



LOUISIANA DEPARTMENT OF INSURANCE
JAMES J. DONELON
COMMISSIONER

NOTICE OF CEASE AND DESIST ORDER

NAIC #707

May 30, 2019

TO: United HealthCare Services, Inc.
9700 Health Care Lane, MN017-E300
Minnetonka, MN 55343

Article #70181830000076335226

UnitedHealthcare Insurance Company
185 Asylum Street 4th Floor, CT039
Hartford, CT 06103

Article #70181830000076335233

WHEREAS, IT HAS COME TO MY ATTENTION, as Commissioner of Insurance (Commissioner) of the Louisiana Department of Insurance (LDI), that United HealthCare Services, Inc. and/or UnitedHealthcare Insurance Company, its subsidiaries and affiliates (collectively hereafter referred to as United) have notified a number of producers licensed to do business in Louisiana of an intention to omit producer commissions from upcoming renewals of certain group health insurance products;

I HEREBY GIVE NOTICE that this practice is contrary to certain provisions of the Louisiana Insurance Code, Title 22, La. R.S. 22:1 *et seq.*;

AND ISSUE THIS NOTICE OF CEASE AND DESIST ORDER, pursuant to the power and authority vested in me as Commissioner and based on the following, to wit:

La. R. S. 22:2 maintains in pertinent part:

§2. Insurance regulated in the public interest

- A. (1) Insurance is an industry affected with the public interest and it is the purpose of this Code to regulate that industry in all its phases. ...It shall be the duty of the commissioner of insurance to administer the provisions of this Code.

1.

United has current third party administrator and health maintenance organization licenses. These licenses were active and in effect at all times pertinent hereto.

2.

Between May 7, 2019 and May 15, 2019, LDI was contacted by numerous producers who indicated that they had been notified of United's intention to implement a zero-dollar schedule of commissions applicable to all policies sold to groups of greater than fifty (50) insureds with an effective date on or after September 1, 2019. Accompanying this notification was an inducement to work with United and affected insureds to negotiate a "replacement" agency fee to be paid by the insured to the producer and an offer by United to facilitate this payment. United subsequently clarified both with at least some of the notified producers and with LDI that the change would only be applicable to groups of one hundred (100) or more insureds and that the lower indication in the notice was erroneous.

VIOLATIONS OF THE LOUISIANA INSURANCE CODE

3.

As defined in La. R.S. 22:1542, a commission is "a fee paid to an insurance producer as a percentage of the premium generated by a sold insurance policy, or direct compensation or reward of a producer when the same is calculated as a flat fee or as a percentage of the premium or on the profit to the principal." Both historically and under the plain language of the statute, this commission is compensation due to the producer by virtue of his service in placing the contract of insurance. La. R.S. 22:1562(A)(1) specifies the two entities involved in the commission transaction – the insurer and the producer¹ – and prohibits the payment of commissions to any person or entity not licensed as an insurance producer. La. R.S. 22:1568(A) further explicates the insurer-producer commission relationship, requiring the insurer to maintain one or more schedules of commission that are uniformly applied to all producers within the same schedule and payable to all appointed, licensed producers.

4.

When a producer arranges the sale of a product of insurance pursuant to an agreement with an insurer, that insurer is obligated to reimburse the producer for his approved services. This obligation is discharged solely through the payment of a commission, as defined in R.S. 22:1542, and is made mandatory by the requirement of a *payable* schedule of uniformly available commissions in R.S. 22:1568(A). The framework is augmented through a series of other permissible payments: a service fee² that may be used by the insurer to help defray producer costs or entice especially skilled or high-demand producers; a separately-negotiated expense-reimbursement fee³ paid by the insured to the producer; and a reasonable agency fee⁴ paid by the insured to the producer.

¹ The term "insurer" under the Louisiana Insurance Code includes all persons engaged in the business of making contracts of insurance, except fraternal benefits societies. For clarity and brevity, health maintenance organizations are also included in the term "insurer." Similarly, the term "producer" is inclusive of agents and brokers, in accordance with La. R.S. 22:46.

² Cf. La. R.S. 22:1557(A)(1)

³ See La. R.S. 22:855(B)(2)

⁴ See La. R.S. 22:855(B)(2)

5.

Each of these fees is *additional* to the commission and cannot be used to satisfy the insurer's obligation to reimburse the producer for the sale of the insurer's products. Moreover, only the first of the three, the service fee payable by the insurer, is permissible as an insurer-sponsored payment; the other two are to be negotiated between the producer and the insured. Finally, the service fee, as with all other payments from the insurer to the producer, is required by R.S. 22:855 to be included in the premium quoted by the insurer and paid by the insured.

