

Commonwealth of Puerto Rico
OFFICE OF THE COMMISSIONER OF INSURANCE

DEPARTMENT OF STATE
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Approved: Hon. Fernando J. Bonilla
Secretary of State
By: Francisco Jose Martín-Caso
Assistant Secretary for Services

RULE NO. 84

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Commonwealth of Puerto Rico
OFFICE OF THE COMMISSIONER OF INSURANCE
Guaynabo, Puerto Rico

RULE NO. 84

**STANDARDS TO REGULATE THE PAYMENT OF ADDITIONAL
COMPENSATION TO GENERAL AGENTS, AUTHORIZED REPRESENTATIVES,
AND PRODUCERS**

ARTICLE I - GENERAL PROVISIONS

SECTION 1 - LEGAL BASIS

The Office of the Commissioner of Insurance of Puerto Rico hereby adopts this Rule No. 84 of the Regulations for the Puerto Rico Insurance Code, pursuant to the provisions of Sections 2.040, 9.022, and 9.062 of Chapter 9 of Public Law No. 77, enacted on June 19, 1957, known as the Puerto Rico Insurance Code, as amended by Public Law No. 10, enacted on January 19, 2006; and the provisions of Public Law No. 170, enacted on August 12, 1988, as amended, known as the "Uniform Administrative Procedures of the Commonwealth of Puerto Rico Act."

SECTION 2 - PURPOSE AND SCOPE

This Rule is adopted for the purpose of establishing the standards for payment of any additional compensation or commission with regard to the authorized and calculated compensation or commission, or in cases where no previous authorization by the Commissioner is required, with regard to any justifiable compensation or commission, as provided in Section 9.062 of the Puerto Rico Insurance Code. This Rule will be applicable to all insurers and health services organizations authorized by the Commissioner of Insurance to write insurance or provide health care insurance plans in the Commonwealth of Puerto Rico.

ARTICLE II- DEFINITIONS

For the purposes of this Rule, the following terms or phrases will have the meaning set forth below, except as the context clearly indicates otherwise.

- a) "General Agent" - has the same meaning as provided in Section 9.040 of the Puerto Rico Insurance Code.

- b) "Insurer" - has the same meaning as provided in Section 1.030 of the Puerto Rico Insurance Code.
- c) "Code" - means Puerto Rico Insurance Code, Public Law No. 77, enacted on June 19, 1957, as amended, 26 LPRA, *et seq.*
- d) "Commissioner" - means the Commissioner of Insurance Puerto Rico.
- e) "Contingent commission"- means any additional compensation that insurers pay to general agents, aside from the authorized and calculated compensation as provided in Section 9.062 of the Code.
- f) "Individual" - means a natural person that is duly authorized to transact insurance business as an authorized representative of an insurer or health services organization or who performs functions related to the placement and issuance of insurance as an authorized person of a corporate authorized representative.
- g) "Health Services Organization" - has the same meaning as stated in Section 19.020(6) of the Puerto Rico Insurance Code.
- h) "Producer" - has the same meaning as stated in Section 9.020 of the Puerto Rico Insurance Code.
- i) "Authorized representative" - has the same meaning as stated in Section 9.021 of the Puerto Rico Insurance Code.

ARTICLE III- PAYMENT OF ADDITIONAL COMPENSATION, INCLUDING PAYMENT OF A CONTINGENT COMMISSION

- A. Insurers may only pay contingent commissions to general agents, provided that the total amount of the compensation or contingent commissions paid to all general agents does not exceed thirty percent (30%) of the total net profit generated from underwriting by the insurer, as reflected in the annual report. No advance payments of contingent commissions or loans to be paid against such will be allowed.

Contingent commissions may be paid by insurers to general agents only if such agents have generated a return on underwriting at the productivity and efficiency levels established by the insurers contractually.

It is further provided that no insurer will pay a contingent commission for the placement of life and health care insurance.

No insurer may use the payment of contingent commissions as a justification for increasing rates. Under no circumstances may the payment of contingent commissions affect the insurer's solvency. With regard to this matter, for each year in which said commissions are paid, insurers shall provide detailed

information regarding such payments on the forms established for this purpose by the Commissioner.

