



October 15, 2009

Robert Melillo, Chief
Legislative and Regulatory Affairs
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Dear Mr. Melillo:

On behalf of the Professional Insurance Agents of New Jersey Inc., I appreciate the opportunity to comment on Proposed Regulation 09_01. I understand that New Jersey Statutes Section 17:22A-26 specifically outlines the details of the required disclosure, that PRN 2009-242 and PPR 2009-1 are intended to effectuate the purposes of this legislation, and that the call for comments seeks feedback regarding two specific scenarios. Respectfully, Professional Insurance Agents of New Jersey Inc. wishes to take this opportunity to share concerns regarding the overall compensation disclosure scheme.

General objection

First and foremost, we wish to stress that we do not believe that this disclosure scheme is necessary. Requiring a written, proactive disclosure of the amount of compensation an insurance producer receives for placing business is a disproportionate and burdensome imposition, particularly in the absence of documented existing harms. Furthermore, agents and brokers are already governed by ethical standards; should a potential purchaser seek information regarding compensation received, they can receive such information simply by asking.

Carriers should make disclosure

Assuming for argument's sake that a mandatory disclosure system is indeed necessary or desirable, the disclosure of commissions paid to producers should be handled by carriers. The carrier, as the entity paying commissions, is the one best situated to determine the amount of compensation paid "downstream." Requiring the producer to disclose places the burden of calculating the amount he or she *may* (compensation is not always known or calculable at time of sale) receive on the party least well-positioned to do so, as the insurer can enclose this information with the other disclosures already required by law and regulation.

Proposal is counter to goals of uniformity and reciprocity

Finally, we believe that requiring this additional disclosure further moves New Jersey away from the goals of uniformity and reciprocity advanced by the National Association of Insurance Commissioners (NAIC.) and publicly supported by the New Jersey Department of Insurance. The imposition of special rules which set New Jersey's practices and requirements apart from those typically found in other states, and act as barriers to producers attempting to do business, energizes and validates the arguments of proponents of a federal insurance regulator.

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While reserving our underlying objection to the necessity and propriety of any compensation disclosure requirement, we do believe the regulation can be amended in a manner that makes it easier to comply with, does not impose as heavy a burden on producers, and adheres more closely to the underlying legislation.

Prohibition on rebating must be stated

By explicitly drawing attention to the amount of consideration a producer would receive, the regulation induces potential purchasers to focus on one discrete piece of information considered in purchasing a policy, at the cost of highlighting more important and relevant considerations such as appropriateness of the policy and nuances of coverage provided. Furthermore, highlighting the consideration received by a producer would likely encourage potential purchasers to attempt to engage the producer in illegal negotiations to give back, forego or otherwise reduce commission. New Jersey Administrative Code Section 11:17A-2.3 clearly forbids rebating, a policy we strongly support. Any regulation promulgated, as well as the sample disclosure form should clearly reiterate this prohibition.

Timing of disclosure problematic

The first sentence of Proposed Section 11:17b-4.3 (b) requires that, for new business, disclosure be made either at the time of proposal, or 30 days prior to the date the contract is executed, whichever is later. No such advance notice time frame is contemplated or required by the statute itself. This requirement would be difficult, if not impossible to comply with. Actual compensation is not known until issuance; requiring the production of a disclosure statement at the time currently proposed would put producers in the position of having to speculate as to expected compensation, something which would not further the goals of this proposal. We believe the regulation should give producers latitude in determining when to make the disclosure, the deadline should allow the disclosure to be made at any time up to the effective date of the policy.

Disclosure not necessary on renewal

The second sentence of Proposed Section 11:17b-4.3 (b) requires disclosure upon the renewal of a policy. The language of the statute requiring such disclosure states, in relevant part: *An insurance producer... shall notify the purchaser of the insurance, in writing, of the amount of any ... valuable consideration that the producer will receive as a result of the sale, solicitation or negotiation of the health insurance policy or contract.* The general conception of the sale of an insurance policy is that it occurs once—at the time the contract is initially agreed to—and that subsequent renewals of the contract do not constitute separate sales. Requiring repeated disclosure of the compensation earned by the producer is of marginal benefit to the consumer since the purchasing decision has already been made. As such, requiring disclosure of consideration upon each renewal does not appear to be in keeping with the intent of the empowering legislation, and we suggest that this requirement be eliminated.

General agent commission not known to producer

Proposed Section 11:17b-4.3 (d), which requires the specific identification and disclosure of compensation to any general agent, presents special difficulties to issuing producers. It is unlikely that a producer would ever be in a position to know a general agent's compensation, as this is closely held information. We are unaware of any reasonable manner in which a producer could comply with this requirement and submit that it be removed.

Penalties are disproportionate and excessive

The penalty provision contained in Proposed Section 11:17B-4.4 has the potential to expose producers to penalties of up to \$5,000 for a first-time violation, and up to \$10,000 for subsequent offenses; the proposed regulation does not discriminate between knowing, intentional violations or inadvertent or unintentional violations such as mistakes in calculating the amounts shown in a disclosure. It seems unreasonable for the regulation to include language allowing the imposition of these harsh penalties on an agency or brokerage for accidental violations of a law, the violation of which does not pose any concrete harm to any foreseeable victim. We suggest that the regulation include language which caps any penalty at \$75 for any inadvertent or unknowing violation, and requires the department to determine that repeated violations constitute an ongoing business practice before pursuing more aggressive sanctions.

Plans other than those defined in N.J.S.A. 17B:27A-17

Proposed Regulation Section 11:17B-4.3 (e) explains how the compensation paid on all plans other than those defined in New Jersey Statutes Section 17B:27A-17 is to be calculated. After reading the statutory reference, we are unsure what plans fall outside of this section and seek clarification regarding what plans are contemplated as well as the underlying statutory authority underlying the promulgation of this section of regulation.

Proposal would negatively impact jobs and small businesses

As required by New Jersey Administrative Code Section 1:30-5.1, proposal PRN 2009-242 analyzes the proposed rule's jobs impact and economic impact. We believe that the disclosure requirements would impose a substantial burden on small agencies.

Form is misleading and confusing

Finally, PRN 2009-242 includes an Appendix "A" which is described as a sample form a producer can use to make his or her disclosure.

New Jersey Administrative Code Section 11:17B-3 *et seq.* already requires the specific written disclosure of any fees charged in conjunction with the sale of an insurance policy. The form contained in Appendix A does not reference this requirement, which will likely confuse the purchaser and producer alike, and should be designed in such a way that it does not duplicate information already disclosed.

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The form also contains three columns in which it lists the ways the producer can disclose compensation. The plain text of the regulation implies that a producer may disclose his or her compensation in any one of the three ways, however, the form does not clearly communicate this. The insertion of the word “or” between the columns or the inclusion of language to that effect would help producers more clearly understand their responsibilities.

We appreciate the opportunity to offer commentary on this proposal and look forward to working with you to refine this regulation.

Sincerely,

A handwritten signature in black ink, appearing to read 'W. Vowteras', with a large, sweeping flourish at the end.

WILLIAM R. VOWTERAS, CPIA
PIANJ President