

Bulletin 113

PRODUCER DUE DILIGENCE WHEN SELLING GROUP HEALTH PLANS

November 4, 2002

This Bulletin is directed to all insurance producers licensed in Indiana to sell accident and sickness insurance and to any person who may assist directly or indirectly in the procurement of an insurance product. This Bulletin is intended to replace Bulletin 65, and Bulletin 65 is hereby withdrawn.

As health insurance costs rise, employers and individuals are shopping for more affordable health plans. Producers may be tempted to offer unlicensed plans, "ERISA plans," or plans that claim to be "reinsurance" or "stop-loss coverage," and that appear to have significantly lower premiums than plans issued by licensed insurance companies. Often, these plans may claim they are not subject to regulation by the Indiana Department of Insurance ("Department").

The Department has shut down some of these plans and, nationwide, consumers and employers have lost millions of dollars to unauthorized and under-funded health insurance plans. Contrary to their claims, most of these plans are subject to state regulation. The plans should be licensed or registered with the Department and monitored for financial solvency. Some employer-sponsored and union plans are exempt from state regulation by the Employee Retirement and Income Security Act of 1974 (29 U.S.C. 1001, et seq.). Such plans are formed by employers or unions for their own employees or members and are not sold by insurance producers. A health plan that claims to be exempt from state licensing requirements, but is in fact not exempt, is an unauthorized insurer. Pursuant to Ind. Code s 27-4-5-2(b)(2) if an unauthorized insurer fails to pay any claim or loss within the provisions of its contract, any person who assisted or in any manner aided directly or indirectly in the procurement of the contract is liable to the insured for the full amount of the claim or the loss in the manner provided in the contract.

Any producer approached to sell one of these plans should contact the Enforcement Division at the Department at (317) 233-4243 to learn whether the plan is licensed in Indiana and the existence and/or status of any investigation. A producer should also examine the plan carefully and request financial information, copies of contracts, filings with any state or federal agencies and the plan's authority to engage in the business of providing health coverage. Producers should pay careful attention to a health plan that:

1. Operates like insurance but claims not to be;
2. Avoids insurance terminology, although it operates like insurance;
3. Refers to reinsurance or stop-loss as the only coverage;
4. Calls itself an "ERISA or union plan";
5. Calls itself an "employee leasing" arrangement with self-funded coverage;
6. Targets individuals with pre-existing conditions;
7. Advertises unusually low premiums or generous benefits, low or no participation requirements, or little or no underwriting.

Even if a health plan is authorized, producers should be familiar with the plan, including whether it is an employer sponsored plan, a trust or association plan, the name of the policyholder or plan sponsor, the state and federal mandates applicable to the plan, and what protections exist for the consumer in the event of insolvency.¹ The Department receives many complaints from people who believed they bought one kind of plan and then discovered it to be another.

The Department expects producers to exercise due diligence when selling group health plans, and to provide written proof of such due diligence upon request from the Department. In addition to the potential liability outlined above, the failure of a producer to exercise due diligence and to make reasonable inquiries of a health plan may subject the producer to disciplinary action under Ind. Code s 27-8-15.6-12 for incompetence, untrustworthiness, or financial irresponsibility in the conduct of his or her business.

INDIANA DEPARTMENT OF INSURANCE
Sally McCarty, Commissioner

¹ It should be noted that Ind. Code s 27-8-8-18 prohibits the use of the Indiana Life and Health Guaranty Association for marketing purposes.