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Colorado General Assembly

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# MEMORANDUM

TO: Committee on Legal Services

FROM: Kip Kolkmeier, Office of Legislative Legal Services

DATE: December 5, 2017

SUBJECT: Rules of the Commissioner of Insurance, Division of Insurance, Department of Regulatory Agencies, concerning Regulation 8-1-4 - title insurance - fiduciary duties, 3 CCR 702-8 (LLS Docket No. 170133; SOS Tracking No. 2016-00607).[1]

## Summary of Problems Identified and Recommendations

No specific rule-making statute authorizes the Commissioner of Insurance (Commissioner) to promulgate rules regarding the fiduciary responsibilities of title insurance entities. But Rule 8-1-4 imposes a new set of fiduciary responsibility requirements on title insurance entities. **Because the Commissioner lacks statutory authority to promulgate Rule 8-1-4, we recommend that Rule 8-1-4 of the Division of Insurance concerning title insurance entity fiduciary duties not be extended.**

Alternatively, even if the Commissioner's general rule-making authority supports a rule regarding fiduciary responsibilities of title insurance entities, Rule 8-1-4 contains provisions that conflict with, exceed, or lack statutory authority. **Because Rule 8-1-4 is inconsistent with and beyond the scope of the Commissioner's rule-making authority, we recommend**

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[1] Under § 24-4-103, C.R.S., the Office of Legislative Legal Services reviews rules to determine whether they are within the promulgating agency's rule-making authority. Under § 24-4-103 (8)(c)(I), C.R.S., the rules discussed in this memorandum will expire on May 15, 2018, unless the General Assembly acts by bill to postpone such expiration.

**that Rule 8-1-4 Sections 5 A., 5 B., 5 D., 5 F., 5 G., 5 I., 5 J.2.b., 5 J.3., and 8 of the rules of the Division of Insurance concerning fiduciary duties of title insurance entities not be extended.**

# Analysis

## 1. The Commissioner lacks statutory authority to promulgate rules imposing comprehensive fiduciary duties on title insurance companies, their authorized agents, and affiliates.

### 1.1. Title insurance companies sell insurance coverage for real property title defects and typically provide escrow and other settlement services in conjunction with the sale of title insurance.

Unlike other insurance products that protect against future events, title insurance protects the insured from events that have already occurred. Title insurance companies insure against past defects in real property titles. Title insurance companies charge a one-time premium typically collected from proceeds at a real estate closing for coverage that continues for as long as the buyer owns the property.[2]

Most title companies also provide "settlement services."[3] Settlement services are considered a part of the "business of title insurance" if performed by a "title insurance company or a title insurance agent in conjunction with the issuance of any contract or policy of title insurance."[4] Settlement services are very broadly defined in section 10-11-102 (6.7), C.R.S., and include a long list of services. Subsection (6.7)(q) of section 10-11-102, C.R.S., includes "escrow handling services" in the list of settlement services.

### 1.2. Rule 8-1-4 imposes legal duties regarding funds held by title insurance companies, title insurance agents, and their affiliates.

The primary obligations under Rule 8-1-4 are to segregate funds, report violations, and resolve disputes in accordance with the rule. The stated purpose of Rule 8-1-4 is "to protect the title insurance industry, its policyholders and members of the general public that may

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[2] *Colorado Department of Regulatory Agencies, Division of Insurance "Title Insurance Frequently Asked Questions",* https://www.colorado.gov/pacific/dora/node/102601 (accessed 10/20/17).

[3] *Id.*

[4] § 10-11-102 (3), C.R.S.

not be title insurance policyholders."[5] The cited need for the rule is that there have been "numerous defalcations[6]… resulting in losses to Colorado consumers and insurers."[7] The full text of Rule 8-1-4 appears in **Addendum A**.

The Colorado Department of Regulatory Agencies 2016 sunset review report on the Division of Insurance contained a specific statutory proposal to address title insurance-related defalcations.[8] This proposal was not included in the sunset legislation filed in 2017 and the Commissioner adopted Rule 8-1-4 on January 11, 2017, to address the issue of defalcations.

The requirements under Rule 8-1-4 include:

- Title insurance companies, title insurance agents, and all affiliates must segregate funds "belonging to others" and account for those funds;
- Funds received must be deposited within three business days and be disbursed within one hundred twenty days of a real estate closing;
- Funds may not be deposited in an investment account, and the title insurance entity may not earn interest unless approved by the fund's owner;
- Disputes concerning all funds must be resolved as provided by rule;
- Fund accounts must be reconciled within forty-five days;
- Title insurance companies must report to the commissioner a failure to pay premiums to an agent, failure of agent to reconcile funds, fund shortages, and comingling of funds; and
- If a title insurance company properly reports to the commissioner, the agency will not take regulatory action against the company. Failure to report constitutes an unfair or deceptive act or practice.

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[5] Rule 8-1-4 Section 2, Scope and Purpose.

[6] A "defalcation" means "[t]he act of a defaulter; misappropriation of trust funds or money held in any fiduciary capacity; failure to properly account for such funds." *Black's Law Dictionary Online*, "Defalcation," http://thelawdictionary.org/defalcation (accessed October 25, 2017).

[7] Rule 8-1-4 Section 2, Scope and Purpose.

[8] Colorado Department of Regulatory Agencies, 2016 Sunset Review: Division of Insurance, October 14, 2016, Recommendation 5, pages 61-63. The sunset report recommended legislation that would authorize the establishment of a fund to protect consumers from title insurance defalcations.

### 1.3. Nothing in the title insurance code authorizes rules governing fiduciary responsibilities of title insurance entities.

The "Title Insurance Code of Colorado"[9] regulates the business of title insurance. There are three distinct provisions that authorize rule-making in the title insurance code. Section 10-11-118 (2), C.R.S., allows the Commissioner to adopt rules regarding the filing of title insurance rates and fees. Section 10-11-122 (3)(b), C.R.S., requires the Commissioner to adopt rules that "identify alternative documentation that may be used and relied upon" when a certificate of taxes cannot be obtained. Section 10-11-124 (2), C.R.S., allows the Commissioner to adopt rules "concerning the creation and conduct of an affiliated business arrangement."[10] The full text of each section appears in **Addendum B**. None of these provisions describe the subject matter of the rule under review.[11] A grant of rule-making authority must be clearly stated and must be "authorized by law."[12]

### 1.4. The Commissioner's general rule-making authority in section 10-1-109 (1), C.R.S., does not empower the Commissioner of insurance to promulgate rules on the fiduciary responsibilities of title insurance entities.

The Commissioner cites section 10-1-109 (1), C.R.S., as authority for Rule 8-1-4. This section authorizes the Commissioner to adopt "reasonable rules as are necessary to enable the Commissioner to carry out the Commissioner's duties under the laws of the state of Colorado." The full text of this section appears in **Addendum C**. While expansive, this rule-making authority still requires a rule to be: (1) reasonable; (2) necessary; and (3) under a legal duty statutorily assigned to the Commissioner. In order to promulgate rules pursuant to section 10-1-109 (1), C.R.S., there must be some articulated statutory duty on the Commissioner that guides and limits that rule.

