# TITLE XXXVII
# INSURANCE
## CHAPTER 417
## UNFAIR INSURANCE TRADE PRACTICES
### General Provisions
### Section 417:4

**417:4 Unfair Methods, Acts, and Practices Defined. –** The following are hereby defined as unfair methods of competition and unfair and deceptive acts and practices in the business of insurance:

I. Misrepresentations. Misrepresenting, directly or indirectly, in the offer or sale of any insurance or in connection with any inducement or attempted inducement of any insured or person with ownership rights under an issued insurance policy to lapse, forfeit, surrender, assign, effect a loan against, retain, exchange, or convert the policy, by:

(a) Making, issuing, circulating, or causing to be made, issued or circulated any estimate, illustration, circular, or statement misrepresenting the terms of any policy issued or to be issued or the benefits or advantages therein or the dividends or share of surplus to be received thereon;

(b) Making any incomplete comparison of insurance policies;

(c) Making any false or misleading representation as to the dividends or share of surplus previously paid on similar policies;

(d) Making any false or misleading representation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates;

(e) Using any name or title of any policy or class of policies misrepresenting the true nature thereof;

(f) Employing any device, scheme, or artifice to defraud;

(g) Obtaining money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it was made, not misleading; the burden of establishing truthfulness or completeness shall be upon the party stating or omitting to state a material fact; or

(h) Engaging in any other transaction, practice, or course of business which operates as a fraud or deceit upon the purchaser, insured, or person with policy ownership rights.

II. Misrepresentation in Insurance Applications or Transactions. Making false or fraudulent statements or representations on or relative to an application for insurance, for the purpose of obtaining a fee, commission, money or benefit from an insurer, agent, or individual.

III. False Information and Advertising Generally.

(a) 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 any insurer, its financial condition, or the terms of any contracts issued or to be issued or the benefits or advantages promised thereby, or the dividends or share of the surplus to be received thereon or with respect to any person in the conduct of such person's insurance business, which is untrue, incomplete, deceptive, or misleading.

(b) The burden of establishing truth and completeness shall be on the person making, publishing, circulating or placing said advertisement, announcement, or statement before the public.

IV. 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 of or derogatory to the financial condition of an insurer, and which is calculated to injure any person engaged in the business of insurance.

V. Boycott; Coercion and Intimidation.

(a) Entering into any agreement to commit or by any concerted action committing any act of boycott or individually or by any concerted action entering into any agreement to commit or committing any act of coercion or intimidation resulting or tending to result in unreasonable restraint of, or a monopoly in, the business of insurance.

(b) Except as contained in the policy no insurer, corporation, partnership, or individual shall make any contract or agreement with any person insured or to be insured except as initiated by or agreed to by the person insured or to be insured that the whole or any part of the insurance which is subject to the provisions of this title, shall be placed by any particular corporation, partnership, or individual or be written by or in any particular company or insurer, or by or in any group of companies or insurers or by any agent or group of agents. Any contracts made in contravention of this section shall be null and void.

VI. False Financial Statements. Knowingly filing with any supervisory or other public official or knowingly making, publishing, disseminating, circulating, or delivering to any person; or knowingly placing before the public, or causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false statement of financial condition of an insurer; or knowingly making any false entry in any book, report, or statement of any insurer or knowingly misleading any public official to whom such insurer is required by law to report, or who has authority by law to examine into its condition or into any of its affairs or knowingly omitting to make a true entry of any material fact pertaining to the business of such insurer in any book, report or statement of such insurer.

VII. 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 common-law 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.

VIII. Unfair Discrimination.

(a) 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.

(b) 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 or contract of health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatsoever.

(c) Making any unreasonable distinction or discrimination between persons as to the policy, premiums, or rates charged for policies upon the lives or health of such persons, or in any other manner whatever; demanding or requiring by an insurer a greater premium from any person than is at that time required by such insurer from persons of the same age, sex, general condition of health and prospect of

longevity; making, or requiring any rebate, diminution, or discount upon the amount to be paid on such policy in case of death of such person insured; inserting in the policy any condition, making any stipulation whereby such person insured shall bind oneself or one's heirs, executors, administrators and assigns to accept any sum less than the full amount of value of such policy in case of a claim accruing thereon by reason of the death or disability of such person insured, other than such as are imposed on persons in similar cases. Any such stipulations or conditions so made or inserted shall be void.

