice President, Health
American Academy of Actuaries

cc: Michael Conway, Colorado Insurance Commissioner