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[9] Article 11 of title 10, C.R.S.

[10] This section requires the Commissioner to adopt rules consistent with the federal law regarding real estate settlements, *see* the federal Real Estate Settlements Procedures Act of 1974, 12 U.S.C. § 2601 et seq., and limits what the Commissioner may do through this rule-making. The section mirrors the authority of the real estate commission granted in § 12-61-113.5 (5), C.R.S. The Commissioner and the real estate commission are required to consult with each other on rules affecting affiliated businesses.

[11] While § 10-11-202 (c), C.R.S., permits the title insurance commission to propose, advise, and recommend consumer protections in statute or rule including statutes or rules related to "misappropriation of funds, misuse of personal information, closing and settlement services, or other concerns," this does not grant independent authority to the Commissioner to promulgate rules.

[12] Section 24-4-103 (8)(a), C.R.S: **"**No rule shall be issued except within the power delegated to the agency and as authorized by law."

The Commissioner's reliance on section 10-1-109 (1), C.R.S., appears to be beyond that permitted by the Colorado Supreme Court. The court in *Travelers Indem. Co. v. Barnes*[13] reviewed the Commissioner's rule-making power under section 10-1-109 (1), C.R.S. The court held that the rule in that case was invalid because it regulated beyond the scope of the statute and therefore exceeded the Commissioner's power.[14] In the *Travelers* case, the court was charged with interpreting a specific statutory term, "all coverages." The court found that even though this statutory term might appear to be comprehensive, the rule went too far by attempting to regulate "every coverage that may be included in a policy."[15]

This same analysis applies to Rule 8-1-4. The general authority to regulate the business of insurance, or even the more specific authority to regulate the business of title insurance, is insufficient to justify all rules regulating any aspect of the business of title insurance. A rule must be reasonable, necessary, and in furtherance of a specific statutory duty. In the *Travelers* case, the Commissioner relied on **both** general rule-making authority in section 10-1-109 (1), C.R.S., **and a specific statutory duty to regulate**. The court still ruled that the Commissioner exceeded the statutory rule-making authority.

### 1.5. The Commissioner's specific statutory authority under section 10-2-704, C.R.S., does not empower the Commissioner to promulgate rules on the fiduciary responsibilities of title insurance entities.

The Commissioner also cites section 10-2-704, C.R.S., as authority for Rule 8-1-4. The full text of this section appears in **Addendum C**. This section does refer to fiduciary responsibilities of insurance providers. However, the plain language of this section is limited to fiduciary responsibilities regarding insurance "premiums."[16]

> **10-2-704. Fiduciary responsibilities.** (1) (a) All premiums belonging to insurers and all unearned premiums belonging to insureds received by an insurance producer licensee under this article shall be treated by such insurance producer in a fiduciary

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[13] *Travelers Indem. Co. v. Barnes*, 191 Colo. 278 (Colo. 1976).

[14] *Id*. at 282.

[15] *Id* at 283.

[16] In discussions with the agency, the agency acknowledged that this statutory section does not provide rule-making authority for Section 5 of Rule 8-1-4. The analysis of § 10-2-704, C.R.S., is included in this memorandum to ensure that the OLLS has thoroughly evaluated every possible basis for supporting the agency's rule-making authority. However, the OLLS is in agreement with the agency that this statutory section does not authorize Rule 8-1-4 Section 5.

> capacity. The commissioner may promulgate such rules as are necessary and proper relating to the treatment of such premiums.

All insurance providers collect some type of premiums and section 10-2-704, C.R.S., is designed to protect the insured from the misappropriation of premiums by an insurance provider. Most importantly, it protects the insured from loss of "unearned premiums." Unearned premiums are payments to an insurance provider for future coverage. If insurance coverage is terminated, generally the insured would be entitled to return of unearned premiums.[17]

The final sentence of section 10-2-704 (1)(a), C.R.S., makes quite clear that it is limited to rulemaking regarding the "treatment of premiums." Rule 8-1-4 goes far beyond the treatment of insurance premiums. Fiduciary funds under Rule 8-1-4 Section 5 B., apply not just to premiums, but all funds held by the title company, title insurance agents, and affiliates including "earnest money, loan proceeds, seller proceeds, homeowner association dues, and any other funds received as part of a title entity conducting closing and settlement services." For this reason, section 10-2-704, C.R.S., does not authorize the Commissioner to promulgate Rule 8-1-4.

### 1.6. When a statute lacks a clear delegation of rule-making authority, Colorado courts consistently find that the statute does not grant an agency rule-making authority.

Colorado courts have recognized and enunciated legal principles restricting agency rule-making power that are applicable to the rule under review. The most basic restriction is that agencies are bound to strictly construe a statute when promulgating rules.[18] While the title insurance code includes definitions describing the business of title insurance as including settlement services, and by extension, escrow handling services, there is no statutory guidance to the Commissioner on how to regulate such ancillary services. Most importantly, there is no way to determine the limits of the agency's power to regulate. If the statute is strictly construed, the rule is not supported by the current law.

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[17] "Unearned premium is the premium corresponding to the time period remaining on an insurance policy. Unearned premiums are proportionate to the unexpired portion of the insurance and appear as a liability on the insurer's balance sheet, since they would be paid back upon cancellation of the policy." Investopedia, http://www.investopedia.com/terms/u/unearned-premium.asp (accessed July 26, 2017).

[18] *Rodgers v. Atencio*, 608 P.2d 813, 816 (Colo. App. 1979); *Sherrerd v. Johnson*, 511 P.2d 923, 924 (Colo. App. 1973). In each case, the court invalidated a rule that added a regulatory requirement not listed in the statute.

State agencies lack power to promulgate rules that are contrary to statute or exceed the authority granted by statute.[19] Rule 8-1-4 regulates all funds received by a title insurance entity and not just insurance premiums. As a result, the rule goes beyond section 10-2-704, C.R.S. Colorado courts consistently hold that agencies may not "add to" or "modify" a statute.[20]

Similarly, general agency powers do not authorize specific agency powers. For example, a statute that empowers an agency to "investigate" does not confer specific investigative powers not enunciated in the statute.[21] A statute that empowers an agency to "supervise" but only grants a general power to promulgate rules, will not support rules that are contrary, inconsistent, or in excess of the statutory authority.[22] It is not sufficient to find that an agency has some interest or jurisdiction on a subject matter and then conclude that the power to regulate is unlimited. Rules are necessarily limited to the authority granted by statute.

In order for the Commissioner to promulgate rules pursuant to the general authority under section 10-1-109 (1), C.R.S., there still must be some articulated statutory basis that references the subject matter of the promulgated rules. The title insurance code has no such statutory reference to the Commissioner's duty to regulate fiduciary funds of title insurance companies. As referenced above, section 24-4-103, C.R.S., will not permit rule-making authority simply because the rule does not explicitly contradict the statute. The Commissioner cannot rely on this general insurance code rule-making power to "add to" or "modify" the title insurance statutes. Moreover, the general power to supervise or investigate cannot justify a rule or tool not authorized by statute.

