



South Carolina Department of Insurance

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TO: Insurance Industry

FROM: Scott H. Richardson, CPCU 
Director

SUBJECT: Supplement to Bulletin 2007-02
Fees for COBRA and Other Administrative Services

DATE: July 29, 2009

I. PURPOSE AND SCOPE OF THIS BULLETIN

This bulletin serves as a supplement to Bulletin 2007-02, regarding fees for COBRA administrative services. It addresses questions the Department has received and clarifies the intent and purpose of Bulletin 2007-02.

II. FEES FOR COBRA AND OTHER ADMINISTRATIVE SERVICES

S.C. Code Section 38-57-150 provides:

(1) No policy or annuity contract may provide for, and no person may engage in any of the following, as an inducement to the purchaser or in connection with or as reference to the policy or annuity contract, directly or indirectly:

(a) Paying, allowing, giving, or offering any paid employment or contract for services of any kind.

S.C. Code Section 38-57-150 specifically prohibits any person from giving, directly or indirectly, a "contract for services" as an inducement to the purchaser of insurance. S.C. Code Section 38-57-20 defines "person" as "any individual, corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd's insurer, fraternal benefit society, and any other legal entity engaged in the business of insurance, including agents, brokers, and adjusters." This includes insurance companies.

Bulletin 2007-02 provides that state insurance law prohibits the administration of COBRA benefits to prospective or existing clients free of cost or at a reduced cost. This prohibition applies to the administration of any service that is not an integral or necessary part of the insurance contract or insurance transaction. These administrative services are separate and apart from the normal course of the business of insurance and include, but are not limited to, administrative services relating to premium conversion, flexible spending accounts (FSAs), health reimbursement arrangements (HRAs), health savings accounts (HSAs), and pre-tax premium plans.

In addition, state insurance law prohibits the marketing of administrative services as “free,” “at no additional cost” or using substantially similar language that suggests that such services will be provided at no additional cost.

III. QUESTIONS

The Department’s responses to the questions that have been received on this issue follow.

1. *Can an insurer offer COBRA, flexible spending accounts (FSAs), or Health reimbursement Accounts (HRAs) administration for no fee if a client purchases insurance coverage?*

No person engaged in the business of insurance may provide COBRA administration services free of cost or at a reduced cost. Insurers are included in the definition of “person.” Additionally, this prohibition extends to the administration of any service that is not an integral or necessary part of the insurance contract or insurance transaction, including FSAs and HRAs.

2. *Can a broker, producer, or insurer offer administrative services without charging a fee or is this considered an inducement/rebating?*

No. As previously stated, no person engaged in the business of insurance may provide administration services free of cost or at a reduced cost.

3. *Some companies provide free FSA administration if you purchase their products. Is this rebating?*

As previously stated, insurers are also subject to Bulletin 2007-02 and this bulletin. No person engaged in the business of insurance may provide FSA administration services free of cost or at a reduced cost.

4. *Can a person pay a third-party to administer COBRA benefits for a client without charging the client for this service?*

No. South Carolina law does not prohibit a person from administering COBRA benefits or referring clients to other COBRA administrators; however, a person (i.e., a producer, broker, insurer, etc.) may not pay for a client’s administrative costs. This applies to the administration of any service that is not an integral or necessary part of the insurance contract or insurance transaction.

5. *If an insurer charges a fee for administrative services and includes the fee in the premiums for a product, can the insurer market these administrative services as at no additional cost when purchasing the product?*

No. Such marketing material would not reflect a charge for these services and is misleading to the public.

Additional questions regarding this Bulletin should be submitted in writing to Jim Byrd, Deputy Director of Market Services:

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