

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
OFFICE LIFE AND HEALTH

Notification of Producer Compensation

Proposed New Rules: N.J.A.C. 11:17B-4

Authorized By: Steven M. Goldman, Commissioner, Department of Banking and Insurance

Authority: N.J.S.A. 17:1-8.1, 17:1-15e and 17:22A-41.1

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2009-242

Submit comments by October 16 , 2009 to:

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The agency proposal follows:

Summary

P.L. 2008, c. 38 (the Act) was approved on July 8, 2008 and became effective on January 5, 2009. Among other things, the Act amended the New Jersey Producer Licensing Act of 2001 at N.J.S.A. 17:22A-26 et seq. to provide as follows:

“a. An insurance producer licensed pursuant to [N.J.S.A. 17:22A-26 et seq.] who sells, solicits, or negotiates health insurance policies or contracts to residents of this State shall notify the purchaser of the insurance, in writing, of the amount of any commission, service fee, brokerage, or other valuable consideration that the producer will

receive as a result of the sale, solicitation or negotiation of the health insurance policy or contract. If the commission, fee, brokerage, or other valuable consideration is based on a percentage of premium, the insurance producer shall include that information in the notification to the purchaser.

b. The Commissioner may specify, by regulation, the information that shall be provided by an insurance producer in the notification to a purchaser of health insurance and the procedure for providing the notification. N.J.S.A. 17:22A-41.1.”

On October 1, 2008, the Department issued Bulletin No. 08-16 to provide guidance for producer compensation disclosure. The Department is now proposing new rules at N.J.A.C. 11:17B-4 to codify and enhance the guidelines previously provided by the Bulletin.

The Department initially notes that the statute requires disclosure for compensation related to “health insurance policies.” However, the proposed new rules apply solely to health benefit plans as defined in N.J.A.C. 11:22-5.2. Other health insurance policies, such as disability, long-term care and accident only, involve a myriad of circumstances under which commissions may be paid (for example, all or a majority of the commission may be paid in the first year of the policy with little or no commissions paid thereafter). These differences present a unique challenge to the Department as to how best to articulate standards so that the notification to purchasers will be meaningful and clear, as well as appropriate across the various plans provided. Thus, the Department is publishing elsewhere in this issue of the New Jersey Register a notice of pre-proposal requesting input from interested parties on how to address these concerns with regard to the issuance of policies other than health benefits plans that provide

health care coverage. After review of the comments submitted on that pre-proposal, the Department will propose amendments or new rules to establish standards applicable to those types of health insurance policies.

The proposed new rules implement N.J.S.A. 17:22A-41.1 with respect to health benefits plans to ensure that purchasers of such plans are provided notice of the compensation paid to producers so that they may be aware of the costs associated with such coverage.

Proposed N.J.A.C. 11:17B-4.1 sets forth the purpose and scope of the proposed new rules.

Proposed N.J.A.C. 11:17B-4.2 sets forth the definitions of terms used in the subchapter.

Proposed N.J.A.C. 11:17B-4.3 sets forth the requirements for notification of producer compensation to purchasers of health benefits plans. Generally, the proposed new rule requires that any insurance producer who sells, solicits or negotiates health benefits plans to residents of this State shall disclose to the purchaser any valuable consideration to be received by them for the sale, including – but not limited to – commissions and service fees. All valuable consideration shall be disclosed whether the amount is set, can be calculated, or must be estimated. For new business, notification and disclosure of compensation shall be made either at the time of the proposal or 30 days prior to the date on which the contract is executed by the purchaser, whichever is later. For renewals, notification and disclosure shall be made at least 30 days prior to the effective date of the renewal. Producers may use the form of disclosure that is set forth in Exhibit A in the Appendix to the proposed subchapter, incorporated therein by reference, or they may use a form that provides the required information. In the alternative, if the carrier or carrier's designee elects to voluntarily provide the required information in the rate quote, such action shall satisfy the requirements of this subchapter. The proposed form is based

on the form previously circulated by the Department as an attachment to Bulletin No. 08-16. The proposed rule also provides that any general agent commission shall be specifically identified to the purchaser and not aggregated with the compensation to the retail producer.