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[19] *Flavell v. Department of Welfare*, 355 P.2d 941, 943 (Colo. 1960); *Ettelman v. Colorado State Bd. of Accountancy*, 849 P.2d 795, 799 (Colo. App. 1992); *Cartwright v. State Bd. of Accountancy*, 796 P.2d 51, 53 (Colo. App. 1990).

[20] *Rodgers*, 608 P.2d at 816; *In re Estate of Liebhardt*, 290 P.2d 1107, 1108 (Colo. 1955).

[21] *State by Colorado Civil Rights Com. v. Adolph Coors Corp.*, 486 P.2d 43, 46 (Colo. App. 1971). The statute at issue permitted the agency a general power to investigate employers, but did not specifically provide for the power to subpoena. Without that specific statutory power, the agency lacked the authority to seek a subpoena.

[22] *Hanlen v. Gessler*, 333 P.3d 41, 48-49 (Colo. 2014).

**2. Even assuming the Commissioner has rule-making authority to regulate settlement service fiduciary responsibilities of title insurance entities, sections of Rule 8-1-4 conflict with statute, exceed the Commissioner's statutory authority, or lack statutory authority.[23]**

### 2.1. Rule 8-1-4 Section 5, subsections A., B., F., and J.2.B., conflict with the requirements of section 10-2-704, C.R.S.

Section 10-2-704, C.R.S., is expressly limited to regulating premiums. However, even as applied to title insurance premiums, Rule 8-1-4 is contrary to the requirements of section 10-2-704, C.R.S. Rule 8-1-4 Sections 5 A. and 5 B. require insurance premiums to be comingled with other fiduciary funds in a fiduciary account. However, section 10-2-704 (3), C.R.S., contains an absolute prohibition on comingling premiums with other funds.

Rule 8-1-4 Sections 5 F. and 5 J.2.B. require return of funds within one hundred twenty days. However, section 10-2-704 (1) and (2), C.R.S., list several specific circumstances where premium funds must be returned or credited.[24] Nowhere in the statute is there a one hundred twenty-day return or credit requirement. The rule's one hundred twenty-day requirement as applied to premiums directly conflicts with the statute.

### 2.2. Rule 8-1-4 Sections 5 G., and 5 I., conflict with section 10-11-109, C.R.S., regarding how to protect consumers' unearned premiums.

The title insurance code has a statutory provision regarding unearned premiums and required reserves for the benefit of policyholders. These requirements are different and distinguishable from those of other insurance companies.[25] Rule 8-1-4 Section 5 G., prohibits depositing fiduciary funds in an investment account without approval of "all necessary parties." Section 5 I., prohibits the earning of interest on fiduciary funds without disclosure to the customer and giving the option for the interest to be paid to the customer. However, section 10-11-109 (2), C.R.S., states "[i]ncome from the investment of the amount of such reserve shall be the unrestricted property of the title insurance company."

To the extent the Commissioner could promulgate rules regarding safe-keeping of title insurance customer premiums under the authority of section 10-11-109 (1), C.R.S., the rule must still conform to section 10-11-109, C.R.S. The statute states that investment income on

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[23] **Addendum E** is a chart that lists rule provisions that conflict with, exceed, or lack statutory authority.

[24] Depending on the circumstance, funds must be returned or disbursed "as soon as practical", within thirty days, within forty-five days, or within ninety days.

[25] § 10-11-109, C.R.S.

premium reserves is "unrestricted". Rule 8-1-4 restricts that investment income by requiring prior disclosures and third-party approval.

### 2.3. Rule 8-1-4 Section 5 D. and Section 8 exceed the Commissioner's authority.

Rule 8-1-4 Section 5 D. requires fiduciary funds, including insurance premiums, to be deposited within three business days of receipt. This requirement is not in either section 10-2-704, C.R.S., or section 10-11-109, C.R.S. As noted previously, the current law on handling of insurance premiums includes requirements on the dates by which the premiums must be re. Rule 8-1-4 Section 5 D. adds a deposit requirement as it relates to insurance premiums that exceeds the statutory date handling requirements.

Rule 8-1-4 Section 6 imposes a variety of new reporting requirements on title insurance companies. Companies must notify the Division of Insurance if they "become aware" of comingling of funds, deficiencies in accounts, failure to pay premiums, etc. Rule 8-1-4 Section 8 provides:

> **Section 8 Unfair or Deceptive Act or Practice**
>
> Knowingly violating Section 6 of this regulation shall be an unfair or deceptive act or practice prohibited by § 10-3-1104, C.R.S.

Section 10-3-1104, C.R.S., contains an exhaustive list of what constitutes an unfair or deceptive act or practice. The full text of this section is in **Addendum D**. None of the listed acts or practices fit the reporting requirements of Section 6. The general assembly did, however, include in the statutory list a title insurance specific unfair or deceptive trade practice related to affiliated business relationships.[26] The general assembly also enacted a specific penalty for violations of section 38-35-125, C.R.S., by settlement service providers. Violations would be punishable as a deceptive trade practice under the Colorado Consumer Protection Act.[27]

The Colorado Supreme Court noted in *Beeghly v. Mack*, that "under the rule of [statutory] interpretation *expressio unius exclusio alterius*, the inclusion of certain items implies the exclusion of others."[28] Similarly, the Colorado Supreme Court stated in *Specialty Rest. Corp. v. Nelson*, that "the general assembly's failure to include particular language [in a statute] is a statement of legislative intent."[29] It therefore follows that if the general assembly intended to

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[26] § 10-3-1104 (1)(ee), C.R.S., incorporating § 10-11-108 (1)(c) and (d), C.R.S.

[27] § 38-35-125 (5), C.R.S.

[28] *Beeghly v. Mack*, 20 P.3d 610, 613 (Colo. 2013).

[29] *Specialty Rest. Corp. v. Nelson*, 231 P.3d 393, 397 (Colo. 2001).

create an additional title insurance statutory basis for finding an unfair or deceptive act or practice, the general assembly would have done so.

A violation of section 10-3-1104, C.R.S., is punishable by a fine up to $3,000 per violation and an aggregate fine of $30,000. It is a significant policy question for the general assembly to consider whether the failure to report "when a title insurance company becomes aware" of a fact should be included in the statutory list of unfair or deceptive acts or practices.

### 2.4. Rule 8-1-4 Section 5 J.3. lacks statutory authority to confer rights and remedies in title insurance fiduciary fund disputes.