(d) Making or permitting any unfair distinction or discrimination in any contract of insurance or annuity contract.

(e) Refusing to insure risks solely because of age (except in the case of life, accident or health insurance), place or area or residence, race, color, creed, national origin, ancestry, marital status, lawful occupation including the military service (except in the case of life, accident or health insurance), of anyone who is or seeks to become insured or solely because another insurer has refused to write a policy, or has cancelled or has refused to renew an existing policy in which that person was the name insured or, except in the instance of excess coverages, solely because the insured does not insure collateral primary, personal types of insurance with the insurer. The exemption in this subparagraph shall not permit a mortgage life insurance policy or certificate to cease, cancel or terminate solely on the basis of the mortgagor's age, until the mortgagor has reached the age of 80.

(f) Refusing to insure or to continue to insure, or limiting the amount, extent or kind of coverage available solely because the applicant who is also the proposed insured has been or may become the victim of domestic abuse or violence. Nothing in this subparagraph shall prohibit an insurer from underwriting a risk on the basis of the physical or medical history or condition of the proposed insured, or other relevant factors relating to the proposed insured, at the time of application regardless of the underlying cause of the condition and in accordance with subparagraph (a) of this paragraph. No insurer shall be held criminally or civilly liable for any cause of action which may result from compliance with this subparagraph.

(g) Charging a higher premium for private passenger automobile or homeowner insurance solely on the basis of information obtained from a credit rating, a credit history, or a credit scoring model.

IX. Rebates.

(a) 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 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 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.

(b) Nothing in paragraphs VIII or IX(a) shall be construed as including within the definition of discrimination or rebates any of the following practices:

(1) Paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, provided that 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;

(2) 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;

(3) Readjustment of the rate of premium for a group insurance policy based on the loss or expense experience 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;

(4) Issuing insurance policies covering bona fide employees of the insurer at a rate less than the rate charged other persons in the same class;

(5) Issuing policies on a salary saving, payroll deduction, preauthorized, postdated, automatic check or draft plans at a reduced rate commensurate with the savings made by the use of such plan;

(6) Paying commissions or other compensation to duly licensed agents or brokers, or allowing or returning to participating policyholders, members or subscribers, dividends, savings, or unabsorbed premium deposits;

(7) Paying by an insurance agent of part or all of commissions on public insurance to a nonprofit association of insurance agents, which is affiliated with a recognized state or national insurance agents' association, to be used in whole or in part for one or more civic enterprises;

(8) Reduction of premium rate for policies of large amounts, but not exceeding savings in issuance and administration expenses reasonably attributable to such policies as compared with policies of similar plan issued in smaller amounts.

(c) Knowingly receiving or accepting, directly or indirectly, any rebate of premium or part thereof, or agents, or brokers commission thereon payable on any policy of insurance or annuity contract or any favor or advantage, a share in the dividend, or other benefit to accrue thereon, or receiving anything of value as an inducement to such insurance or contract or in connection therewith which is not specified, promised, or provided for in the policy or contract, except as provided in paragraph IX(b).

(d) Nothing in this chapter shall be construed as including within the definition of securities as inducement to purchase insurance, the selling or offering for sale, contemporaneously with life insurance or annuities, of mutual fund shares or face amount certificates of regulated investment companies under offerings registered with the securities and exchange commission and the state of New Hampshire pursuant to RSA 421-B where such shares or such face amount certificates or such insurance or annuities may be purchased independently of and not contingent upon purchase of the other, at the same price and upon the same terms and conditions as were purchased independently.

X. Title Insurance Commissions, Rebates and Discounts. Paying, allowing, or permitting commissions, rebates, or discounts to any person having an interest in or lien upon real property, which is the subject of the title insurance involved, or to any person acting for or on behalf of a person with such an interest or lien.

