

INSURANCE LAW ALERT

SEPTEMBER 2010

New York: Workers' Compensation Board Proposes Rate Increase And Issues Producer Disclosure Regulations

New York Workers' Compensation Board Proposes Rate Increase On Workers' Compensation Medical Fee Providers

Health care providers treating injured workers will receive a rate adjustment by the New York Workers' Compensation Board.

According to Chairman Robert Beloten, health care providers treating injured workers have not received a rate increase since 1996. The rate increase is intended to facilitate the

Board's recruitment and retention of qualified doctors in New York.

While the Workers' Compensation Board reportedly has not completed an evaluation of the cost impact of the increase, one is anticipated. It is further anticipated that the increase will be subject to procedural administrative safeguards, including a public comment period and adoption. A date for public comment has not yet been finalized, but is expected before year end. ■

New York Issues New Regulations Regarding Disclosure Of Producer Compensation

On January 1, 2011, New York's Regulation No. 194 shall take effect and will require New York Insurance Producers to disclose certain information regarding their compensation to their clientele.

Exceptions to the Regulations

Regulation 194 will not pertain to: (1) the placement of reinsurance; (2) the placement of insurance with a captive insurance company; (3) an insurance producer that has no direct sales or solicitation contact with the purchaser (*i.e.*, wholesale brokers, managing general agents); (4) the sale of insurance by someone not

required to be licensed pursuant to Insurance Law §2012(a)(1)¹; or (5) "renewals, except that if the purchaser requests more information about the producer's compensation less than 30 days prior to a renewal or less than 30 days after a renewal, the insurance producer shall disclose to the purchaser in a prominent writing the information required by subsection 30.3(b) of this Part within five business days."

Compensation Defined

"Compensation" is defined as "anything of value, including money, credit loans, interest on premium, forgiveness of principal or interest, trips, prizes, or gifts, whether paid as commission or otherwise." It does not include

¹ "No person, firm, association or corporation shall act as an insurance producer, insurance adjuster or life settlement broker in this state without having authority to do so by virtue of a license issued and in force pursuant to the provisions of this chapter." N.Y. Ins. Law § 2101(a)(1).

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any goods with the insurer name or logo or any other advertisement having an aggregate value of less than \$100 per year.

Disclosure Requirements

A producer selling an insurance contract must disclose, either orally or in a prominent writing, to the purchaser at or prior to the time of application:

1. A description of the role of the insurance producer in the sale;
2. Whether the insurance producer will receive compensation from the selling insurer or other third party based in whole or in part on the insurance contract;
3. That the compensation paid to the insurance producer may vary depending on a number of factors, including (if applicable) the insurance contract and the insurer that the purchaser selects, the volume of business the producer provides to the insurer or the profitability of the insurance contracts that the producer provides to the insurer; and
4. That the purchaser may obtain information about the compensation expected to be received by the producer ... and the compensation expected to be received based in whole or in part on any alternative quotes presented by the producer, by requesting such information from the producer.

If the disclosure is made orally, then the producer must disclose this information in a prominent writing no later than the issuance of the contract.

If the purchaser requests more information regarding compensation, the producer must disclose, in writing:

1. A description of the nature, amount and source of any compensation to be received by the producer or any parent, subsidiary or affiliate;
2. A description of any alternative quotes presented by the producer, including the coverage, premium and compensation that the insurance producer or any parent, subsidiary or affiliate would have received based in whole or in part on the sale of any such alternative coverage;
3. A description of any material ownership interest the insurance producer ... has in the insurer issuing the insurance contract;
4. A description of any material ownership interest the insurer issuing the insurance contract ... has in the insurance producer; and
5. A statement whether the insurance producer is prohibited by law from altering the amount of compensation received from the insurer based in whole or in part on the sale.

Such disclosures must occur prior to the issuance of the insurance contract, except when time is of the essence in issuing the contract, then within five business days. If the purchaser requests more information after the issuance of the insurance contract, but the request is made less than thirty days after issuance, then the producer must disclose the above-mentioned 1 through 5 requirements within five business days. If, at the time compensation is to be

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disclosed, the producer is uncertain as to the nature or amount of compensation, then he or she must disclose:

1. A description of the circumstances that may determine the receipt and amount or value of such compensation, and
2. A reasonable estimate of the amount or value, which may be stated as a range of amounts or values.

Retention Requirements

Producers must retain a copy of all disclosures for at least three years after the disclosure is given, unless the producer has an agreement

with the insurer that the insurer will retain all copies. Insurers and their agents must maintain the amount of any compensation provided to a producer in accordance with Regulation 152.² Finally, a producer may not make any statements that contradict Regulation 194.

We welcome the opportunity to speak with you about the applicability of Regulation 194 to your business. ■

² 11 NYCRR § 243.

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