Rule 8-1-4 Section 5 J.3. provides rights and remedies to title insurance entities when there is a dispute concerning fiduciary funds. This language mirrors language currently contained in Colorado model real estate sale contracts.[30] Rule 8-1-4 Section 5 J.3. states:

> 3. In the event of any controversy regarding the funds held by the title entity (not withstanding any termination of the contract), the title entity shall not be required to take any action unless and until such controversy is resolved. At its option and discretion, the title entity may:
>
> a. Await any proceeding; or
>
> b. Interplead all parties and deposit such funds into a court of competent jurisdiction, and recover court costs and reasonable attorney and legal fees; or
>
> c. Deliver written notice to the buyer and seller that unless the title entity receives a copy of a summons and complaint or claim (between buyer and seller), containing the case number of the lawsuit or lawsuits, within 120 days of the title entity's written notice delivered to the parties, title entity shall return the funds to the depositing party.

Pursuant to this rule, a title company may: (1) take no action; (2) await "any proceeding"; (3) sue and collect attorney fees and costs; or (4) upon court order disperse funds. However, there does not appear to be any statute permitting the Commissioner to confer these rights and remedies on a title company. Moreover, the right to recover attorney fees must be by statute and not by rule.[31] Whether to create these rights and remedies is a significant public policy question that must be decided by the general assembly.

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[30] *See* Colorado Real Estate Commission model contract for sale of residential real property, https://images.template.net/wp-content/uploads/2015/07/CBS1-Contract-to-Buy-and-Sell-Residential.pdf (accessed July 26, 2017).

[31] *Allstate Ins. Co. v. Huizar*, 52 P.3d 816, 818 (Colo. 2002).

## Recommendations

We therefore recommend that Rule 8-1-4 of the Division of Insurance concerning title insurance entity fiduciary duties not be extended because the Commissioner lacks statutory authority to promulgate Rule 8-1-4.

Alternatively, if the Committee on Legal Services finds that the Commissioner's general rule-making authority authorizes a rule regarding fiduciary responsibilities of title insurance entities, we therefore recommend that Rule 8-1-4 Sections 5 A., 5 B., 5 D., 5 F., 5 G., 5 I., 5 J.2.b., 5 J.3., and 8 not be extended because these sections conflict with, exceed the scope of the Commissioner's rule-making authority, or lack statutory authority.

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# Addendum A

## Regulation 8-1-4 TITLE INSURANCE – FIDUCIARY DUTIES



### Section 1 Authority

This regulation is promulgated, and adopted by the Commissioner, pursuant to the authority of §§ 10-1- 108(7), 10-1-109, 10-2-104, 10-2-704, 10-2-801, 10-3-131, and 10-3-1110, C.R.S.

### Section 2 Scope and Purpose

The purposes of this regulation are to set forth the fiduciary duties of title entities and to create reporting requirements to assist the Division of Insurance (Division) with identifying and mitigating certain risk factors which may have an immediate and direct impact on the solvency of title insurance entities.

Numerous defalcations have occurred in Colorado resulting in losses to Colorado consumers and insurers. As a result, the Commissioner finds that the provisions of this regulation are necessary in order to protect the title insurance industry, its policyholders and members of the general public that may not directly be title insurance policyholders.

### Section 3 Applicability

This regulation governs title entities and any other persons transacting the business of title insurance.

**Section 4 Definitions**

A. "Affiliate" means a person who directly, or indirectly through one or more intermediaries:

1. controls a title entity;
2. is controlled by a title entity; or
3. is under common control with a title entity.

C. "Person" has the same meaning as that in § 10-2-103(8), C.R.S.

D. "Reconcile" means, for the purpose of this regulation, the accounting process of comparing transactions and activity in order to balance accounts and resolve any discrepancies in an amount that exceeds five hundred dollars ($500.00).

E. "Sweep account" means, for the purposes of this regulation, a banking arrangement in which a bank account balance is automatically transferred to and from another account.

F. "Title insurance agency" shall mean a corporation, partnership, association, or foreign or domestic entity as defined in § 7-90-102, C.R.S., or other legal entity that transacts the business of title insurance.

G. "Title insurance agent" shall have the same meaning as in § 10-11-102(9), C.R.S.

H. "Title insurance company" shall have the same meaning as in § 10-11-102(10), C.R.S.

I. "Title entity" shall mean title insurance agents, title insurance agencies and title insurance companies, unless otherwise stated in the regulation.

**Section 5 Rules Regarding Fiduciary Duties**

A. All title entities, their authorized agents, and affiliates in possession of funds received and belonging to others shall maintain the funds in a fiduciary capacity in a separate fiduciary fund account or accounts supported by books and records sufficient to identify such funds. Any such fiduciary fund account shall be identified as "fiduciary fund account", "trust account" or "escrow account", or identified similarly.

B. Funds that must be maintained as fiduciary funds include, but are not limited to, underwriter portions of title insurance premiums, earnest money deposits, loan proceeds, seller proceeds, homeowner association dues, and any other funds received as part of a title entity conducting closing and settlement services.

C. All fiduciary funds shall be maintained in an account separate from other monies and assets of the title entity. Commingling of other monies and assets of the title entity with fiduciary funds is prohibited. Notwithstanding the foregoing, nothing herein shall prohibit the advancement of funds authorized pursuant to § 38-35-125(2), C.R.S.

D. All fiduciary funds shall be deposited within three business days of receipt with a state or federal bank, or a savings and loan association whose depositors are insured by an instrumentality of the United States Government, unless otherwise directed in writing by all necessary parties to the transaction.

E. Except as otherwise consented to in writing by the parties to a transaction establishing the need for fiduciary funds, a title entity or its authorized agent shall not use such fiduciary funds for any purpose other than the purpose or purposes set forth in the written agreement for which the fiduciary funds were deposited with the title entity.

F. Unless otherwise consented to in writing by all necessary parties, fiduciary funds, other than earnest money, held by a title entity shall either be disbursed for the purpose that the funds were collected or returned to the party that deposited the funds with the title entity within 120 days of the closing of the transaction.

G. Unless prior written authorization has been received by all necessary parties, fiduciary funds shall not be deposited by a title entity into a treasury management account or any other type of investment account.

H. Fiduciary funds may only be deposited into a sweep account by a title entity if the funds are segregated and held in a fiduciary capacity in the account the funds are swept into.

I. A title entity shall not earn interest on fiduciary funds unless disclosure is made to any parties to a transaction, for who said funds are being held, that interest is or has been earned. Said disclosure must offer the opportunity to receive payment of any interest earned on such funds beyond any administrative fees as may be on file with the Division. Said disclosure must be clear and conspicuous, and may be made at any time up to and including closing.

J. Until a title entity receives written instructions pertaining to the holding of fiduciary funds, in a form agreeable to the title entity, it shall comply with the following:

1. The title entity shall deposit funds into an escrow, trust, or other fiduciary account and hold them in a fiduciary capacity.

2. The title entity shall use any funds designated as "earnest money" for the consummation of the transaction as evidenced by the contract to buy and sell real estate applicable to said transaction. Except, if the transaction does not close, the title entity shall:

a. Release the earnest money funds as directed by written instructions signed by both the buyer and seller; or

b. If acceptable written instructions are not received, uncontested funds shall be held by the title entity for 120 days from the scheduled date of closing, after which the title entity shall return said funds to the depositing party.

