Oregon
Kate Brown, Governor

Department of Consumer and Business Services
Division of Financial Regulation
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OREGON DIVISION OF FINANCIAL REGULATION BULLETIN No. DFR 2017–2

TO: All Entities Transacting Insurance in Oregon

RE: Producer Compensation for Health Benefit Plans

Purpose:

The purpose of this bulletin is to clarify expectations for producer compensation in the health benefit plan market. The Division of Financial Regulation (division) has issued two bulletins on producer compensation in the past. Bulletin 2004-1, related to compensation for small group health benefit plans, and Bulletin 2009-2, related to producer compensation for Medicare Supplement Policies. This bulletin expounds and clarifies these previous bulletins in the application of commissions in on and off-marketplace plans.

Authority:

- ORS 746.015 [Unfair discrimination in the availability of insurance]
- ORS 743.019 [Procedures for Review of Proposed Rates for Health Insurance; Rules]
- ORS 746.160 [Practices injurious to free competition]
- ORS 746.230 [Undefined trade practices injurious to the insurance buying public]

Explanation of terms used in this bulletin:

- "Compensation" includes payments, commissions, awards, bonuses, gifts, or any other form of valuable consideration. See, e.g., OAR 836-071-0260(5)(b).
- "Health benefit plan" has the meaning given in ORS 743B.005.
- "Insurer" has the meaning given in ORS 731.106.
- "Producer" has the meaning given in ORS 731.104.

Discussion

Consumers purchasing health benefit plans may seek the advice of trained and licensed insurance producers to assist in the purchase of an insurance product that meets their needs. Producers contract with insurance companies to sell products in exchange for compensation, typically in the form of a set commission schedule detailed in the producer contract. Captive producers write for only one insurer.

Commissions are included as an administrative expense in required annual individual rate filings and quarterly small group rate filings and may be adjusted yearly. Including commission information in rate filings allows the Department of Consumer and Business Services (the department) to estimate the number of policies that could be sold by each insurer. The department, in essence, approves administrative expenses, which encompasses agent commissions. Mid-year commission adjustments that deviate from information filed in statutorily required rate filings may no longer be reasonable, or based on adequate administrative expenses. Mid-year changes also limit the department's ability to adequately assess market distribution.

Changes to producer compensation impact plan enrollment during annual enrollment periods and during special enrollment periods. The department has become aware that insurers may use premium rate increases coupled with reduced producer compensation to control the amount of business placed with their company during the annual enrollment period.

Mid-year producer compensation adjustments leads to uneven availability of insurance by encouraging producers to place individuals with insurers based on compensation level rather than consumer need. Reduction or elimination of compensation encourages placement of high risk individual into a smaller subset of available plans. Available plans may be more costly and provide fewer benefit options to consumers. But for the reduced commissions, consumers would likely have had broader coverage options available to them.

Additionally, reduction in producer compensation may limit the availability of plans for individuals experiencing life changing events (e.g. marriage, moving to a new state, losing access to Medicaid, or birth of a child). Steady producer compensation stabilizes enrollment by leveraging enrollment into broad plan offerings. Thus, the division views producer contracts containing compensation structures that limit plan availability – whether intentionally or unintentionally – to be detrimental to competition and injurious to the insurance-buying public.

Some examples of inappropriate commission changes that would be detrimental to free competition and injurious to the insuring public include, but are not limited to:

- Reducing or eliminating producer compensation to contradict annual rate filings.
- Developing producer compensation arrangements with reimbursement levels that are lower for special enrollment period actions.
- Reducing or eliminating producer compensation for enrollment received through the Oregon Health Insurance Marketplace.

Nonetheless, the department recognizes that a one-sized fits all approach may not take into account pressing financial or operational reasons necessitating alterations to commission rates. The department remains committed to discussing with carriers exceptions to the statutory interpretation proffered by this bulletin. Insurers are also strongly encouraged to proactively work with the department if financial or operational needs create conflicts with this bulletin.

Director's expectations for insurers and other regulated entities

The Director expects that agent compensation contracts will be structured in a way that is not injurious to the public. This bulletin adds to and does not supersede Bulletin Nos. INS 2004-1 and INS 2009-2.

This bulletin takes effect March 9, 2017.

Dated this 9th day of March, 2017 at Salem, Oregon.

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Laura Cali Robison
Oregon Insurance Commissioner
Administrator, Division of Financial Regulation