

INDUSTRIAL INSURED TRANSACTIONS

March 12, 2004

Pursuant to IC 27-1-3-20(c), no company shall transact any business of insurance in Indiana until it has obtained a certificate of authority from the Department of Insurance. There are several exceptions to this general statement codified at IC 27-4-5-2(a). One such exception is commonly referred to as an industrial insured provision. IC 27-4-5-2(a)(8) states that transactions in this state involving contracts of insurance not readily obtainable in the ordinary insurance market and issued to one (1) or more industrial insureds do not constitute the unauthorized transaction of insurance. An industrial insured means an insured:

- (1) who procures the insurance of any risk or risks by use of the services of a full-time employee acting as an insurance manager or buyer or the services of a regularly retained and continuously qualified insurance consultant;
- (2) whose aggregate annual premium for insurance on all risks total at least twenty-five thousand dollars (\$25,000); and
- (3) who has at least twenty-five (25) full time employees.

IC 27-4-5-2-(a)(8)(A)-(C).

An entity that chooses to purchase insurance as an industrial insured should contact the Department and provide notice of the transaction. The notice should document the coverage and the position that the coverage is not readily obtainable in the ordinary insurance market. Similar to a surplus lines transaction, the Department requires a statement that the insured, after diligent effort, was unable to procure the full amount of insurance required to protect the insured from any insurer authorized to transact the particular class of insurance business in Indiana. The statement must confirm that the insurance was not placed for the purpose of procuring it at a premium rate lower than would be accepted by an insurer authorized and licensed to transact insurance business in Indiana. The notice should also identify the risk manager and/or insurance consultant; the aggregate annual premium; and the number of full-time employees employed by the industrial insured. The name, NAIC company code, or alien code of the insurer must also be included. This notice should be sent to the Company Records Division of the Indiana Department of Insurance. The Department may request additional information to ensure that the transaction meets the standards for the industrial insured exception. The notice should be updated if there are any changes to the reported items.

In an industrial insured transaction the industrial insured is responsible for paying taxes on the premium. Quarterly estimated and annual premium tax filings are to be made in accordance with the property and casualty premium tax instructions. These instructions are available on the Department's website, <https://www.in.gov/idoi/>.

Industrial insureds should also note that neither the Indiana Life and Health Guaranty Association nor the Indiana Insurance Guaranty Association provides coverage for industrial insured transactions.

It is possible that medical professional liability insurance for certain types of providers can be written on an industrial insured basis. However, if a health care provider would like to participate in Indiana's Medical Malpractice Act and use an industrial insured transaction as proof of financial responsibility under IC 34-18-4-1(1) the Commissioner, as administrator of the Patient's Compensation Fund (PCF), must approve the industrial insured transaction as acceptable to establish financial responsibility. The PCF faces risks in the event of an insurer insolvency. Unlike admitted carriers and surplus lines carriers, an industrial insurer has no financial oversight or standards. Thus the PCF will conduct its own review of the insurer's financial condition to determine its risk of insolvency. If the

Department is not comfortable with the financial condition of the insurer, the Department will not recognize the industrial insured transaction as sufficient proof of financial responsibility.

In addition, the surcharge for participation in the PCF must be reasonable for the coverage provided. A health care provider, other than a hospital or physician, pays 100% of its underlying premium as surcharge to the PCF. The amount of 100% of premium was set actuarially to cover the risk posed by these types of health care providers. One important factor in the actuarial analysis was an assumption that the underlying premium is a market based premium. Since industrial insured transactions do not use a market based premium the Department will review the surcharge to ensure that it is reasonable in relation to the benefits provided by the PCF and that it does not put an undue burden on other health care providers in the industrial insured's provider category.

Any health care provider proposing to use an industrial insured for proof of financial responsibility under the Medical Malpractice Act must make a second filing with the Department. In addition to the aforementioned notice, the industrial insured shall submit the insurer's annual statement or audited financial statement, and the insurer's most recent balance sheet. This information should be submitted to the Manager of the Department's Medical Malpractice Division.

It should be noted that the Indiana Residual Insurance Malpractice Authority, created by IC 34-18-17, does write coverage for most providers under the Medical Malpractice Act. Because of this fact, coverage under the Medical Malpractice Act would not typically be a coverage that is not readily available in the marketplace. Thus, the use of industrial insured transactions for qualification under the Medical Malpractice Act should be rare.

INDIANA DEPARTMENT OF INSURANCE
Sally McCarty, Commissioner