

Opinion No. 45-4751

July 13, 1945

BY: C. C. McCULLOH, Attorney General

TO: Mr. R. F. Apodaca Superintendent of Insurance State Corporation Commission
Santa Fe, New Mexico

{*103} Replying to your letter of July 5, 1945, wherein you request an opinion of this office on the question of insurance companies (accident and health policies) issuing regular policies at regular premium rates, but with riders attached limiting coverage on disease or injury existing previous to time of making the application for insurance.

Advise: "Whether or not the attached riders can be approved by this office."

Ex. 1. Appears to be the usual approved form upon which applications for health and accident insurance are made.

Ex. 2. Questionnaire re persons discharged from government service, time of service and health record while in service.

{*104} Ex. 3. Waiver of all rights of indemnity on account of disability which may arise by reason of injury or disease existing before making application.

Ex. 4. Waiver of all indemnity by reason of injury or disease of the eyes before making application.

Ex. 5. Waiver of all indemnity for injury to or resulting from injury to leg before making application.

"60-607. Accident insurance -- Forms and rates to be filed -- Exceptions. -- No company licensed to transact an insurance business in the state of New Mexico shall issue or deliver any policy of insurance against loss or damage from sickness or bodily injury or death of the insured by accident, until the form of same, together with schedule of rates applicable thereto, has been filed with the superintendent, and if the superintendent shall, within thirty (30) days, notify any company that any form thus filed in his opinion contains provisions contrary to the laws of this state, it shall thereafter be unlawful for any such company to issue any policy on the form so disapproved; Provided, however, that the action of the superintendent in this regard shall be subject to review by the corporation commission or any court of competent jurisdiction. * * *"

32 C. J., Section 222, Page 1122, states:

"(Sec. 222) c. Rider. Some statutes expressly authorize separate slips or riders, containing additional or modifying provisions, to be attached to a standard form of

policy. More than one provision may be contained in the same slip or rider. The substance of the rider must not be in contravention of statutes prescribing a standard form of insurance contracts."

Cooley's Briefs on Insurance, 2nd Edition, Volume 1, Page 827, Right to Limit Liability:

"The policy of insurance is a contract of indemnity in which the parties have a legal right to insert any conditions and stipulations which they may deem reasonable and necessary, provided no principle of public policy will be contravened."

Cooley's Briefs on Insurance, 2nd Edition, Volume 1, General Rules, Page 981:

"In view of the rule that the policy should be liberally construed in favor of the insured, it follows that provisions of the contract limiting or avoiding liability will be construed strictly against the insurer."

By reason of the foregoing, it is my opinion that the above riders may be approved or disapproved by the Superintendent of Insurance.

By THOS. C. McCARTY,

Asst. Atty. General