

NEW YORK STATE
INSURANCE DEPARTMENT
PROPOSED
REGULATION NO. 194
(11 NYCRR 30)

PRODUCER COMPENSATION TRANSPARENCY

I, James J. Wrynn, Acting Superintendent of Insurance of the State of New York, pursuant to the authority granted by sections 201 and 301 and Article 21 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. 194), 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 and insurance producers with respect to transparency of compensation paid to insurance producers and their role in insurance transactions in this state; and

(b) to protect the interests of the public by establishing minimum disclosure requirements relating to the role of insurance producers and the 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. Compensation does not mean tangible goods with the insurer name, logo or other advertisement and having an aggregate value of less than \$100 per year per insurer.

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

(c) *Insurer* means any person or entity doing an 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, an insurance producer selling or renewing an insurance contract shall disclose the following information to the purchaser orally or in a prominent writing not later than application for the insurance contract or the renewal,:

(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 may vary depending on a number of factors, including 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 for the sale and for any alternative quotes obtained by the producer by requesting such information from the producer.

(b) If the purchaser requests more information about the producer's compensation prior to the issuance of the insurance contract, the producer shall disclose the following information to the purchaser in a prominent writing no later than the issuance of the insurance contract, except that if time is of the essence to issue the insurance contract, then within five business days:

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

(2) a description of any alternative quotes obtained 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 any such alternative quotes;

(3) a description of any material ownership interest the insurance producer or any parent, subsidiary or affiliate has in the insurer issuing the insurance contract or any parent, subsidiary or affiliate;

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

(5) a statement whether the insurance producer is prohibited by law from altering the amount of compensation received from the insurer for the sale.

(c) If the purchaser requests more information about the producer's compensation after issuance of the insurance contract but less than three years after issuance, the insurance producer shall disclose to the purchaser in a prominent writing the information required by subsection 30.3(b) of this Part within thirty days.

(d) If the nature, amount or value of any compensation to be disclosed by the insurance producer is not known at the time of the disclosure required by subdivision 30.3 (b) or (c) of this section, then the insurance producer shall include in the disclosure:

(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.

(e) If the disclosure required by subdivision (a) of this section is provided orally, the insurance producer shall also disclose the information required by subdivision (a) of this section to the purchaser in a prominent writing no later than the issuance of the insurance contract.

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

§ 30.4 Retention and certification of disclosure.

(a) An insurance producer shall retain a copy of any written disclosure provided to the purchaser pursuant to section 30.3 of this Part for not less than three years after the disclosure is given.

(b) If oral disclosure is provided to the purchaser pursuant to section 30.3(a) of this Part, the insurance producer shall retain for not less than three years:

(1) a certification that the oral disclosure was provided; or

(2) an audio recording of the oral disclosure.

§ 30.5 Exceptions.

This Part shall not apply:

(a) to the placement of reinsurance;

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

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

(d) 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.

(e) to renewals when the producer has no sales or solicitation contact with the purchaser in connection with the renewal.

§ 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 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.