



National Association of Health Underwriters

America's Benefits Specialists

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December 22, 2004

To: Diane Koken, President, National Association of Insurance Commissioners and Insurance Commissioner, Pennsylvania Insurance Department

From: Trei Wild, President, National Association of Health Underwriters

On behalf of the National Association of Health Underwriters, we would like to comment on the most recent draft of the proposed amendment to the NAIC Producer Licensing Model Act.

We appreciate the most recent changes to the proposed amendment, and believe it has significantly improved. We do have a few remaining concerns about the amendment.

First, although Section A of the new proposed amendment requires that the amount of commissions be disclosed *if possible*, we again note that the broad definition of compensation will make disclosure difficult in the case of bonus or other contingent commissions where the fact or amount of compensation is unknown at the time the insurance is placed. Basic commissions, fees, and overrides may in fact be the only compensation that is known at the time the insurance is placed. We again stress our concern that our members may not be able to comply with the requirements of the amendment as it is currently written.

Additionally, a licensed employee of a producer may act on behalf of a customer for a variety of servicing reasons or to perform administrative functions at the direction of the producer directly involved in placement of the insurance, but clearly should not be subject to these disclosure requirements. We suggest the word “represents” rather than “acts on behalf of” to avoid any confusion in this area.

We have additional concerns regarding the requirement for documented acknowledgement of commissions and in particular, the definition of such acknowledgement. We believe that the requirement for commission disclosure can be achieved in a number of ways and that in the event of an investigation a producer is likely to be asked to show as a part of their regular business practice how commission disclosures are made. At a minimum, the word “consent” does not reflect the business relationship between the producer and the customer, and should be changed to “acknowledgement.”

In **Section A**, we would suggest the following changes:

Where any insurance producer or any affiliate of such producer receives any compensation from the customer for the placement of insurance or ~~acts on behalf~~ represents the customer with respect to that placement, neither that producer nor the affiliate shall accept or receive any compensation from an insurer or other third party for that placement of insurance unless the producer has, prior to the customer's purchase of insurance (a) ~~obtained the customer's documented acknowledgment~~ disclosed that such compensation will be received by the producer or affiliate and (b) disclosed the amount of such compensation from the insurer or other third party for that placement. If the producer is aware that certain compensation will be received from the insurer or other third party but the amount of compensation is not known at the time of disclosure, the producer shall disclose the specific method for calculating such compensation and, if possible, a reasonable estimate of the amount.

In addition, we remain concerned about **Section B** and the purpose of its inclusion when a licensed producer may be representing only one insurer. In this situation, bid rigging and the other problems described by Attorney General Spitzer are not possible due to the contractual relationship of the producer with the insurer. At the NAIC meeting in December, many of the commissioners expressed a desire to look more closely at whether commission disclosure was appropriate for this category of producer. Since these producers have an entirely different relationship with their customers and clearly represent an insurer, and there has been no indication of any problem with this category of producer, we are hopeful that Section B will be put aside for now until it can be determined whether any action is required and if so, what the appropriate action will be.

Finally, in reflection of our previous comments, we recommend the following changes to **Section E**:

“Compensation from an insurer or other third party” means payments, commissions, fees, awards, overrides, bonuses, contingent commissions, loans, stock options, gifts, prizes or any other form valuable consideration, whether or not payable pursuant to a written agreement, if the producer is aware of the compensation at the time of placement of the insurance.

We appreciate this opportunity to comment on the proposed amendment. Should you have any questions or if we can clarify any of these comments, please contact Janet Trautwein, NAHU Vice-president of Government Affairs at (703) 276-3806, cell phone (703) 517-3255, or jtrautwein@nahu.org.