3. In the event of any controversy regarding the funds held by the title entity (not withstanding any termination of the contract), the title entity shall not be required to take any action unless and until such controversy is resolved. At its option and discretion, the title entity may:

a. Await any proceeding; or

b. Interplead all parties and deposit such funds into a court of competent jurisdiction, and recover court costs and reasonable attorney and legal fees; or

c. Deliver written notice to the buyer and seller that unless the title entity receives a copy of a summons and complaint or claim (between buyer and seller), containing the case number of the lawsuit or lawsuits, within 120 days of the title entity's written notice delivered to the parties, title entity shall return the funds to the depositing party.

4. Nothing herein shall be read as relieving the responsibilities, if any, of any title entity in complying with the Colorado unclaimed property act, § 38-13-101, et seq., C.R.S.

5. Every title insurance agent or title insurance agency shall reconcile all fiduciary accounts, or similarly identified accounts, at least every forty-five (45) days.

**Section 6 Reporting Requirements for the Prevention of Defalcations**

A. A title insurance company shall notify the Division within thirty (30) days if:

1. At any point a title insurance company becomes aware that a title insurance agent or title insurance agency fails to remit premium to the insurer, on the later of, forty-five (45) days after the contractual due date, or if there is no contractual due date, ninety (90) days after receipt;

2. At any point a title insurance company becomes aware that a title insurance agent or title insurance agency fails to reconcile the title insurance agent's or title insurance agency's fiduciary bank accounts, or similarly identified accounts, at least every forty-five (45) days;

3. At any point a title insurance company becomes aware that a title insurance agent or title insurance agency has an account shortage or file shortage of more than $10,000 in a title insurance agent's or title insurance agency's fiduciary account;

4. The title insurance company enters into any repayment agreement with a title insurance agent or a title insurance agency; or

5. The title insurance company becomes aware of any commingling of other monies or assets with fiduciary funds held by the title insurance agent or title insurance agency.

B. A title insurance company shall provide the Division with a comprehensive list of all title insurance agencies that are authorized in the state of Colorado to issue title

insurance products of the title insurance company within thirty (30) days of the effective date of this regulation.

C. A title insurance company shall notify the Division in writing within thirty (30) days if the title insurance company:

1. Authorizes a new title insurance agent or title insurance agency to issue its title insurance products;

2. Suspends the authority of a title insurance agent or title insurance agency to issue its title insurance products; or

3. Cancels the authority of a title insurance agent or title insurance agency to issue its title insurance products.

**Section 7 Safe Harbor**

If a title insurance company properly complies with the requirements of Section 6 of this regulation, the Division shall not take any regulatory action against the title insurance company for a shortage in a title insurance agent's or title insurance agency's fiduciary account, with the exception of any necessary regulatory actions to order that restitution be paid by the title insurance company.

**Section 8 Unfair or Deceptive Act or Practice**

Knowingly violating Section 6 of this regulation shall be an unfair or deceptive act or practice prohibited by § 10-3-1104, C.R.S.

**Section 9 Severability**

If any provision of this regulation or the application of it to any person or circumstance is for any reason held to be invalid, the remainder of this regulation shall not be affected.

**Section 10 Enforcement**

Noncompliance with this regulation may result in the imposition of any of the sanctions made available in the Colorado statutes pertaining to the business of insurance, or other laws, which include the imposition of civil penalties, issuance of cease and desist orders, and/or suspensions or revocation of license, subject to the requirements of due process.

**Section 11 Effective Date**

This regulation is effective March 15, 2017. Section 12 History Regulation promulgated on March 15, 2017.

## Section 12 History

Regulation promulgated on March 15, 2017.

# Addendum B

**10-11-118. Title insurance – rules.** (1) Title insurance rates and fees shall be regulated in the manner provided in part 4 of article 4 of this title.

(2) Prior to the effective date of any new or amended rate or fee, every title insurance company and title insurance agent shall file with the commissioner the new or amended rate or fee, with justification for the new or amended rate or fee. Each filing shall set forth its effective date, which shall be no earlier than thirty days after its receipt by the commissioner. The commissioner may promulgate rules to implement this subsection (2).

(3) No title insurance company or title insurance agent shall use any rate or fee in the business of title insurance prior to its effective date, and no rate or fee increase or decrease shall apply to title policies or services that have been contracted for prior to such effective date. All rates or fees shall be readily available to the public in each office of the title insurance company or title insurance agent in the county to which said rates or fees apply.

**10-11-122. Title commitments – rules.** (1) Every title insurance agent or title insurance company shall provide, along with each commitment for an owner's policy of title insurance pertaining to a sale of residential real property as defined in section 39-1-102 (14.5), C.R.S., a statement disclosing the following information:

(a) That the subject real property may be located in a special taxing district;

(b) That a certificate of taxes due listing each taxing jurisdiction will be obtained from the county treasurer of the county in which the subject real property is located or that county treasurer's authorized agent unless the proposed insured provides written instructions to the contrary; and

(c) That information regarding special districts and the boundaries of such districts may be obtained from the board of county commissioners, the county clerk and recorder, or the county assessor.

(2) Failure of a title insurance agent or a title insurance company to provide the statement required by subsection (1) of this section shall subject such agent or company to the penalty provisions of section 10-3-111 but shall not affect or invalidate any provisions of the commitment for title insurance.

(3) (a) Before issuing any owner's policy of title insurance pertaining to a sale of residential real property, unless the proposed insured provides written instructions to the

contrary, a title insurance agent or title insurance company shall obtain a certificate of taxes due from the county treasurer or the county treasurer's authorized agent.

(b) To address circumstances in which a certificate of taxes cannot be obtained from the county treasurer or the county treasurer's authorized agent during the period in which the county treasurer is certifying the tax rolls, the commissioner of insurance shall promulgate rules, in accordance with article 4 of title 24, C.R.S., that identify alternative documentation that may be used and relied upon during that period. If a title insurance agent or title insurance company uses alternative documentation during this period, the agent or company shall obtain a tax certificate when it becomes available from the county treasurer or the county treasurer's authorized agent.

**10-11-124. Affiliated business arrangements – rules – investigative information shared with division of real estate.** (1) (a) An affiliated business arrangement is permitted where the person referring business to the affiliated business arrangement receives payment only in the form of a return on an investment and where it does not violate the provisions of section 10-11-108 (1).

(b) A title insurance company or a title insurance agent making a referral as part of an affiliated business arrangement shall disclose the affiliation in accordance with the federal "Real Estate Settlement Procedures Act of 1974", as amended, 12 U.S.C. sec. 2601 et seq.

(c) Neither a title insurance company nor a title insurance agent shall require the use of an affiliated business arrangement or a particular settlement producer as a condition of obtaining title insurance services from the company or agent. For the purposes of this paragraph ©, "require the use" shall have the same meaning as "required use" in 24 CFR 3500.2 (b).