The proposed new rule further provides that for any group health benefits plan not otherwise subject to N.J.S.A. 17B:27A-17 et seq., the premium, rate, or charge for coverage may be (but is not required to be) calculated by the carrier based on the actual commission paid. If the premium is calculated based on the actual commission, this fact must be disclosed by the carrier to the policyholder or contractholder (for example, in the rate proposal).

Proposed N.J.A.C. 11:17B-4.4 sets forth penalties for violations of the subchapter.

A 60-day comment period is provided for this notice of proposal, and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the proposal is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The proposed new rules implement N.J.S.A. 17:22A-41.1, with respect to the providing of notice of the compensation to be received by producers to purchasers of health benefits plans. Such notice should enable purchasers to better understand the components of the full cost of the coverage they are purchasing, and be informed about the compensation provided to the producer for their services in the transaction. The new rules will also assist employers in the large group market in negotiating commissions, which may result in reductions in the fees paid by employers to acquire such coverage.

Economic Impact

Producers and carriers will be required to incur any costs associated with notifying purchasers of health benefits plans who are residents of this State of the compensation the producer will receive in connection with the sale of such plans. In addition, purchasers will be in a position to know the charges related to compensation paid to producers in connection with the sale of such plans. Professional services needed to comply with the proposed new rules include information technology, accounting and actuarial. These services should currently be either available in-house or retained by entities subject to the proposed new rules.

Federal Standards Statement

A Federal standards analysis is not required because the proposed new rules are not subject to any Federal requirements or standards.

Jobs Impact

The Department does not anticipate that any jobs will be generated or lost as a result of the proposed new rules. The Department invites commenters to submit any data or studies on the potential jobs impact of the proposed new rules together with their comments on other aspects of the proposal.

Agriculture Industry Impact

The proposed new rules will not have an impact on the agriculture industry in New Jersey.

Regulatory Flexibility Analysis

The proposed new rules will apply to “small businesses,” as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. To the extent that the proposed new rules apply to small businesses, they will apply to resident business entities licensed as organization insurance producers, domestic insurers and health maintenance organizations providing individual and group health benefits plans to residents of this State. The cost for compliance and professional services required to comply with the proposed new rules are discussed in the Economic Impact above. The proposed new rules provide no differentiation in compliance requirements based on business size. N.J.S.A. 17:22A-41.1 requires insurance producers to provide notice of their compensation to purchasers of health insurance (with health benefits plans being addressed in this proposal, and other kinds of health insurance to addressed in a subsequent proposal). The purpose of this statute is to ensure that purchasers of health insurance in this State are advised of the producer compensation component of the cost of such coverage. These goals do not vary based on business size.

Smart Growth Impact

The proposed new rules will not have an impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Housing Affordability Analysis

The proposed new rules will not have an impact on housing affordability in this State because the proposed new rules relate to notification of producer compensation to purchasers in connection with the sale of health benefits plans.

Smart Growth Development Impact

The Department believes that there is an extreme unlikelihood that these proposed new rules would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan because the proposed new rules relate to notification of producer compensation to purchasers in connection with the sale of health benefits plans.

Full text of the proposed new rules follows:

SUBCHAPTER 4. NOTIFICATION OF PRODUCER COMPENSATION

11:17B-4.1 Purpose and scope

(a) The purpose of this subchapter is to set forth standards and requirements to implement N.J.S.A. 17:22A-41.1, and to require insurance producers who sell, solicit, or negotiate health benefits plans to residents of this State to notify the purchaser of the plan in writing of the amount of any commission, service fee, brokerage, or other valuable consideration that the producer will receive as a result of such sale, solicitation or negotiation.

