

Amended Regulation 5-1-12

CONCERNING WARRANTIES AND SERVICE CONTRACTS

Section 1.	Authority
Section 2.	Background and Purpose
Section 3.	Scope
Section 4.	Definitions
Section 5.	Rules
Section 6.	Enforcement
Section 7.	Severability
Section 8.	Effective Date
Section 9.	History

Section 1. Authority

This regulation is promulgated by the Commissioner of Insurance under the authority of §§ 10-1-108(8) and 10-1-109, Colorado Revised Statutes (C.R.S.).

Section 2. Background And Purpose

The purpose of this regulation is to establish a distinction between a written agreement that is an insurance contract pursuant to § 10-1-102(7), C.R.S. and a written agreement that meets the definition of a written warranty or service contract and is not subject to regulation by the Division of Insurance.

The Colorado Division of Insurance has received numerous inquiries regarding contracts which may be insurance and are sold as warranties or service contracts. The definitions and rules contained herein set forth certain conditions which will cause a contract to be considered a contract of insurance, and thereby regulated by the Division of Insurance, and warranty contracts and service contracts which may not be regulated unless specifically addressed in the Colorado statutes, rules and regulations.

Section 3. Scope

This regulation applies to written agreements in which services are promised to be rendered or the purchaser of property, personal or real, is guaranteed repair, replacement or indemnification for such repair or replacement of the property on the discovery of defects, loss, or damage to the property during a specified or unlimited period of time after purchase.

This regulation applies to written agreements which provide a benefit including but not limited to, prepaid legal, accounting, or other services.

This regulation shall not apply to contracts issued as warranties and/or service contracts regulated by §§ 42-10-103, et. seq., 42-11-101, et. seq. and 12-61-602, et. seq., C.R.S.

This regulation shall not apply to written agreements providing health benefits or health service plans.

Section 4. Definitions

For the purposes of this regulation:

"Closed panel" means an individual or a group of providers which are linked by ownership or contract arrangements to the issuer of the contracts.

"Contract" means a written agreement for consideration.

"Indemnify" means to make compensation for damage, loss, or injury suffered.

"Service contract" means a contract whereby specified or designated services are obligated to be performed, over a fixed period of time or for a specified duration.

"Supplier" means the manufacturer, wholesaler or retailer of a product or thing being sold and warranted or guaranteed.

"Written warranty" means

(A) Any written affirmation of fact or written promise made in connection with a sale of real or personal property by a supplier to a buyer which relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is defect free or will meet a specified level of performance over a specified period of time, or

(B) Any undertaking in writing in connection with the sale of real or personal property by a supplier to refund, repair, replace, or take other remedial action with respect to such product in the event that such property fails to meet the specifications set forth in the undertaking, which written affirmation, promise, or undertaking becomes part of the basis of the bargain between a supplier and a buyer for purposes other than resale of such product.

Section 5. Rule

A service contract will not be a contract of insurance if the issuer has the ability to and provides the services or meets the following conditions:

1. Has a closed panel of providers who agree to provide all the services promised to any contract holder of the plan.
2. The closed panel must be responsible for providing services whether or not the issuer, which collects the dues and pays the providers, becomes bankrupt or otherwise ceases to function in the anticipated manner.
3. The closed panel of providers must have a factual and realistic capability to provide all the services obligated to the contract holder.
4. There must be no indemnification contracted for by either the administrative unit or the providers of the plan for services or risk contingencies performed by any other entity outside the closed panel.

The issuer of these contracts may be the supplier, an individual, entity or association. Associations may issue service contracts only if the association is solely comprised of members who will provide the services.

A written agreement issued by the supplier of a product which meets the definition of a written warranty under this regulation is not a contract of insurance. Any other person who issues a written warranty, promise or contract to a product buyer for consideration is engaged in the business of insurance.

A contract which agrees or promises to indemnify the purchaser directly or promises to indemnify others for providing such agreed upon services and meets the definition of insurance as set forth in § 10-1-102(7), C.R.S., is a contract of insurance.

If a written agreement is such that any part of the agreement is considered to be a contract of insurance, then the entire agreement shall be considered to be a contract of insurance.

A written agreement which would otherwise be considered a contract of insurance with the exception of not having charged an explicit consideration, is a contract of insurance if there is any consideration received through other provisions or related agreements.

Section 6. Enforcement

Any contract which is considered to be a contract of insurance based upon this regulation shall be subject to the rules and regulations of the insurance code as contained in Title 10 of the Colorado Revised Statutes.

Noncompliance with this regulation may result in the imposition of sanctions authorized in Article 3 of Title 10, C.R.S.

Section 7. Severability

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

Section 8. Effective Date

This regulation shall be effective January 1, 2002.

Section 9. History

Regulation 91-9, was effective August 1, 1991.

Regulation 91-9 was repealed and replaced by Regulation 5-1-2, effective July 1, 1993.

Regulation 5-1-12 was amended, effective January 1, 2002.