XI. [Repealed.]

XII. Collecting Proper Premium. Knowingly collecting as premium or charge for insurance any sum in excess of or less than the premium or charge applicable to such insurance and as specified in the policy, in accordance with the applicable classifications and rates as filed with and approved by the commissioner, except a premium finance charge, consultant's fee, policy fee, and/or service fee as allowed by law or regulation; or, in cases where classifications, premiums, or rates are not required by this title to be so filed and approved, such premiums and charges shall not be in excess of or less than those specified in the policy and as fixed by the insurer. This provision shall not be deemed to prohibit the charging and collecting, by surplus line brokers of the amount of applicable state and federal taxes in

addition to the premium required by the insurer. Nor shall it be deemed to prohibit the charging and collecting, by an insurer, of amounts actually to be expended for medical examination of an applicant for insurance or for reinstatement of an insurance policy. Nor shall it be deemed to prohibit the charging or collecting by an insurance agent or broker of a reasonable service charge or fee as may be determined by regulation.

XIII. Separate Charge for Insurance. Arranging or participating in any plan to offer or effect in this state as an inducement to the purchase or rental by the public of any property or services, any insurance for which there is no separate charge to the insured. This section does not apply to:

(a) Insurance offered as a guarantee of the performance of goods, and designed to protect the purchasers or users of such goods;

(b) Title insurance;

(c) Towing and labor services of motorist service clubs.

XIV. Coverage Reduction. Reduction by an insurance company authorized to do business in this state of liability limits or increasing premiums on any policy during its term, without the consent of the insured.

XV. Unfair Claim Settlement Practices by Insurers.

(a) Any of the following acts by an insurer, if committed without just cause and not merely inadvertently or accidentally, shall constitute unfair claim settlement practices:

(1) Knowingly misrepresenting to claimants or insureds pertinent facts or policy provisions relating to coverages at issue;

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

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

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

(5) Compelling claimants to institute litigation to recover amounts due under insurance policies by offering substantially less than the amounts ultimately recovered in actions brought by them;

(6) Adopting or 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;

(7) Attempting settlement or compromise of a claim on the basis of an application which was altered without notice to, or knowledge or consent of the insured;

(8) Attempting to settle or compromise a claim for less than the amount which the insured had been led to believe the insured was entitled to by written or printed advertising material accompanying or made part of an application;

(9) Attempting to delay the investigation or payment of claims by requiring an insured and the insured's physician 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;

(10) Making any claim payment not accompanied by a statement setting forth the benefits included within the claim payment;

(11) Failing to affirm or deny coverage of claims within a reasonable time after proof of loss forms have been submitted;

(12) Refusing payment of a claim solely on the basis of an insured's request to do so without

making an independent evaluation of the insured's liability based upon all available information;

(13) Failure of an insurer to maintain a complete record of all complaints which it has received, whether or not they were deemed valid, the time it took to process the complaint, and the disposition thereof and file an annual report thereof with the insurance department.

(14) Knowingly underestimating the value of any claim by an insurer or by an adjuster representing the insurer.

(b) Evidence as to numbers and types of complaints to the insurance department against an insurer, and said department's complaint experience with other insurers writing similar lines of insurance, shall be admissible in evidence in an administrative or judicial proceeding brought under this title, provided that no insurer shall be deemed in violation of this section solely by reason of the numbers and types of such complaints.

XVI. Coercion in Requiring Insurance.

(a) No creditor or lender engaged in the business of financing the purchase of real or personal property or of lending money on the security of real or personal property may require, as a condition to such financing or lending, or as a condition to the renewal or extension of any such loan or to the performance of any other act in connection with such financing or lending, that the purchaser or borrower, or the purchaser's or borrower's successors shall negotiate through a particular insurance company or companies, insurance agent or agents, broker or brokers, type of company or types of companies, any policy of insurance or renewal of a policy insuring such property. This provision does not prevent the exercise by any mortgagee of the right to approve on a reasonable nondiscriminatory basis only insurance companies authorized to do business in this state, selected by the borrower.

(b) There shall be no interference either directly or indirectly with such borrower's, debtor's or purchaser's free choice of an agent and of an insurer which complies with the foregoing requirements, and the creditor or lender may not refuse the policy so tendered by the borrower, debtor or purchaser. Upon notice of any refusal of such tendered policy, the insurance commissioner shall order the creditor or lender to accept the tendered policy, if the commissioner determines that the refusal is not in accordance with the foregoing requirements of this subparagraph. Failure to comply with such an order of the insurance commissioner is a violation of this section.