(b) This subchapter shall apply to any insurance producer licensed pursuant to N.J.S.A. 17:22A-26 et seq., who sells, solicits or negotiates health benefits plans to residents of this State.

11:17B-4.2 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context indicates otherwise.

“Carrier” is as defined in N.J.A.C. 11:21-1.2.

“Commissioner” means the Commissioner of the New Jersey Department of Banking and Insurance.

“Department” means the New Jersey Department of Banking and Insurance.

“Health benefits plan” is as defined in N.J.A.C. 11:22-5.2.

“Insurance producer” or “producer” is as defined in N.J.S.A. 17:22A-28.

11:17B-4.3 Notification

(a) Any insurance producer who sells, solicits or negotiates health benefits plans to residents of this State shall disclose to the purchaser of such plan any valuable consideration received by them for the sale, solicitation, or negotiation. Valuable consideration received by the producer includes, but is not limited to, commissions and service fees. All valuable consideration shall be disclosed whether the amount is a fixed amount, is calculable, or must be estimated. However, the precise nature of the compensation (for example, whether the compensation is a commission or service fee) need not be disclosed. In the case of commission rates, producers may disclose the commission as a percentage of premium or the per employee amount of commission in connection with a rate proposal, binder or bill, as an alternative to disclosing the total dollar amount of the compensation.

(b) For new business, notification and disclosure of compensation shall be made either at the time of the proposal or 30 days prior to the date on which the contract is executed by the purchaser, whichever is later. For renewals, notification and disclosure shall be made at least 30 days prior to the effective date of the renewal.

(c) Producers may use the form of disclosure set forth in Exhibit A in the Appendix to this subchapter, incorporated herein by reference, or they may use a form that provides the required information. In the alternative, if the carrier or carrier's designee elects voluntarily to provide the required information in the rate quote, such action shall satisfy the requirements of this subchapter and N.J.S.A. 17:22A-41.1.

(d) Compensation to any general agent shall be specifically identified and shall not be aggregated with the compensation paid to the retail agent (that is, the producer who directly sold the health benefits plan).

(e) For any group health benefits plan not otherwise subject to N.J.S.A. 17B:27A-17 et seq., the premium, rate, or charge for coverage may be (but is not required to be) calculated by the carrier based on the actual commission paid. If the premium is calculated based on the actual commission, this fact must be disclosed by the carrier to the policyholder or contract-holder (for example, in the rate proposal).

11:17B-4.4 Penalties

Failure to comply with the provisions of this subchapter may result in the imposition of penalties as authorized by law, including, but not limited to, penalties authorized by N.J.S.A. 17:22A-45.

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APPENDIX
EXHIBIT A

**DISCLOSURE OF A FINANCIAL INTEREST
IN THE SALE OF HEALTH INSURANCE BENEFITS PLANS**

New Jersey law (N.J.S.A. 17:22A-41.1) requires disclosure of the compensation a licensed agent or broker (producer) receives from your purchase or renewal of health coverage. Compensation may be in the form of a commission, fee(s), or possibly other valuable consideration, or a combination of all three.

The dollar amount(s) or percentage(s) of premium are in the table below. If an amount cannot be determined (for example, a bonus), it is marked as "CBD." If something does not apply, it is marked "None" or "NA".

	Agent/Producer		
	Percentage (%)	Amount in Dollars (\$) on a per employee basis	Total Dollar (\$) per plan (case)*
Commission of Issuing Agent			
Commission of General Agent			
Consultant Fee			
Brokerage Fee			
Other:			

*This column shows a fixed compensation arrangement that does not consider the premium generated or the number of enrollees. This column should not contain any dollar amounts if either of the first two columns indicates a commission or fee applies.

PRODUCER INFORMATION

Agent Name: _____ License #: _____

Other Producer: _____

CARRIER INFORMATION

Company Name: _____