(2) The commissioner may promulgate rules concerning the creation and conduct of an affiliated business arrangement, including, but not limited to, rules defining what constitutes a sham affiliated business arrangement. Nothing in this subsection (2) shall be construed to increase a fee or create a licensure program for affiliated business arrangements. The commissioner shall adopt the rules, policies, or guidelines issued by the United States department of housing and urban development concerning the federal "Real Estate Settlement Procedures Act of 1974", as amended, 12 U.S.C. sec. 2601 et seq. Rules adopted by the commissioner shall be at least as stringent as the federal rules and shall ensure that consumers are adequately informed about affiliated business arrangements. The commissioner shall consult with the real estate commission pursuant to section 12-61-113.2 (5), C.R.S., concerning rules the real estate commission may promulgate concerning affiliated business arrangements. Neither the rules promulgated by the commissioner nor the

real estate commission may create a conflicting regulatory burden on an affiliated business arrangement.

(3) The division may share information gathered during an investigation of an affiliated business arrangement with the division of real estate.

# Addendum C

**10-1-109. Rules of commissioner**. (1) The commissioner may establish, and from time to time amend, such reasonable rules as are necessary to enable the commissioner to carry out the commissioner's duties under the laws of the state of Colorado.

(2) The commissioner shall adopt rules to ensure that payments to the subsequent injury fund created in section 8-46-101, C.R.S., the workers' compensation cash fund, created in section 8-44-112 (7), C.R.S., the cost containment fund created in section 8-14.5-108, C.R.S., and the major medical insurance fund created in section 8-46-202, C.R.S., from surcharges on premiums paid for policies of workers' compensation insurance that feature deductibles in excess of the limit set forth in section 8-44-111 (1), C.R.S., reflect the value of any reduction in premium achieved through the use of such deductibles. Such rules shall apply only to claims made on policies issued or renewed after the effective date of the rules. In adopting such rules, the commissioner shall determine the most effective method of establishing the value of deductibles in excess of such limits and ensuring that payments reflect such value.

**10-2-704. Fiduciary responsibilities.** (1) (a) All premiums belonging to insurers and all unearned premiums belonging to insureds received by an insurance producer licensee under this article shall be treated by such insurance producer in a fiduciary capacity. The commissioner may promulgate such rules as are necessary and proper relating to the treatment of such premiums.

(b) All premiums received, less commissions if authorized, shall be remitted to the insurer or its agent entitled thereto on or before the contractual due date or, if there is no contractual due date, within forty-five days after receipt.

(c) All returned premiums received from insurers or credited by insurers to the account of the licensee shall be remitted to or credited to the account of the person entitled thereto within thirty days after such receipt or credit.

(d) If any insurance producer has failed to account for any collected premium to the insurer to whom it is owing or to its agent entitled thereto for more than forty-five days after the contractual due date or, if there is no contractual due date, more than ninety days after receipt, the insurer or its agent shall promptly report such failure to the commissioner in writing.

(2) Every insurer shall remit unearned premiums to the insured or the proper agent, or shall otherwise credit the account of the proper licensee, as soon as is practicable after entitlement thereto has been established, but in no event more than forty-five days after the effective date of any cancellation or termination effected by the insurer or after the date of entitlement thereto as established by notification of cancellation or of termination or as otherwise established. It shall be the responsibility of any insurance producer having knowledge of a failure on the part of any insurer to comply with this subsection (2) to promptly report such failure to the commissioner in writing.

(3) No insurance producer under this article shall commingle premiums belonging to insurers and returned premiums belonging to insureds with the producer's personal funds or with any other funds except those directly connected with the producer's insurance business.

(4) Any insurer that delivers, in this state, a policy of insurance to an insurance producer representing the interest of the insured upon the application or request of such producer shall be deemed to have authorized such producer to receive on the insurer's behalf any premium due upon issuance or delivery of the policy; and the insurer shall be deemed to have so authorized the producer.

# Addendum D

**10-3-1104. Unfair methods of competition – unfair or deceptive acts or practices.** (1) The following are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

(a) Misrepresentations and false advertising of insurance policies: Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, circular, statement, sales presentation, omission, or comparison which:

(I) Misrepresents the benefits, advantages, conditions, or terms of any insurance policy; or

(II) Misrepresents the dividends or share of the surplus to be received on any insurance policy; or

(III) Makes any false or misleading statements as to the dividends or share of surplus previously paid on any insurance policy; or

(IV) Is misleading or is a misrepresentation as to the financial condition of any person, or as to the legal reserve system upon which any life insurer operates; or

(V) Uses any name or title of any insurance policy or class of insurance policies misrepresenting the true nature thereof; or

(VI) Is a misrepresentation for the purpose of inducing or tending to induce the lapse, forfeiture, exchange, conversion, or surrender of any insurance policy; or

(VII) Is a misrepresentation for the purpose of effecting a pledge or assignment of or effecting a loan against any insurance policy; or

(VIII) Misrepresents any insurance policy as being a security; or

(IX) Misrepresentation shall not be construed where a written comparison of policies is made factually disclosing relevant features and benefits for which the policy is issued and by which an informed decision can be made;

(b) False information and advertising generally:

(I) Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance, or with respect to any person in the conduct of his or her insurance business, which is untrue, deceptive, or misleading;

(II) Knowingly filing with the commissioner or other public official, or with any employee or agent of the division of insurance in the department of regulatory agencies, a written, false statement of material fact as to the financial condition of an insurer;

(III) Knowingly making any false entry of a material fact in any book, report, or other written statement of any insurer; knowingly omitting or failing to make a true entry of a material fact pertaining to the business of the insurer in any book, report, or other written statement of the insurer; or knowingly making any written, false material statement to the commissioner or any employee or agent of the division of insurance in the department of regulatory agencies;

(c) Defamation: Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article, or literature which is false, or maliciously critical, or derogatory to the financial condition of any person, and which is calculated to injure such person;

(d) Boycott, coercion, and intimidation: Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion, or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance;

(c) Stock operations and advisory board contracts: Issuing or delivering, or permitting agents, officers, or employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares, in any corporation, or securities, or any special or advisory board contracts, or other contracts of any kind promising returns and profits as an inducement to insurance;

(f) (I) Unfair discrimination: Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity, or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract;

(II) Making or permitting any unfair discrimination between individuals of the same class or between neighborhoods within a municipality and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of insurance, or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever;

(III) Making or permitting to be made any classification solely on the basis of marital status or sex, unless such classification is for the purpose of insuring family units or is justified by actuarial statistics;

(IV) Making or permitting to be made any classification solely on the basis of blindness, partial blindness, or a specific physical disability unless such classification is based upon an unequal expectation of life or an expected risk of loss different than that of other individuals;

(V) Repealed.

