



LOUISIANA DEPARTMENT OF INSURANCE
JAMES J. DONELON
COMMISSIONER

**ADVISORY LETTER 2015-02
(REVISED AND REISSUED)**

TO: ALL INSURERS, HEALTH MAINTENANCE ORGANIZATIONS AND ALL PRODUCERS

FROM: JAMES J. DONELON, COMMISSIONER OF INSURANCE

RE: PRODUCER COMPENSATION; RESCISSION OF ADVISORY LETTER NO. 2010-01

DATE: APRIL 12, 2023

Advisory Letter No. 2015-02, originally issued June 3, 2015, is hereby revised and reissued to provide updated guidance and clarity due to changes in the law since its original issuance. Advisory Letter No. 2015-02 originally rescinded Advisory Letter No. 2010-01 and advised all insurers, including health maintenance organizations (HMOs), and all producers licensed to do business in Louisiana of the manner in which the Louisiana Department of Insurance (LDI) addresses and shall enforce various provisions of the Louisiana Insurance Code with respect to producer compensation.

I. Guidance Applicable to All Insurers and HMOs of Every Line of Insurance

A. Producer Compensation in the Form of a Fee

La. R.S. 22:1542 defines "Commission" as follows:

[A] fee paid to an insurance producer as a percentage of the premium generated by a sold insurance policy, or direct compensation or reward of a producer when the same is calculated as a flat fee or as a percentage of the premium or on the profit of the principal.

The Louisiana Insurance Code does not mandate that any insurer or HMO utilize one form of commission over another. Each insurer or HMO may design and utilize whatever lawful commission arrangement best fits its business model. Such lawful arrangements may include, but not be limited to, graduated compensation or classes of producers based upon definable characteristics, whether the commission is paid as a percentage of the premium or as a flat fee.

B. Quoted Premium Must Include Commission

La. R.S. 22:46 defines "Premium" as follows:

[A]ll sums charged, received, or deposited as consideration for the purchase or continuance of insurance for a definitely stated term, and shall include any assessment, membership, policy, survey, inspection, service or similar fee or charge made by an insurer as a part of the consideration for the purchase or continuance of insurance. The term premium, as used in R.S. 22:885(B) and 887(D), shall not include any assessment, membership, policy, survey, inspection, service, or similar fee or charge made by an insurer as part of the consideration for the purchase or continuance of insurance.

Furthermore, La. R.S. 22:855 requires that the premium quoted by an insurer or HMO shall be a specific dollar amount which shall be inclusive "of all fees, charges, premiums, or other consideration charged for the insurance or the procurement thereof...."

Regardless of which producer compensation scheme is employed by an insurer or HMO, the cost of the commission must be included in the quoted premium. Because a premium is derived from a rate, the cost to an insurer or HMO of producer compensation must be reflected in both the rate and the premium. Other sums charged to an insured by an insurer, HMO, or producer that do not constitute a commission and are therefore excluded from the definition of premium are authorized strictly and with specificity in La. R.S. 22:855.

C. Alteration of the Quoted Premium and Net of Commission Quotes are Prohibited

Implicit in the statutory scheme of the Insurance Code, where an insurer is required to file rates with the LDI, is the requirement that the quoted premium may not be altered except as authorized by law. Absent such authorization, no producer may alter the dollar amount or terms of the quoted premium, whether the alteration is to increase the quoted premium or to reduce the quoted premium. Any such deviation or alteration of the quoted premium would result in a rate that is either unauthorized (where the LDI has approval authority over rates) and/or indicative that an unfiled rate has been used by an insurer in contravention of the Insurance Code.

The term "net of commission" refers to an agreement whereby the quoted premium is reduced by an amount proposed to be the producer's commission and in doing so, the

producer and the insurer have deviated from the insurance rate. Net of commission quotes violate a number of statutory provisions and constitute an unfair or deceptive trade practice under La. R.S. 22:1964, except where the Louisiana Insurance Code strictly and specifically authorizes such arrangements.

II. Guidance Applicable to Insurers by Lines of Insurance

A. Commissions for Fire, Casualty, Surety, Fidelity, Guaranty and Bonding Insurance

The plain and unambiguous terms of La. R.S. 22:1557(C) mandate that the commission paid by each fire, casualty, surety, fidelity, guaranty, and bonding insurer shall be uniform and equal to all classes of producers. By the terms of the statute, the insurer should establish a commission schedule or schedules that define the producer compensation scheme. Furthermore, the compensation scheme must be executed in such a way that all producers falling into a particular class receive "uniform" and "equal" commissions. The establishment of classes of producers, if desired, is at the discretion of the insurer provided that the insurer does not subvert the intent of the statute by, for example, using arbitrary or capricious standards to create pseudo-classes of producers to treat similarly situated producers inequitably.

