



Commonwealth OF PUERTO RICO
OFFICE OF THE COMMISSIONER OF INSURANCE

WHEN ANSWERING,
PLEASE REFER TO:

February 13, 2006

CIRCULAR LETTER NO.: C-SP-2-1758-2006

TO ALL DOMESTIC INSURERS AND HEALTH SERVICES ORGANIZATIONS THAT
WRITE MEDICARE ADVANTAGE AND MEDICARE PART D PLANS

**LICENSING REQUIREMENTS FOR WRITING MEDICARE ADVANTAGE AND
MEDICARE PART D INSURANCE**

In view of the proliferation Medicare Advantage plans that are for sale (MA plans) and the new Medicare Part D, we have been asked to clarify whether it is necessary to use duly licensed agents for soliciting, selling or marketing these products. The following is the analysis the Office of the Commissioner of Insurance (OCI) has made regarding this matter.

Chapter 9¹ of the Puerto Rico Insurance Code (the Code) regulates, among other matters, all aspects related to agents, brokers, general agents, solicitors, adjusters, and insurance consultants. 26 L.P.R.A. secs. 901 and ff. As expressly provided in Section 9.060(1) of the Puerto Rico Insurance Code², in Puerto Rico no person will act as or represent being an agent, general agent, broker, solicitor, adjuster or insurance unless licensed to do so.

Specifically, Section 9.060 of the Puerto Rico Insurance Code provides as follows:

- (1) No person in Puerto Rico shall act as or pretend to be an insurance producer, authorized representative, general agent, solicitor, adjuster, or consultant unless he/she holds a license therefor, pursuant to this chapter.
- (2) No agent, broker or solicitor may transact or accept applications for any kind of insurance for which he/she does not hold a license nor procure or place said application for others.
- (3) No agent will place any business with any insurer for which the agent does not have a license issued pursuant to this Chapter, except as provided in Sections 9.390(1) and 9.410.

¹ Although in this letter Chapter 9 is CITED before the amendments as approved in Public Law. 10, January 19, 2006, the applicable provisions are essentially the same and do not change the analysis set forth herein.

² 26 L.P.R.A. Sec. 906(1)

- (4) The Commissioner shall supply the forms required in relation to the application, issue or termination of any license required by this chapter.
- (5) A violation of paragraphs (1), (2) or (3) will be considered a misdemeanor, punishable with a fine of not less than fifty (50) dollars nor more than five thousand (5,000) dollars.

Furthermore, Section 9.061 of the Puerto Rico Insurance Code establishes that:

- (1) No insurer, general agent, manager or authorized representative of the insurer shall accept insurance applications transacted through a person who does not hold a license issued according to this Code.
- (2) No insurer, general agent, manager or producer shall pay any commission or compensation whatsoever for transacting insurance unless by the date the same is due the person entitled to the same holds a license issued pursuant to this Code.

Chapter 3 of the Puerto Rico Insurance Code also clearly establishes that no insurer may transact any insurance directly, and that to transact and sell insurance products a person must hold a license issued by the OCI. This is what is provided in Section 3.290(1), *supra*, as follows:

- (1) No insurer may effectuate any direct insurance upon or relative to any person, property or other material object of insurance that resides, is located in or is to be carried out in Puerto Rico, nor any insurance related thereto, except through an authorized agent of said insurer residing in Puerto Rico. (Our emphasis)

If the insured is represented by an authorized broker residing in Puerto Rico, said insurance shall be executed through the manager, general agent or authorized agent of the insurer residing in Puerto Rico.

- (2) ...

This standard was reiterated by the Secretary of Justice in Opinion No. 28 in 1958, when the Court held that "no person will solicit or place insurance business for which the person is not authorized even when it arises in the normal course of transacting business for admitted classes."

With regard to health services organizations ("HMO"), Section 19.160 of the Puerto Rico Insurance Code, *supra*, defines the term "*Agent*" as a person appointed by a health services organization to carry out soliciting and underwriting activities, and "*broker*" a person who for compensation as an independent contractor negotiates on behalf of a subscriber or group of subscribers to obtain or renew a health care plan.

Specifically, paragraph (2) of said Section establishes that the provisions for licenses, commissions, requisites, examinations, controlled business, bonds, service of process, books, documents, and reports, as well as the limitations established there in that are not in conflict with the provisions of paragraph (1) of this Section, and that are not otherwise incompatible with Chapter 19, will be deemed to be applicable to agents and brokers of health services organizations, hereinafter "the organization."

Accordingly, paragraph (3) of this Section provides that "[n]o health services organization will solicit or subscribe a healthcare plan except through an authorized agent of the health services organization who resides in Puerto Rico." It is further provided that to that effect no provisions of the Section limit the ability of the organization to contract directly with the subscriber.

By reading this Section it may be clearly understood that: (i) an agent is the person appointed by an organization to effectuate solicitation and subscription; (ii) the provisions on licensing shall be applicable to the agents and brokers of these organizations; and (iii) no organization will effectuate solicitation and subscription for a health care plan except through an authorized agent of the organization who resides in Puerto Rico.

In spite of the fact that the Section provides that the organization "may contract directly with the subscriber," the fact is that the organization may only do so through employees of such organization, provided that the employee does not have the characteristics of an agent as defined in Section 19.160, that is to say, that the person has not been employed by the health services organization to perform the functions of an insurance agent, such as solicitation and subscription of contracts. To interpret otherwise would be to act against the general standard established in the Insurance Code that in Puerto Rico no person will act as or represent being an agent, general agent, broker, solicitor, adjuster or insurance consultant unless the person holds a license duly issued by the OCI for the exercise of such functions.

In conclusion, and pursuant to the above, in order to solicit, market, and sell MA and Medicare Part D products it is necessary to have a license issued by the OCI. Insurers and health services organizations that are not in compliance with the above must immediately correct this situation. The OCI reserves the right to take the corresponding action if it is found that the above provisions are being violated.

Very truly yours,

SIGNED

Dorelisse Juarbe-Jiménez
Commissioner of Insurance