(c) Whenever the instrument requires that the purchaser, mortgagor, or borrower furnish insurance of any kind on real or personal property which is being conveyed or which is collateral security to a loan, the mortgagee or lender shall refrain from disclosing or using any and all such insurance information to its own advantage and to the detriment of either the borrower, purchaser, mortgagor, insurer, or company or agency complying with the requirements relating to insurance.

(d) Notwithstanding any other law to the contrary, a creditor or lender of a loan secured by an interest in real property shall not require the borrower to keep the mortgaged property insured under a property insurance policy in a sum in excess of the value of the buildings on the real property.

(e) Notwithstanding any other law to the contrary, no creditor or lender shall require as a condition to closing a loan that the borrower provide an original insurance policy at said closing; provided, however, that the creditor or lender may require the borrower to produce at closing a binder showing the borrower as a named insured and creditor or lender as mortgagee, and confirming that insurance has been issued, is in force, and will remain in full force until a copy of the final policy is delivered to the creditor or lender or until the creditor or lender has received notice of cancellation in accordance with the policy conditions.

(f) No insurer may automatically write insurance on a debtor who has contracted credit based on the

principle that the insurance is applicable unless specifically rejected by the debtor, unless the premium or such other identifiable charge as may be applicable is paid in full by the creditor.

XVII. Complaint Handling Procedures Applicable to Insurance Companies.

(a) Failing to maintain a procedural means within the company, headed by a responsible officer, to process and respond adequately to policyholders' and certificate holders' complaints.

(b) Failing to record and assemble all records of policyholders' and certificate holders' complaints in a central location to facilitate periodic review by insurance departments.

(c) Failing to record, maintain and produce, when requested by appropriate authority, a summary of all complaints received, whether or not they were deemed valid, the time it took to process the complaints, and the disposition thereof and failing to file an annual report thereof with the insurance department.

(d) Failing to provide within this state reasonable means whereby any person aggrieved by the application of an insurer's rating system, claims practices, sales practices or underwriting procedures may be heard, in person or by an authorized representative, upon the person's written request to review the manner in which such procedures were applied in connection with insurance afforded or tendered to the person.

XVIII. Conflict of Interest. Failing to establish a reasonable procedure whereby insurance company officers, directors, trustees or responsible employees can disclose to the company board of directors or trustees any material interest or affiliation likely to conflict with their official duties.

XIX. Human Immunodeficiency Virus. No person engaged in the business of insurance in this state shall test for the presence of an antibody or antigen to a human immunodeficiency virus other than in accordance with the provisions of this paragraph. Such persons shall not be subject to any provision of RSA 141-F.

(a) No person may test any individual in connection with an application for insurance for the presence of an antibody or antigen to a human immunodeficiency virus unless such individual gives written consent on a form designed by the commissioner of the department of health and human services with consultation and approval by the commissioner of insurance. The form shall contain information about the medical interpretations of positive and negative test findings, disclosure of test results, and the purpose for which the test results may be used.

(b) If the laboratory analysis is performed within this state, only laboratories certified by the department of health and human services shall be used to test for the presence of an antibody or antigen to a human immunodeficiency virus. If the laboratory analysis is conducted without this state, only laboratories licensed by the United States Department of Health and Human Services under the Clinical Laboratory Improvement Amendments of 1988, as amended, shall be used to perform such tests.

(c) In the event of a positive test result on a blood, urine, or oral specimen, or a positive test result on an FDA approved test, a person who tests for the presence of an antibody or antigen to a human immunodeficiency virus shall disclose the test results, but only to:

(1) The individual tested;

(2) Such other person or entity as the individual tested may authorize by written consent to receive the test results, which consent shall be clearly identifiable as part of the form described in subparagraph (a) of this paragraph.

(d) Notwithstanding the provisions of subparagraph (c), if the test results are positive or indeterminate and the individual tested has not given written consent authorizing a physician to receive

the test results, such individual shall be urged, at the time the individual is informed of the positive or indeterminate test results, to contact the commissioner of the department of health and human services for appropriate counseling.

(e) A person who requires the test for the presence of an antibody or antigen to a human immunodeficiency virus shall maintain all test results and records pertaining to test results as confidential and protected against inadvertent or unwarranted intrusion. Such test results obtained by subpoena or any other method of discovery shall not be released or made public outside the proceedings.