(VI) Inquiring about or making an investigation concerning, directly or indirectly, an applicant's, an insured's, or a beneficiary's sexual orientation in:

(A) An application for coverage; or

(B) Any investigation conducted in connection with an application for coverage;

(VII) Using information about gender, marital status, medical history, occupation, residential living arrangements, beneficiaries, zip codes, or other territorial designations to determine sexual orientation;

(VIII) Using sexual orientation in the underwriting process or in the determination of insurability;

(IX) Making adverse underwriting decisions because an applicant or an insured has demonstrated concerns related to AIDS by seeking counseling from health care professionals;

(X) Making adverse underwriting decisions on the basis of the existence of nonspecific blood code information received from the medical information bureau, but this prohibition shall not bar investigation in response to the existence of such nonspecific blood code as long as the investigation is conducted in accordance with the provisions of section 10-3-1104.5;

(XI) Reducing benefits under a health insurance policy by the addition of an exclusionary rider, unless such rider only excludes conditions which have been documented in the original underwriting application, original underwriting medical examination, or medical history of the insured, or which can be shown with clear and convincing evidence to have been caused by the medically documented excluded condition;

(XII) Denying health care coverage subject to article 16 of this title to any individual based solely on that individual's casual or nonprofessional participation in the following activities: Motorcycling; snowmobiling; off-highway vehicle riding; skiing; or snowboarding;

(XIII) Making or permitting any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy of sickness and accident insurance, in the benefits payable under such policy, in the terms or conditions of the policy, or in any other manner;

(XIV) Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazard by refusing to insure, refusing to renew, canceling, or limiting the amount of insurance coverage on a property and casualty risk solely because of the geographic location of the risk, unless the action is the result of the application of sound underwriting and actuarial principles related to actual or reasonably anticipated loss experience;

(XV) Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to insure, refusing to renew, canceling, or limiting the amount of insurance coverage on the residential property risk, or

the personal property contained therein, solely because of the age of the residential property;

(XVI) Terminating or modifying coverage or refusing to issue or renew any property or casualty policy solely because the applicant or insured or any employee of either is mentally or physically impaired; except that this subparagraph (XVI) does not:

(A) Apply to accident and health insurance sold by a casualty insurer; or

(B) Modify any other provision of law relating to the termination, modification, issuance, or renewal of any insurance policy or contract;

(XVII) Refusing to insure a person solely because another insurer has refused to write a policy, or has cancelled or has refused to renew an existing policy, in which the person was the named insured. Nothing in this subparagraph (XVII) prevents an insurer from terminating an excess insurance policy based on the failure of the insured to maintain any required underlying insurance.

(g) Rebates: Except as otherwise expressly provided by law, knowingly permitting, or offering to make, or making any contract of insurance or agreement as to such contract, other than as plainly expressed in the insurance contract issued thereon, or paying, or allowing, or giving, or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract; or giving, or selling, or purchasing, or offering to give, sell, or purchase, as inducement to such insurance contract or annuity or in connection therewith any stocks, bonds, or other securities of any insurance company or other corporation, association, or partnership, or any dividends or profits accrued thereon, or anything of value whatsoever not specified in the contract;

(h) Unfair claim settlement practices: Committing or performing, either in willful violation of this part 11 or with such frequency as to indicate a tendency to engage in a general business practice, any of the following:

(I) Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue; or

(II) Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies; or

(III) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies; or

(IV) Refusing to pay claims without conducting a reasonable investigation based upon all available information; or

(V) Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed; or

(VI) Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear; or

(VII) Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds; or

(VIII) Attempting to settle a claim for less than the amount to which a reasonable man would have believed he was entitled by reference to written or printed advertising material accompanying or made part of an application; or

(IX) Attempting to settle claims on the basis of an application which was altered without notice to, or knowledge or consent of, the insured; or

(X) Making claims payments to insureds or beneficiaries not accompanied by statement setting forth the coverage under which the payments are being made; or

(XI) Making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration; or

(XII) Delaying the investigation or payment of claims by requiring an insured or claimant, or the physician of either of them, to submit a preliminary claim report, and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information; or

(XIII) Failing to promptly settle claims, where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage; or

(XIV) Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement; or

(XV) Raising as a defense or partial offset in the adjustment of a third-party claim the defense of comparative negligence as set forth in section 13-21-111, C.R.S., without conducting a reasonable investigation and developing substantial evidence in support thereof. At such time as the issue is raised under this subparagraph (XV), the insurer shall furnish to the commissioner a written statement setting forth reasons as to why a defense under the comparative negligence doctrine is valid.

(XVI) Excluding medical benefits under health care coverage subject to article 16 of this title to any covered individual based solely on that individual's casual or nonprofessional participation in the following activities: Motorcycling; snowmobiling; off-highway vehicle riding; skiing; or snowboarding; or

(XVII) Failing to adopt and implement reasonable standards for the prompt resolution of medical payment claims.

(i) Failure to maintain complaint handling procedures: Failing of any insurer to maintain a complete record of all the complaints which it has received since the date of its last examination. This record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of these complaints, and the time it took to process each complaint. For purposes of this paragraph (i), "complaint" shall mean any written communication primarily expressing a grievance.

(j) Misrepresentation in insurance applications: Making false or fraudulent statements or representations on or relative to any application for an insurance policy, for the purpose of obtaining a fee, commission, money, or other benefit from any person;

(k) Requiring, directly or indirectly, any insured or claimant to submit to any polygraph test concerning any application for or any claim under any policy of insurance;

(l) Violation of or noncompliance with any insurance law in part 6 of article 4 of this title;

(m) Failure to make promptly a full refund or credit of all unearned premiums to the person entitled thereto upon termination of insurance coverage;

(n) Requiring or attempting to require or otherwise induce a health care provider, as defined in section 13-64-403 (12)(a), C.R.S., to utilize arbitration agreements with patients as a condition of providing medical malpractice insurance to such health care provider;

(o) Failure to comply with all the provisions of section 10-3-1104.5 regarding HIV testing;

(p) Violation of or noncompliance with any provision of part 13 of this article;

(q) Increasing the premiums unilaterally or decreasing the coverage benefits on renewal of a policy of insurance, increasing the premium on new policies, or failing to issue an insurance policy to barbers, cosmetologists, estheticians, nail technicians, barbershops, or beauty salons, as regulated in article 8 of title 12, C.R.S., regardless of the type of risk insured against, based solely on the decision of the general assembly to stop mandatory inspections of the places of business of such insureds;

(r) Repealed.

(s) Certifying pursuant to section 10-16-107.2 or issuing, soliciting, or using a policy form, endorsement, or rider that does not comply with statutory mandates. Such solicitation or certification shall be subject to the sanctions described in sections 10-2-704, 10-2-801, 10-2-804, 10-3-1107, 10-3-1108, and 10-3-1109.

(t) Certifying pursuant to section 10-4-419 or issuing, soliciting, or using a claims-made policy form, endorsement, or disclosure form that does not comply with statutory mandates. Such solicitation or certification shall be subject to the sanctions described in sections 10-3-1107, 10-3-1108, and 10-3-1109.

(u) Certifying pursuant to section 10-4-633 or issuing, soliciting, or using an automobile policy form, endorsement, or notice form that does not comply with statutory mandates.

