

## Commissioner's Bulletin # B-0007-19

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August 12, 2019

**To: Insurance agents and third-party administrators**

**Re: Strict liability for assisting in the practice of unauthorized insurance**

The Texas Department of Insurance reminds all insurance agents and third-party administrators (TPAs) that their licenses may be at risk and that they may be held responsible for assisting a company engaging in the unauthorized business of insurance under Insurance Code Chapter 101.

New types of health insurance or insurance-like products are being marketed to Texas consumers by unlicensed and unauthorized companies. While some health plans, including self-funded health plans under ERISA and legitimate health care sharing ministries, are exempt from state regulation and do not need a license or authorization from TDI, others are not. Specifically, companies may claim to be a health care sharing ministry or other innovative business without complying with the requirements of the claimed exemption. TDI advises agents and TPAs to carefully evaluate all new products and companies. You may check [the National Association of Insurance Commissioners website](#) to verify a company's license. If you have questions about a company or product, call TDI at 512-676-6500.

A person who in any manner assists directly or indirectly in the procurement of the unauthorized insurance contract could be held strictly liable to the insured for the full amount of a claim or loss under the terms of the contract if the unauthorized insurer fails to pay the claim or loss.

Further, if a company is engaged in unauthorized insurance, TDI may bring an action against an agent or TPA who assists the company whether the agent or TPA knew the product was unauthorized or not. A person violating Chapter 101 may be subject to civil penalties of up to \$10,000 for each act of violation and for each day of violation. TDI may also revoke or suspend the agent or TPA's license for engaging in the unauthorized business of insurance.

Acts for which TDI may bring an action against an agent or TPA under Chapter 101 include:

- Taking or receiving an application for the unauthorized insurance product;
- Receiving or collecting any consideration for the product, including premiums, commissions, membership fees, assessments, or dues;
- Issuing or delivering a contract for the product;

- Directly or indirectly acting as an agent for or otherwise representing or assisting in:
  - Soliciting, negotiating, procuring, or effectuating the product or renewal of the product;
  - Disseminating information relating to the product's coverage or rates;
  - Forwarding an application for the product;
  - Delivering the product policy or contract;
  - Inspecting a risk;
  - Setting a rate;
  - Investigating or adjusting a claim or loss;
  - Transacting a matter after the effectuation of the product that arises out of the product; or
  - Representing or assisting the company in any other matter relating to the product; or
- Contracting to provide indemnification or expense reimbursement for medical expenses by direct payment, reimbursement, or otherwise.

Agents and TPAs should exercise due diligence before offering products from companies who are not licensed by TDI or who are claiming to be exempt from licensing requirements. The products may have one or more of the following features:

- Commissions significantly higher than similar licensed products;
- Declarations that the product is not insurance;
- Risk-bearing, risk-shifting, or risk-pooling;
- Offers of unlimited, free, or low-cost medical services included with a flat monthly fee, such as telemedicine or preventative care;
- Offers a network of providers similar to preferred provider organizations or health maintenance organizations; or
- Products that function, look, and sound like traditional health insurance.

If you believe a company may be engaged in the unauthorized business of insurance, please notify TDI at 1-800-252-3439 or [EnforcementInfo@tdi.texas.gov](mailto:EnforcementInfo@tdi.texas.gov).

For more information, contact: [ChiefClerk@tdi.texas.gov](mailto:ChiefClerk@tdi.texas.gov)

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