- B. In addition to the commission that is calculated and authorized as provided in Section 9.062 of the Code, an insurer or health services organization may only pay additional compensation to an authorized representative if the total additional compensation paid to all authorized representatives does not exceed twenty percent (20%) of the total net annual profit generated by the insurance written by the insurer or health services organization, as reflected in the annual report.

As part of the additional compensation established in the first paragraph of this Subsection, an insurer or health services organization may provide authorized representatives with training that includes travel, lodging, or any other event or amenity, and that are related to the functions that the authorized representative performs as such. The total value of this training may not exceed \$3,000 a year per individual. Any training that does not include travel and lodging will not be subject to the 20% limitation provided in this Subsection.

The insurer or health services organization must maintain reliable evidence in its records of this training, in the form of a certificate issued by the person or entity that has provided the training. Beginning in the third year after the approval of this Rule, insurers may pay an amount that is greater than the \$3,000 a year established in the above paragraph, with the prior written approval of the Commissioner. The Commissioner will take into consideration the increase in the cost of living to make any determination.

All additional compensation, including training with travel and lodging, that may be paid to an authorized representative by an insurer or health services organization will be considered an expense that must be kept in a duly identified separate account in the books of the insurer or health services organization.

ARTICLE IV - PAYMENT OF ADDITIONAL COMPENSATION BY THE INSURED

- A. No provision of this Rule shall be interpreted as prohibiting a producer from receiving directly from an insured additional compensation other than the commission paid by an insurer, general agent, or health services organization, provided that the producer discloses to the insured the total amount of compensation received from the insurer, general agent or health services organization.

- B. The disclosure of information required in Subsection A shall be made before placing the policy, and shall contain the following:
- i. The source or sources of compensation earned by the producer for placing the insurance business;
 - ii. The total amount of the compensation received from the insurer, health services organization or general agent.
- C. The producer shall keep reliable evidence of compliance with the disclosure of information as required herein. For the purposes of this section, "reliable evidence" means written acknowledgment by the insured confirming that the total amount of compensation that the producer will receive from the insurer, general agent or health services organization has been disclosed. The written acknowledgment made by the insured shall specify the date on which the producer made the required disclosure.
- D. A person shall not be considered an "insured," for the purposes of this section, if said person is merely:
- i. a participant or beneficiary of an employee benefits plan; or
 - ii. an insured under a group insurance policy or a group annuity contract, which has been sold, solicited or negotiated by the insurance producer or an affiliate thereof.

It is further provided that in the aforementioned cases, the producer shall make the required disclosure to the entity named in the policy as the policyholder of the group policy.

ARTICLE V. PENALTIES FOR VIOLATIONS

Payment of additional compensation or contingent commission above and beyond what is permitted under this Rule will be considered an illegal incentive, as prohibited in Section 27.100 of the Code.

Any violation or failure to comply with the provisions of this Rule will entail the imposition of sanctions, according to the powers and faculties vested in the Commissioner in Sections 3.211, 9.460, 9.480, and 27.350 of the Code, as well as any other applicable provision of law.

ARTICLE VI. SEVERABILITY

If any word, sentence, paragraph, subsection, section, or part of this Rule were found to be null and void by a court of competent jurisdiction, the order of the court

will not affect or invalidate any of the remaining provisions of this Rule and the effect of such order is limited to such word, sentence, paragraph, subsection, section or part that has been ruled to be void.

ARTICLE VII. EFFECTIVE DATE

This Rule will enter into effect thirty (30) days after filing at the Department of State. All additional compensation provided under contracts that are in effect at the effective date of Public Law No. 10, enacted on January 19, 2006, will be paid according to the terms and conditions of such contracts, provided that such terms and conditions are not contrary to the provisions of the Code. It is further provided, that such contracts in which additional compensation has been agreed on and whose duration is beyond the effective date of this Rule, shall be adjusted to the provisions of this Rule within ninety (90) days to be counted from the effective date of the rule.

SIGNED

DORELISSE JUARBE-JIMÉNEZ
COMMISSIONER OF INSURANCE

Approval date: June 14, 2007

Date of Filing
at the Department of State: June 14, 2007

Date of Filing
With the Legislative Library