

June 27, 1977

SUBJECT: INSURANCE

WITHDRAWN

Circular Letter No. 7 (1977)

June 27, 1977

TO: ALL INSURANCE BROKERS, AND AGENTS LICENSED TO SELL LIFE, ACCIDENT AND HEALTH INSURANCE

SUBJECT: Insurance Policies Issued by Employees' Benefit Associations

This Department has received inquiries as to whether purported "comprehensive health plans" offered by the Employees' Security Benefit Association (ESBA) of Bellevue, Washington and the Continental Employees' Benefit Association (CEBA) of Lakewood, Colorado, which provide major medical expense benefits and death benefits to their members on a self-funded, self-adjusting basis can be sold in this state.

The selling of the above "benefits" constitutes the doing of an insurance business under the New York Insurance Law, and only a licensed insurer may offer such insurance policies in this state.

ESBA and CEBA are not licensed to do an insurance business in New York, but contend that they are exempt from the requirements of licensing and conformance to the New York Insurance Law because of provisions of the Employee Retirement Income Security Act, Public Law 93-406, ("ERISA").

Based on a review of the materials distributed by the above organizations, the applicable provisions of ERISA and regulations promulgated by the United States Department of Labor, the Office of General Counsel of this Department has concluded that ESBA and CEBA are not employee benefit plans within the meaning of ERISA and, consequently, are not exempt from regulation under the New York State Insurance Law.

The Insurance Department has directed ESBA and CEBA to cease all activities within the State of New York and has turned the matter over to the New York State Attorney General for prosecution. Any licensee of this Department who solicits, negotiates or effectuates any policy on behalf of ESBA or CEBA would be subject to disciplinary action for having violated Sections 112, 117, 126 and other applicable provisions of the Insurance Law and to the penalties provided therein which includes suspension or revocation of all insurance licenses held and/or the imposition of monetary penalties.

Any other person who acts on behalf of ESBA or CEBA in this state would be subject to monetary penalties for having violated Sections 41-a, 112 and 126 of the Insurance Law.

[SIGNATURE]

THOMAS A. HARNETT

Superintendent of Insurance