

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF INSURANCE

Insurance Producer Standards of Conduct: Marketing
Activities for Which a Person Must be Licensed as an Insurance Producer
Professional Employer Organization and Employee Leasing Companies

Adopted Amendments: N.J.A.C. 11:17A-1.2 and 1.4

Proposed: September 15, 2003 at 35 N.J.R. 4170(a)

Adopted April 7, 2004 by Holly C. Bakke, Commissioner,
Department of Banking and Insurance

Filed April 8, 2004 as R. 2004 d.184, **without change**.

Authority: N.J.S.A. 17:1-8.1, 17:1-15e and 17:22A-48 et seq.

Effective Date: May 3, 2004

Expiration Date: December 30, 2004

Summary of Public Comments and Agency Responses:

The Department received three written comments on the proposal. The comments were received from: National Association of Health Underwriters; Independent Insurance Agents of New Jersey; and Professional Insurance Agents of New Jersey.

COMMENT: One commenter is concerned that the proposal allows employees of professional employer organizations (PEOs) to be treated differently from insurance company personnel and insurance agents. The commenter believes that health insurance is the inducement that makes a

PEO attractive to its potential clients. The commenter is of the opinion that PEOs that offer health insurance as a benefit to the employer should be required to secure licensure.

RESPONSE: The Department disagrees with the commenter. The proposal clarifies that employees of PEOs are required to be licensed if they engage in any of the activities that require licensure as an insurance producer. If the conduct in which an employee of a PEO is engaged constitutes solicitation, negotiation or sale of insurance, pursuant to the amended rule and to N.J.S.A. 17:22A-29 et seq, they would need to be licensed.

COMMENT: One commenter is of the opinion that the term “enrolling new members” is vague and that the term “member” is not defined in the proposal. The commenter is also concerned that the term “member” could be assumed by PEOs to mean the organization with which a PEO is dealing in its attempt to solicit, sell or negotiate a contract for PEO services. The commenter explains that even if the PEO is only selling one particular insurance plan, they are comparing such plan to the existing coverage that the potential client previously purchased. Therefore, the commenter views these activities to be part of the solicitation of insurance contracts if the party receiving the information was not already a client company of the PEO. Consequently, the PEO under these circumstances should be licensed.

RESPONSE: A PEO whose members are covered by a group policy could give the prospective clients rate information on the group policy if that was all that they offered. Here there is no solicitation or negotiation or sale involved. However, the Department agrees with the commenter that comparing the coverage that a prospective client already has with the coverage the PEO is offering could constitute the solicitation or negotiation or sale of insurance. Therefore, a PEO employee who made such a comparison would need to be licensed pursuant to the amended rule and the provisions of N.J.S.A. 17:22A-29 et seq.

COMMENT: One commenter believes that where a PEO employee holds a discussion about matters such as the benefits of coverage or options in deductibles or co-payments, then the PEO employee should be required to turn such discussion over to a licensed insurance producer.

RESPONSE: The Department feels that the inclusion of a standard in the rule based upon the occurrence of such a “discussion” would be too vague. In addition, such a standard might be construed in a manner that would conflict with N.J.S.A. 17:22A-30b(2), which provides, in relevant part, that a license as a producer is not required of a person whose secures and furnishes information for the purpose of enrolling individuals under insurance plans where no commission is paid to the person.

COMMENT: One commenter commended the Department for this proposal because it clarifies those activities undertaken by PEO’s which require licensure.

RESPONSE: The Department appreciates the commendation.

Federal Standards Statement

A Federal standards analysis is required when any State agency adopts, readopts, or amends States rules that exceed any Federal standards or requirements, and must include in the rulemaking document a comparison with Federal law.

The Department notes that the subject of these amendments deals with insurance activities in New Jersey, which is exclusively subject to the laws of this State and is not subject to any Federal standards or requirements. Thus, no Federal standards analysis is required.

Full text of the adoption follows:

ROG03-22/INOREGS