



DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INSURANCE

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Bulletin No. 16-007

September 16, 2016

COMMISSIONS FOR HEALTH BENEFIT PLANS

It has come to the attention of the Division of Insurance (“Division”) that carriers are attempting to eliminate commissions or change commission structures on certain plans offered in Nevada. The purpose of this Bulletin is to inform carriers that changes to commission structures that were not included in rate filings may be an unfair method or deceptive act in violation of Nevada Revised Statute (“NRS”) 686A.020, or may be unfairly discriminatory in violation of NRS 686B.050.

Eliminating Commissions

Each year, the Division reviews rate filings for individual and small group health benefit plans. When rates are filed for review, the Division determines the reasonability of assumptions underlying the proposed rates, including the non-benefit expense assumptions such as agent/broker commissions. NRS 686B.060. The Division then approves or disapproves the rate filing. NRS 686B.110.1. Once approved, a carrier must charge only the rates approved by the Commissioner. Under federal law, after rates are approved by the Commissioner, there is no opportunity to modify the rates. 45 C.F.R. pt. 154. Since the commission structure is part of the approved rate, failure to pay commissions in accordance with the rate filing renders the carrier’s ratings to be other than what was approved.

Differing Commission Structures

Differing commission structures that discourage the sale of plans where a carrier is responsible for a greater portion of the health care costs incurred; avoid paying commission when a consumer is granted a special enrollment period due to a triggering event; and discourage the sale of its plans, either on or off of the Exchange, without actively discontinuing plans or exiting the market, may violate Nevada or federal law. Differing commission structures may have the


effect of directly or indirectly incentivizing the sale of those plans for which the carrier will pay commissions and dis-incentivizing the sale of those plans for which no commission is paid.

Regardless of the rationale for the differing commission structures, at a minimum, paying differing commission levels for the same plan has the effect of creating unfair discrimination, which violates Nevada law.

Conclusion

In Nevada, rates must be filed or approved before a carrier may charge the rate. NRS 686B.110.1. A carrier that materially modifies its commission structure after rates have been approved may violate state and federal law because the carrier is using a rate structure that has not been reviewed for reasonableness by the Division. NRS 686B.060. Moreover, the rate impact of commission structures that are revised after the rates have been approved, may result in excessive or inadequate rates in violation of NRS 686B.050. Any carrier that eliminates commissions or employs differing commission structures may also violate the unfair competition and deceptive practices. NRS 686A.020.

Any carrier that modifies its commission structures, as described in this Bulletin, would subject itself to enforcement actions to remedy those violations.



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Commissioner of Insurance