Such solicitation or certification shall be subject to the sanctions described in sections 10-3-1107, 10-3-1108, and 10-3-1109.

(v) Failure to comply with all provisions of section 10-16-108.5 concerning fair marketing of health benefit plans and section 10-16-105 concerning guaranteed issuance of individual and small employer health benefit plans;

(w) Failure to comply with the provisions of section 10-16-105.1 concerning the renewability of health benefit plans;

(x) Violation of the provisions of part 8 of article 1 of title 25, C.R.S., concerning patient records;

(y) Violating any provision of the "Consumer Protection Standards Act for the Operation of Managed Care Plans", part 7 of article 16 of this title by those subject to said part 7;

(z) Willfully violating any provision of section 10-16-113.5;

(aa) Certifying pursuant to section 10-10-109 (3) or 10-10-109 (4), issuing, soliciting, or using a credit insurance policy form, certificate of insurance, notice of proposed insurance, application for insurance, endorsement, or rider that does not comply with Colorado law. Such certification, issuance, solicitation, or use shall be subject to the sanctions described in sections 10-3-1107, 10-3-1108, and 10-3-1109.

(bb) Certifying pursuant to section 10-15-105 (1), issuing, soliciting, or using a preneed funeral contract form or a form of assignment that does not comply with Colorado law. Such certification, issuance, solicitation, or use shall be subject to the sanctions described in sections 10-3-1107, 10-3-1108, and 10-3-1109.

(cc) Violation of the provisions of section 10-16-122 (4) concerning an unauthorized transfer of a covered person or subscriber's prescription;

(dd) Failing to comply with the provisions of section 10-4-628 (2)(a)(V) or 10-16-201 (5);

(ee) Willfully or repeatedly violating section 10-11-108 (1)(c) or (1)(d), including a willful or repeated violation through the creation or operation of an improper affiliated business arrangement;

(ff) Violation of the "Physician and Dentist Designation Disclosure Act", article 38 of title 25, C.R.S.;

(gg) Violation of section 10-16-705 (6.5) or (10.5);

(hh) Unfair compensation practices: Basing the compensation of claims employees or contracted claims personnel, including compensation in the form of performance bonuses or incentives, on any of the following:

(5) The number of policies canceled;

(II) The number of times coverage is denied;

(III) The use of a quota limiting or restricting the number or volume of claims; or

(IV) The use of an arbitrary quota or cap limiting or restricting the amount of claims payments without due consideration of the merits of the claim;

(ii) Violation of section 8-43-401.5, C.R.S.;

(jj) Violation of part 6 of article 43 of title 8, C.R.S.;

(kk) Violation of section 10-7-703 of the "Insurable Interest Act", part 7 of article 7 of this title;

(ll) Engaging in stranger originated life insurance;

(mm) Paying a fee or rebate or giving or promising anything of value to a jailer, peace officer, clerk, deputy clerk, an employee of a court, district attorney or district attorney's employees, or a person who has power to arrest or to hold a person in custody as a result of writing a bail bond;

(nn) Unless the indemnitor consents in writing otherwise, failure to post a bail bond within twenty-four hours after receipt of full payment or a signed contract for payment, and if the bail bond is not posted within twenty-four hours after receipt of full payment or a signed contract for payment, failure to refund all moneys received, release all liens, and return all collateral within seven days after receipt of good funds;

(oo) Failure to report, preserve without use, retain separately, or return after payment in full, collateral taken as security on any bail bond to the principal, indemnitor, or depositor of the collateral;

(pp) Soliciting bail bond business in or about any place where prisoners are confined, arraigned, or in custody;

(qq) Failure to pay a final, nonappealable judgment award for failure to return or repay collateral received to secure a bond; or

(rr) Certifying pursuant to section 8-44-102, C.R.S., or issuing, soliciting, or using a workers' compensation form, endorsement, rider, letter, or notice that does not comply with statutory mandates. The solicitation or certification is subject to the sanctions described in sections 10-3-1107, 10-3-1108, and 10-3-1109.

(2) Nothing in paragraph (f) or (g) of subsection (1) of this section shall be construed as including within the definition of discrimination or rebates any of the following practices:

(a) In the case of any contract of life insurance or life annuity, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, if any such bonuses or abatement of premiums shall be fair and equitable to policyholders and for the best interests of the company and its policyholders;

(b) In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium

payments directly to an office of the insurer in an amount which fairly represents the saving in collection expenses;

(c) Readjustment of the rate of premium for a group insurance policy based on the loss or expense thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year;

(d) Requests by a person that an applicant or insured take an HIV related test when such request has been prompted by either the health history or current condition of the applicant or insured or by threshold coverage amounts which are applied to all persons within the risk class, as long as such test is conducted in accordance with the provisions of section 10-3-1104.5.

(3) Repealed.

(4) The following is defined as an unfair practice in the business of insurance: For an insurer to deny, refuse to issue, refuse to renew, refuse to reissue, cancel, or otherwise terminate a motor vehicle insurance policy, to restrict motor vehicle insurance coverage on any person, or to add any surcharge or rating factor to a premium of a motor vehicle insurance policy solely because of:

(a) A conviction under section 12-47-901 (1)(b), C.R.S., or section 18-13-122 (3), C.R.S., or any counterpart municipal charter or ordinance offense or because of any driver's license revocation resulting from such conviction. This paragraph (a) includes, but is not limited to, a driver's license revocation imposed under section 42-2-125 (1)(m), C.R.S.

(b) The licensee's inability to operate a motor vehicle due to physical incompetence if the licensee obtains an affidavit from a rehabilitation provider or licensed physician acceptable to the department of revenue.

(5) It shall not be an unfair practice in the business of insurance for an insurer to pay an assignee if the insurer believes in good faith that the claim is subject to a written assignment from the insured. The insurer shall remain responsible to the insured for such amounts pursuant to the applicable policy terms in the event the person paid did not hold a written assignment and did not provide services or goods to the insured at the insured's request.

# Addendum E

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|---|---|
| Rule 8-1-4 Section 5 A. | Conflicts with § 10-2-704 (3), C.R.S. |
| Rule 8-1-4 Section 5 B. | Conflicts with § 10-2-704 (3), C.R.S. |
| Rule 8-1-4 Section 5 D. | Exceeds § 10-2-704, C.R.S., and § 10-11-109, C.R.S. |
| Rule 8-1-4 Section 5 F. | Conflicts with § 10-2-704 (1) and (2), C.R.S. |
| Rule 8-1-4 Section 5 G. | Conflicts with § 10-11-109 (2), C.R.S. |
| Rule 8-1-4 Section 5 I. | Conflicts with § 10-11-109 (2), C.R.S. |
| Rule 8-1-4 Section 5 J.2.b. | Conflicts with § 10-2-704 (1) and (2), C.R.S. |
| Rule 8-1-4 Section 5 J.3. | Lacks statutory authority |
| Rule 8-1-4 Section 8 | Exceeds § 10-3-1104, C.R.S. |