



**STATE OF NEW YORK
INSURANCE DEPARTMENT**
25 BEAVER STREET
NEW YORK, NEW YORK 10004

**Circular Letter No. 5 (2001)
February 1, 2001**

TO: All licensed life insurers, fraternal benefit societies, charitable and segregated gift annuity societies, employee welfare funds, retirement systems, viatical settlement licensees, governmental variable supplements funds, property/casualty insurers, co-operative property/casualty insurers, financial guaranty insurers, mortgage guaranty insurers, title insurers, reciprocal insurers, accident and health insurers, Article 43 corporations, municipal cooperative health benefit plans, and rate service organizations; State Insurance Fund; Medical Malpractice Insurance Association; New York Property Insurance Underwriting Association; Motor Vehicle Accident Indemnification Corporation; Excess Line Association of New York; registered risk retention groups; service contract providers; Public Health Law Article 44 health maintenance organizations and integrated delivery systems; accredited reinsurers; and licensed insurance agents, brokers, adjusters and consultants.

RE: Advertisements, Referrals and Solicitations on the Internet

STATUTORY REFERENCES: Sections 1101, 1102, 2102, 2105, 2114, 2115, 2116 and 2117 of the Insurance Law

The Insurance Department has taken an active role in encouraging the use of electronic commerce in the insurance industry, as evidenced by [Circular Letter No. 33 \(1999\)](#) and numerous opinions issued by the Office of General Counsel on the subject of electronic commerce. During the past few years, the number of insurers, agents and brokers who are advertising and offering their products and services on the Internet has grown rapidly. As part of the Department's continuing effort to promote electronic commerce in the insurance industry, the Department has recently examined how New York Insurance Law governing insurance advertisements, referrals and solicitations applies in the electronic world. As a result of its review, the Department is offering the following guidance to licensed and unlicensed entities concerning the application of the New York Insurance Law to insurance advertisements, referrals and solicitations on the Internet.

Advertisements

The Department does not consider the mere maintenance of a passive web site that is accessible to New York residents containing information about specific insurance products or services to constitute solicitation under New York Insurance Law. A web site that merely contains advertisements for insurance products or services also does not constitute solicitation.

Internet advertisements for products or services of insurance companies, agents or brokers can appear in many forms, including banners, tiles, hypertext links, frames or embedded links. Such advertisements must be clearly delineated as such and are permitted to appear on the web site of a non-licensee even if it leads the consumer to, or is linked to, a web site where insurance solicitation takes place, as long as the advertisement or web site does not include, or the advertisement is not framed by, recommendations, endorsements or promotions from the non-licensee concerning the insurance products or services. Accordingly, a non-licensee hosting such advertisements on its web site may receive compensation calculated in any manner, including flat fees for such advertisements or fees that are based upon the amount of insurance business produced as a result of such advertisements. Advertisements that appear on the Internet are subject to all applicable existing statutory and regulatory guidelines and restrictions applicable to advertisements in any other medium.

However, if the insurance products or services are not being offered by a New York authorized insurer, the advertisements or the web sites upon which the advertisements appear must contain a clear and conspicuous disclaimer indicating that the advertised products or services are not available in New York State, and such products and services cannot, in fact, be made available in New York. For example, a disclaimer stating "not available in all states" would be sufficient. In such cases, compensation may not be based upon New York sales

since such sales would violate the Insurance Law.

In accordance with prior Department opinions in regard to advertisements in other types of media, an advertisement on a web site that is directed to brokers or excess line brokers, and not potential or actual insureds, need not contain the disclaimer. However, in such circumstances, the advertised insurance products cannot be sold over the Internet in New York. A broker or excess line broker, however, in accordance with Insurance Law Sections 2105 and 2117, may continue to procure insurance products pursuant to the mail-order exceptions contained in Section 1101.

The Federal Trade Commission has issued a staff paper containing guidelines for disclosure for Internet advertisements which may be instructional. These FTC guidelines are located at:

www.ftc.gov/bcp/rulemaking/elecmedia/

Referrals

If advertisements or web sites contain, or if an advertisement is framed by, recommendations, endorsements or promotions from a non-licensee concerning the advertised products or services, this would constitute a referral, subject to the discussion below. Referrals by non-licensees to New York State licensed insurance agents or brokers are permitted under a recent New York State statutory enactment contained in Chapter 418 of the Laws of 2000¹. Under that statute, a non-licensee may make a referral to a licensed insurance agent or broker provided there is no discussion of specific insurance policy terms and conditions and the compensation to the non-licensee for the referral is not based upon the purchase of insurance by the referred person.

Referrals may not direct New York residents to the products or services of unlicensed agents or brokers. Such a referral to an unlicensed agent or broker would constitute solicitation as outlined in prior Department opinions. In addition, compensation may not be paid for such referrals. One way to avoid such a violation would be the inclusion of a clear and conspicuous disclaimer on the referring web site indicating that the insurance products or services being offered are unavailable to New York residents. As stated above, a disclaimer stating "not available in all states" would be sufficient.

However, it should be noted that the New York Insurance Law does not prohibit licensees from purchasing lists of customer names and related information from non-licensees for the purposes of soliciting insureds. The compensation payable to non-licensees for such lists may be contingent upon the successful placement by the licensee of the insurance and may be a percentage of the insurance commission the licensee earned from placing the business.

Solicitations

Pursuant to Sections 1102 and 2102 of the Insurance Law, insurance companies (unless exempted from licensing), as well as agents and brokers that maintain web sites where the solicitation of insurance takes place, must be licensed, and commissions for such business may be paid only to licensees. Web sites of non-licensees must be designed to prevent insurance transactions with New York residents.

Soliciting is not defined in the Insurance Law. The Department defines solicitation as "to ask for the purpose of receiving" and "to move to action, to endeavor to obtain by asking, and implies personal petition to a particular individual to do a particular thing." As a general approach, the Department's analysis of the solicitation issue centers upon whether the non-licensee does an affirmative act, not defined as a referral under the new law, suggesting that insurance be obtained from an individual or entity. The Department has historically taken the position that what constitutes a solicitation must be determined by the facts and circumstances of each particular case. We encourage you to consult prior opinions for additional guidance.

This Circular Letter is not intended to address particular factual circumstances but rather to encourage the use of electronic commerce in the insurance industry by clarifying New York Insurance Law as it pertains to advertisements, referrals and solicitations on the Internet. Any questions regarding the interpretation of the Insurance Law in connection with Internet advertisements, referrals and solicitations should be directed to Audrey Samers, First Deputy General Counsel, at the address set forth above.

Kevin Rampe
Senior Deputy Superintendent and General Counsel

¹ Subsection (a) of section 2114 of the Insurance Law was amended by adding a new paragraph 4 to read as

follows: "(4) Services of the kind specified in this subsection shall not include the referral of a person to a licensed insurance agent or broker that does not include a discussing of specific insurance policy terms and conditions and where the compensation for referral is not based upon the purchase of insurance by such person."

Section 2114 (McKinney 2000), as amended by section 4 of Chapter 418 of the Laws of 2000, applies to life and accident and health insurance agents. Section 2115 (McKinney 2000), as amended by Section 5 of Chapter 418 of the Laws of 2000, in regard to property/casualty agents, and Section 2116 (McKinney 2000), as amended by Section 6 of Chapter 418 of the Laws of 2000, in regard to insurance brokers, contain identical provisions.