

11/05/07

INSURANCE DEPARTMENT OF THE STATE OF NEW YORK
PROPOSED
REGULATION NO. 185
11 NYCRR 5

PRINCIPLES APPLICABLE TO
INSURERS AND OTHER ENTITIES SUBJECT
TO THE INSURANCE LAW

I, Eric R. Dinallo, Superintendent of Insurance of the State of New York, pursuant to the authority granted by Sections 108, 201, 301, 304, 305, 307, 308, 312, 314, 315, 317, 318, 319, 320, 321, 333, 405, 409, 1102, 1104, 1106, 1107, 1111, 1115, 1201, 1202, 1216, 1301-1308, 1310, 1313, 1315, 1317-1320, 1322, 1323, 1401-1414, 1601-1611, 1701-1715, 2101-2108, 2110, 2114-2120, 2122, 2123, 2128, 2129, 2132, 2135, 2201-2205, 2314, 2319, Article 24, Article 25, 2601-2615, 2701-2705, 2801-2808, 3101-3109, 3111, 3112, Article 32, 3401-3449, 4101, 4103, 4107-4116, 4209, 4210, 4224, 4226, 4240, 4301, 4303-4308, 4311, 4318, 4320-4327, 4401, 4402, 4413, 4414, 4501-4513, 4516, 4521, 4522, 4523, 4601-4604, 4704, 4705, 4709, 4801-4805, 4900-4916, 5101-5109, 5303, 5403, 5502, 5504, 5602, 5909, 5911, 6106-6109, 6302, 6303, 6404-6407, 6409, 6502, 6503, 6504, 6506, 6609, 6610, 6611, 6613-6618, 6624, 6704, 6705, 6706, 6802, 6804, 6902, 6905, 7003, 7004, 7008, 7434, 7608, 7708, 7804, 7807, 7808, 7809, 7904, 7905, 7906, and 7909 of the Insurance Law, do hereby promulgate Part 5 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Regulation 185), to take effect upon publication in the State Register to read as follows:

Section 5.0 Preamble.

The purpose of this Part is to set forth, in broad terms, the principles to which licensees are expected to adhere in conducting business in New York. These principles do not pre-empt existing requirements in statute or in regulations. The principles represent, in virtually every instance, the reasoning behind existing statutory and regulatory requirements. The purpose of this Part is to start the transition to principles-based regulation, and to encourage licensees to begin to think in broader terms about the basic principles underlying the existing requirements. The placement of these principles in this Part will assist licensees in adhering to and interpreting statutory and regulatory requirements, and will assist the Department in the consistent application of such requirements. Adherence to the principles in this Part should align good, and constantly changing, business practices with the objectives of the regulation of licensees.

Section 5.1 Definitions.

For purposes of this Part:

(a) "Licensee" means a person, firm, association or other entity licensed, authorized, registered, certified, or accredited, or required to be licensed authorized, registered, certified, or accredited, pursuant to the Insurance Law of this State, or otherwise subject to, or required to be subject to, the Insurance Law of this State or the

supervision of the superintendent, pursuant to any other status that may be conferred by the superintendent or otherwise; a health maintenance organization holding, or required to hold, a certificate of authority pursuant to Public Health Law Article 44; and an unauthorized insurer in regard to the excess line business conducted pursuant to New York Insurance Law Section 2118 and Part 27 of this Title (Regulation 41).

(b) "Client" means an insured, policyholder, beneficiary, certificate holder, or claimant under any insurance policy, contract or bond; a service contract holder; or any other person entitled to any benefit or compensation under any contract regulated under the Insurance Law; and includes any prospective client, such as an applicant for insurance.

Section 5.2 Applicability.

This Part applies to every licensee with respect to any activity the licensee engages in within this State or that is otherwise subject to the jurisdiction of the superintendent.

Section 5.3 Principles.

- (a) Every licensee shall act in accordance with the principles embodied in subdivision (b) of this section.
- (b)
 - (1) A licensee shall lawfully conduct its business with integrity, due skill, and diligence.
 - (2) A licensee shall take reasonable care to organize and control its affairs responsibly and effectively, with adequate risk management systems.
 - (3) A licensee shall maintain adequate financial resources.
 - (4) A licensee shall observe proper standards of market conduct.
 - (5) A licensee shall pay due regard to the interests of its clients and treat them fairly.
 - (6) A licensee shall pay due regard to the information needs of its clients, and communicate information to them in a way that is clear, fair and not misleading.
 - (7) A licensee shall manage conflicts of interest fairly, both between the licensee and its clients and between clients.
 - (8) A licensee shall take reasonable care to ensure the appropriateness or suitability of its advice and discretionary decisions for any person or other entity that is entitled to rely upon such.
 - (9) A licensee shall ensure that the assets of any client for which the licensee is responsible are adequately protected.
 - (10) A licensee shall interact with the superintendent and other regulators in an open and cooperative way, and shall disclose to the superintendent any information relating to the licensee of which the superintendent would reasonably expect notice.

Section 5.4 Other regulatory requirements.

Notwithstanding any provision of this Part, nothing in this Part shall supersede or be construed, or deemed to be construed, to modify, limit or be in conflict with any provision of the Insurance Law, any other law of this State, or this Title, and the requirements of any such other provision shall continue to apply.

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