B. Commissions for Major Medical Health Insurance

La. R.S. 22:1568 requires that a health insurance issuer, including health maintenance organizations, to establish one or more commission schedules for major medical health insurance products. The schedules must be uniformly applied to all producers within the same schedule. The statute also specifically excludes ancillary health products, which are sometimes called "supplemental benefits" or "limited or excepted benefits," from the provisions of La. R.S. 22:1568. Therefore, the statute applies to major medical health insurance products and not to ancillary products.

C. Negotiability of Commissions in Certain Lines of Insurance and the Effect of the Cost of Commissions on Rates

It is imperative that insurers note that the guidance contained under this heading, Part II.C of this Advisory Letter, is inapplicable to the following lines of insurance: major medical health, fire, casualty, surety, fidelity, guaranty, and bonding. For purposes of this Advisory Letter, the aforementioned lines shall be referred to as "enumerated lines." Any line of insurance, other than an enumerated line, may refer to Part II.C for guidance.

Several questions have arisen regarding producer commissions for policies sold

outside of the enumerated insurance lines. Those questions are:

1. Are insurers transacting business in a line of insurance, other than an enumerated line, required to establish commission schedules? If such insurers are required to establish commission schedules, what rules for the establishment of those schedules are applicable?
2. To what extent may producers and insurers, other than in an enumerated line, negotiate commissions?
3. Can the premium charged to a policyholder, in a line other than an enumerated line, be directly affected by the compensation of the policyholder's agent? For example, can the premium charged to a policyholder be lower if an agent accepts a 5% commission rather than a 10% commission?

Regarding the questions posed in Question One, insurers transacting business in any line, other than an enumerated line, may elect to establish commission schedules. There is no statutory requirement in the Insurance Code that such insurers must establish schedules, nor is there any statutory or regulatory rule specifically governing the method by which such insurers design commission schedules. Furthermore, the Insurance Code contains no guidelines for establishing such schedules.

With respect to Question Two, insurers and producers transacting business in any line other than an enumerated line are free to negotiate producer commissions. The Insurance Code does not require any official or standard commission, nor is there any regulatory rule that would interfere with market dynamics in the payment of producer compensation. Absent such requirements, insurers and producers may engage in negotiations for producer compensation.

Regarding Question Three, the premium charged to a policyholder in a line other than an enumerated line can be directly affected by the cost of the compensation of the policyholder's agent, provided that any rate filings for the product sold include a rating methodology or formula that allows for a negotiated commission. Currently, some insurers have filed rates with the LDI that arrive at a final rate, and therefore a quoted premium, that is calculated by a formula that includes a variable for producer commissions. The use of such a formula allows a policyholder's quoted premium to be affected by the cost of the producer's commission.

By contrast, if an insurer utilizes a rating methodology that does not include a variable formula with respect to producer commissions, the quoted premium cannot be affected by the cost of the producer commission, and any agreement to reduce the quoted premium due to the producer's compensation would constitute a net of commission quote,

and rebating under La. R.S. 22:1964, and may potentially violate other provisions of the Insurance Code. However, if an insurer has filed a rate that includes a methodology that allows for variable commissions in a non-enumerated line, such as a limited benefits health policy, a policyholder's quoted premium could be a lesser amount if the policyholder's producer accepted a commission of 5% as opposed to a commission of 10%. The reduction in the quoted premium due to a lower commission would not constitute rebating under the Unfair Trade Practices Act because the final quoted premium is directly derived from the filed rates that contain a variable formula.

Therefore, there can be no "rebate of premiums" that would constitute rebating under La. R.S. 22: 1964. Similarly, in such an example, the reduction in the quoted premium would not violate La. R.S. 22:34, which prohibits insurers from unfair discrimination in favor of individuals or persons, or between insureds or subjects of insurance having substantially like insuring risk, and exposure factors, or expense elements. La. R.S. 22:34 would not be contravened because it is fair for a policyholder to pay more or less for insurance if the expense of his insurance policy is more or less due to the cost of the producer's compensation. Conversely, an insurer may choose, at its option, not to utilize such a rating methodology and can instead spread the cost of producer compensation across its risk pool.

If there are any questions or concerns regarding Advisory Letter No. 2015-02 (Revised and Reissued), please contact the Deputy Commissioner, Office of Licensing, electronically at public@ldi.la.gov or by telephone at (225) 342-0860.

Baton Rouge, Louisiana, this 12th day of April 2023.



JAMES J. DONELON
COMMISSIONER OF INSURANCE