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April 25, 2017

Via E-Mail and U.S. Mail  
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Tina Haley  
Holifield, Janich, Rachal & Associates, PLLC  
11907 Kingston Pike, Suite 201  
Knoxville, TN 37934

Re: Interpretative Opinion No. 01-17, Applicability of Tenn. Code Ann. § 56-6-125

Dear Ms. Haley:

The Insurance Division of the Tennessee Department of Commerce and Insurance (“Division”) is in receipt of your request for an interpretive opinion regarding whether certain services offered by an insurance producer for claims and billing concierge services are in violation of Tenn. Code Ann. § 56-6-125 as an unfair trade practice. The fact scenario included an insurance producer who has an employer group client with multiple welfare benefits, which are fully-insured by an insurance company. The insurance producer provides services regarding these insured benefits for which he or she receives a commission from the insurance company. The employer group also has separately procured self-funded group health insurance coverage through an industry association. The insurance producer did not sell, solicit or negotiate the self-funded coverage and does not receive any commission regarding the self-funded coverage. The insurance producer is now seeking to provide claims and billing concierge services with regard to the self-funded group health insurance which would include assistance for employees of the group with claims issues and plan questions. These services would be provided after the employee enrolls in the self-funded group health insurance program. The fee to be charged by the insurance producer for these services would be pursuant to a separate, written agreement and would be equal to or less than the commission the insurance producer would traditionally receive on a fully insured group medical product.

Tenn. Code Ann. § 56-6-125(a)(3) states that “[a]n insurance producer may charge fees for services not connected with the sale, solicitation and negotiation of insurance by the insurance producer if the fees are based upon a qualified written agreement, signed by the party to be charged in advance of the performance of the services under the agreement...”.

The fact scenario presented in your inquiry does not appear to be a violation of Tenn. Code Ann. § 56-6-125(a)(3) as an unfair trade practice because the services do not appear to be connected or associated with the sale, solicitation, or negotiation of insurance policies. The information you provided indicates that the services provided by the insurance producer would include assisting employees with claims and coverage questions and that the assistance would be provided after the employee has already enrolled in the self-

insured group program. Additionally, the insurance producer also intends to enter into a separate, written agreement with the employer group as required by Tenn. Code Ann. § 56-6-125(a)(3) and will include the provisions required by Tenn. Code Ann. § 56-6-125(a)(3)(A)-(C) to ensure that the agreement is considered qualified.

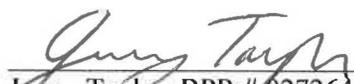
The fact scenario you presented stated that the insurance would only provide claims and billing concierge services including providing assistance coverage questions and claims denial. Please be aware that pursuant to Tenn. Code Ann. § 56-6-410, “[n]o person shall act as, or hold out to be, an administrator in this state, other than an adjuster licensed in this state for the kinds of business for which the person is acting as an adjuster, unless the person holds a license as an administrator issued by the commissioner...”. An “administrator” is defined as “...any person, company, corporation, partnership, association or other legal entity that collects charges or premiums from, or that adjusts or settles claims on, residents of this state in connection with life or health insurance coverage or annuities...” Tenn. Code Ann. § 56-6-401. Please consult the requirements of Tenn. Code Ann. § 56-6-401 et seq. if any of the services provided by the insurance producer subject expand into services that could be defined as the actions of an administrator as defined above.

Please note that the Division has not made an independent investigation of the facts to determine the accuracy or completeness of the information supplied, but has instead relied solely upon the information you have provided. If such information is incorrect or changes substantially, it would be necessary for the Division to reconsider the matter and the position stated herein would be void. This letter expresses the Division’s position on enforcement action only and does not purport to express legal conclusions on the issues presented. This position is furnished solely for the benefit and use of the entities described herein. Please be advised that further publication or use of this position may only be made with the Division’s prior written consent.

This response by the Division is to a specific fact situation and should not be construed as a legal position or opinion of the Commissioner of the Tennessee Department of Commerce and Insurance or of any other official in the Department. Please note that the conclusions contained herein are based upon the representations that have been made to the Division, and any different facts or conditions might require a different response. As each inquiry is reviewed on the specific facts presented, this response is based only on such facts and may not be used as precedent by any person or entity. Any variation in the facts presented to the Division by Ms. Tina Haley could result in a different conclusion than asserted herein.

If you have further questions or concerns regarding this letter, please feel free to contact me.

Sincerely,

  
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