6.

An insurer that maintains a schedule of commission providing for a zero-dollar commission violates both its obligation to remunerate producers for selling its products and the statutory requirement to maintain one or more schedules of payable commission. In addition, however, a schedule of commission with zero-dollar or minimal commission payment provides strong evidence that the insurer is impermissibly attempting to reclassify what is properly and mandatorily a commission as another form of payment. This behavior is a clear violation of R.S. 22:855(A)(1)'s requirement that the commission be included in the premium and may additionally violate the insurer's obligation to pay tax on its annual premiums under R.S. 22:842, the prohibition on the payment of commissions to a non-licensed entity under R.S. 22:1557, the requirement that all payable commissions be reflected on the schedule of commission maintained pursuant to R.S. 22:1568 and that commissions be uniformly applied to all producers. Simple reclassification of what is properly a commission – whether into an illusory “agency fee” or otherwise and whether through a simple change in terminology or through an arrangement whereby an insurer forgives, reduces or otherwise alters some third party's obligation to the insurer in exchange for that third party meeting the insurer's obligation to pay for a producer's services – does not actually convert the commission into another vehicle or relieve the insurer of its obligation to reflect the commission in its schedule or include it in its premium quote.

7.

United's proposed combination of zero dollar commissions and insurer-initiated agency fees is a clear violation of La. R.S. 22:855 and 22:1568 and would very likely need to be structured in a way that violated 22:1562 – such as a scenario where the insured is provided the valuable consideration due the producer in the form of a reduced premium in order to support the payment of an additional agency fee – and potentially 22:842.

8.

Whereas the Commissioner is authorized to order any insurer, person, or entity to cease and desist any such action that violates any provisions of this Code pursuant to La. R.S. 22:18(A).

CEASE AND DESIST ORDER

9.

BECAUSE UNITED'S NOTIFICATION AND THE UNDERLYING PRODUCER REIMBURSEMENT POLICY ARE IN VIOLATION OF, AT A MINIMUM, LA. R.S. 22:855 AND 22:1568, UNITED IS HEREBY ORDERED TO IMMEDIATELY **CEASE AND DESIST** ALL EFFORTS TO IMPLEMENT SUCH POLICY, TO REVISE ALL APPLICABLE SCHEDULES OF COMMISSIONS AND RELEVANT RATE AND FORM FILINGS TO APPROPRIATELY REFLECT THE FULL COMMISSION PAYMENT REQUIRED BY LAW AND TO NOTIFY ALL AFFECTED PRODUCERS OF THE CORRECTED POLICY.

NOTICE OF RIGHT TO APPEAL

10.

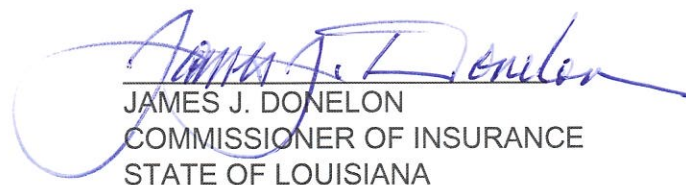
Pursuant to La. R. S. 22:2191(A)(2), any person aggrieved by an act of the Commissioner may request a hearing within thirty days of the receipt of notice from such act. You must make a written demand for an appeal within thirty (30) days from the date of this notice. Failure to file a written demand for an appeal within thirty (30) days of this notice will preclude your right to an administrative hearing. Pursuant to La. R. S. 22:2191(B), your written demand for an appeal (1) shall reference the particular sections of the statutes and rules involved; (2) shall provide a short and plain statement of the matters asserted for review; and (3) shall attach a copy of the order or decision that you are appealing. Your written demand for an appeal shall be filed with the Louisiana Department of Insurance at the address below:

Louisiana Department of Insurance
Attn: Liz Butler, Executive Counsel
P. O. Box 94214
Baton Rouge, LA 70804-9214

Telephone: (225) 342-4673
Fax: (225) 342-1632

File in Person at:
1702 N. Third Street
Baton Rouge, LA 70802

Signed in Baton Rouge, Louisiana this 30th day of May, 2019.


JAMES J. DONELON
COMMISSIONER OF INSURANCE
STATE OF LOUISIANA

CERTIFICATE OF SERVICE

Article #70181830000076335226

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I hereby certify that I have this day served the foregoing document upon United HealthCare Services, Inc. and UnitedHealthcare Insurance Company by mailing a copy thereof properly addressed with postage prepaid, this 30th day of May 2019.


Trent Beach