

In early February, 2009, the New York State Insurance Department released the second draft of draft producer disclosure regulations.

Under the New York State Department producer disclosure regulations,

- ❖ Producers would be required to disclose to purchasers that they may obtain detailed information from the producer about the source and amount of the producer's compensation from the sale, as well information about alternative quotes obtained by the producer.
- ❖ If requested by the purchaser, the exact parameters and flexibility of acceptable compensation disclosure are unclear—for example whether the amount can be disclosed on an amortized basis, such as the average amount per year if the policy is kept in force for twenty years.
- ❖ Producer compensation disclosure would also include an explanation that an insurance producer is prohibited by law from accepting a commission rate that is less than the filed commission rate in an effort to lower an insurance premium.

Draft 7/8/09
NEW YORK STATE
INSURANCE DEPARTMENT

REGULATION NO. xx
(11 NYCRR 30)

PRODUCER COMPENSATION TRANSPARENCY

I, Kermitt Brooks, Acting Superintendent of Insurance of the State of New York, pursuant to the authority granted by sections 201 and 301 and Articles 21 and 24 of the Insurance Law, do hereby promulgate a new Part 30 to Title 11 of the Official Compilation of Codes, Rules, and Regulations of the State of New York (Regulation No. xx), to take effect upon publication in the State Register.

(ALL NEW MATTER)

A new Part 30 is added to read as follows:

§ 30.1 Purposes.

The purposes of this Part are:

(a) to implement the New York Insurance Law by regulating the acts and practices of insurers, insurance producers and other Insurance Department licensees with respect to transparency of compensation paid to insurance producers and their role in insurance transactions; and

(b) to protect the interests of the public by establishing minimum disclosure requirements relating to the role of insurance producers and potential conflicts of interest created by compensation paid to insurance producers.

§ 30.2 Definitions.

For purposes of this Part:

(a) *Compensation* means anything of value, including money, credits, loans, interest on premium, forgiveness of principal or interest, vacations, prizes, or gifts, whether paid as commission or otherwise.

(b) *Purchaser* means the person or entity to be charged under an insurance contract or a group policyholder and may include the named insured, policyholder, owner of a life insurance policy or annuity contract, principal under a bond, or other person to be charged, including an applicant for insurance, bond or annuity; but does not include a certificate holder or member under a group or blanket insurance contract

unless the certificate holder or member has direct contact with the insurance producer, and the certificate holder or member pays some or all of the premium.

(c) *Insurer* means any person or entity doing insurance business in this State.

(d) *Insurance contract* means an insurance policy, surety bond, contract of guarantee, or annuity contract.

(e) *Insurance producer* means any insurance producer as defined by Insurance Law section 2101(k).

§ 30.3 Disclosure of producer compensation, ownership interests and role in the insurance transaction.

(a) Except as provided in section 30.5 of this Part, prior to the binding of any insurance contract, an insurance producer selling an insurance contract shall disclose to the purchaser in a prominent writing, or orally, if the purchaser requests oral disclosure because there is insufficient time to receive the disclosure in writing:

(1) whether the insurance producer represents the purchaser or the insurer for purposes of the sale;

(2) that the insurance producer will receive compensation from the selling insurer based on the insurance contract the producer sells (if applicable);

(3) that the compensation insurers pay to insurance producers varies from company to company and from insurance contract to insurance contract; and

(4) that at any time during the relationship the purchaser may obtain detailed information about the source and amount of compensation expected to be received by the producer for the sale and any alternative quotes obtained or considered by the producer by requesting such information from the producer.

(b) If the purchaser requests more information about the producer's compensation or about alternative quotes, the producer shall disclose to the purchaser in a prominent writing prior to the issuance of the insurance contract:

(1) a detailed description of the nature, amount and source of any of compensation to be received by the producer or its affiliates based in whole or in part on the sale;

(2) a detailed description of any alternative quotes obtained or considered by the producer, including the coverage, the premium and the compensation that the insurance producer would have received in connection with those alternative quotes;

(3) a description of any material ownership interest the insurance producer or its affiliates has in the insurer issuing the insurance contract or its affiliates;

(4) a description of any material ownership interest the insurer issuing the insurance contract or its affiliates has in the insurance producer or its affiliates; and

(5) an explanation that an insurance producer is prohibited by law from accepting a commission rate that is less than the filed commission rate in an effort to lower an insurance premium.

(c) If the amount or value of any compensation to be received by the insurance producer is not known at the time of the disclosure required by subsection (b), then the insurance producer shall include in the disclosure:

(1) a description of the circumstances that will determine the receipt and amount or value of such compensation, and

(2) a reasonable estimate of the amount or value.

(d) An insurance producer shall not make statements to a purchaser contradicting the disclosures required by this section or any other misleading or inaccurate statements about the role of the insurance producer in the sale.

§ 30.4 Retention and certification of disclosure.

An insurance producer shall retain a copy of any written disclosure provided pursuant subsections 30.3(a), (b) and (c) of this Part for not less than three years after the disclosure is given. If oral disclosure is requested by the purchaser pursuant to section 30.3(a) of this Part, the insurance producer shall retain a certification that the oral disclosure was provided for not less than three years after the disclosure is given.

§ 30.5 Exceptions.

This Part shall not apply:

(a) to renewals;

(b) to the placement of reinsurance;

(c) to the placement of insurance with a captive insurance company pursuant to Article 70 of the Insurance Law;

(d) to an insurance producer that has no contact with the purchaser, which may include wholesale brokers or managing general agents; or

(e) to a sale of insurance by a person who is not required to be licensed as an insurance producer under Insurance Law section 2102(a)(1) for the purposes of that sale.

§ 30.6 Obligations of an authorized insurer.

The amount of any compensation that an authorized insurer or its agent pays to an insurance producer shall be included in the producer file maintained by the insurer in accordance with Part 243 of this Title (Regulation 152).

§ 30.7 Conformity with other laws.

Nothing in this Part shall be construed in a manner inconsistent with, or in violation of, Insurance Law sections 2119, 2324, 4224, or other provisions of the Insurance Law and regulations promulgated thereunder.

§ 30.8 Unfair trade practice.

A contravention of this Part shall be deemed to be an unfair method of competition or an unfair or deceptive act and practice in the conduct of the business of insurance in this State; and shall be deemed to be a trade practice constituting a determined violation, as defined in Insurance Law section 2402(c), in violation of section 2403 of such law.