(f) The commissioner of insurance shall adopt rules, under RSA 541-A, relative to:

(1) Recordkeeping designed to maintain the confidentiality of an individual tested under this paragraph.

(2) Who may have access to such records and the conditions of such access.

XX. Coercion in Requiring Certain Automobile or Glass Repair.

(a) No insurance company, and no agent or adjuster for such insurance company, that issues or renews in this state any policy of insurance covering, in whole or in part, motor vehicles shall require any insured person or entity under that policy to use a particular company or location for the providing of automobile glass replacement or automobile repair services or products insured in whole or in part by that policy.

(b) No such insurance company, agent or adjuster shall engage in any act or practice of intimidation, coercion, threat, for or against any such insured person or entity to use such a particular company or location to provide such services or products.

(c) Nothing shall prohibit any insurance company, agent or adjuster from providing to such insured person or entity the name of an automobile glass company or automobile repair company with which arrangements may have been made with respect to automobile glass or repair prices or services. If a name is provided, there must be disclosure by the insurance company, agent or adjuster to the insured person or entity that any other automobile glass company or automobile repair company or location may be used at the discretion of the insured person or entity. However, the insurer may limit payment for such work based on the fair and reasonable price in the area by repair shops or facilities providing similar services with the usual and customary guarantees as to materials and workmanship. If an independent repair shop or facility and an insurer are unable to agree on a price, then for the purposes of this section "fair and reasonable price'' shall mean the price available from a recognized, competent and conveniently located, independent repair shop or facility which is willing and able to repair the damaged automobile within a reasonable time.

XXI. "Most Favored Nation'' or "Equally Favored Nation'' Provisions. Using or enforcing any "most favored nation'' or "equally favored nation'' provision in any contract for medical care provider services. For the purposes of this paragraph "most favored nation'' or "equally favored nation'' provisions mean a requirement that a provider give the insurer the benefit of any lower fee schedules or charges for services which the provider may subsequently agree to with other persons or entities.

XXII. [Repealed.]

XXIII. Medicare Products and Medicare Supplemental Health Insurance.

(a)(1) Selling, soliciting or negotiating the purchase of Medicare products (Part C and Part D) or Medicare supplemental (Medigap) health insurance in this state through the use of cold lead advertising.

(2) Using an appointment that was made to discuss Medicare products or to solicit the sale of

Medicare products in order to solicit sales of life insurance or annuity products.

(3) Soliciting the sale of Medicare products door-to-door prior to receiving an invitation from a consumer.

(b) In this paragraph:

(1) "Cold lead advertising'' means making use directly or indirectly of a method of marketing that fails to disclose in a conspicuous manner that a purpose of the marketing is insurance sales solicitation and that a contact will be made by an insurance producer or insurance company.

(2) "Medicare products'' means Medicare Part C (Medicare Advantage) and Medicare Part D (prescription drugs).

(3) "Medicare supplemental health insurance'' means a group or individual policy of accident and sickness insurance or a subscriber contract of hospital and medical service associations or health maintenance organizations, other than a policy issued pursuant to a contract under section 1876 of the federal Social Security Act 42 U.S.C. section 1395 et seq. or an issued policy under a demonstration project specified in 42 U.S.C. section 1395 ss (g)(1), which is advertised, marketed, or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical, or surgical expenses of persons eligible for Medicare. "Medicare supplemental health insurance'' does not include Medicare Advantage plans established under Medicare Part C, Outpatient Prescription Drug plans established under Medicare Part D, or any Health Care Prepayment Plan (HCPP) that provides benefits pursuant to an agreement under section 1833(a)(1)(A) of the Social Security Act.

**Source.** 1947, 189:1, par. 4. RSA 417:4. 1965, 122:1. 1971, 519:1; 561:7, 8. 1986, 157:2. 1988, 262:10. 1991, 26:1. 1993, 160:1. 1994, 320:1. 1995, 310:181, 182. 1996, 40:1; 238:1-8. 1997, 158:11; 174:1; 282:4. 2000, 206:1. 2003, 144:8. 2004, 245:5, 6. 2006, 196:11. 2007, 30:1. 2009, 96:1, II. 2010, 258:1, eff. Jan. 1, 2011.