STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
INSURANCE DIVISION
500 JAMES ROBERTSON PARKWAY 4TH FLOOR
NASHVILLE, TENNESSEE 37243-5065
615-741-2176

December 4, 2012

Ralph D. Spaulding
Hinman Straub
121 State Street
Albany, NY 12207-1693

Re: Interpretive Opinion No. 02-12
American Pet Insurance Company
Trupanion 30 Days Free Pet Insurance Coverage
Unlawful Inducement or Rebate

Dear Mr. Spaulding:

This letter is in response to your request for guidance regarding whether your client, American Pet Insurance Company, would be in violation of Tenn. Code Ann. § 56-8-104(8) regarding the unlawful use of rebates and inducements to enter into insurance policies by implementing its proposed Trupanion Program. The facts understood by the Insurance Division are as follows:

The proposed Trupanion Program would offer consumers 30 days of free pet insurance coverage without any obligation of signing a contract for continued coverage. Consumers qualify for the program following an examination of their pet by participating veterinary hospitals. The application for Trupanion is distributed by the veterinary hospitals which receive no financial or other incentive for offering the program. Qualifying pets must be between the ages of eight (8) weeks and twelve (12) months and have undergone a complete physical examination in accordance with minimum standards of the relevant regulating veterinary body.

Once the certificate for the free 30 day coverage is offered to the consumer it must be activated within 24 hours. The program can be activated by either website or telephone at which time the consumer provides a promotional code listed on the issued certificate. Enrollment for the 30-day free trial does not require the consumer to provide any credit card or payment information. The program will offer 30 days of unlimited health insurance coverage for diagnostic tests, surgeries, and medications. If a consumer wishes to continue coverage they may do so by website or telephone by again providing the promotional code listed on the certificate before the free trial expires.

You have requested guidance on the following specific question:

1. Whether the proposed Trupanion Program would violate Tennessee Law, specifically Tenn. Code Ann. § 56-8-104(8) as constituting an unlawful rebate or other inducement to enter into a policy of insurance.

RESPONSE:

Tenn. Code Ann. § 56-8-104(8) forbids certain inducements and states, in pertinent part, that, except as otherwise expressly provided by law, an insurer may not pay, allow, give, or offer to:

> "pay, allow, or give, directly or indirectly, as inducement to the policy, any rebate of premiums payable on the policy, or any special favor or advantage in the dividends or other benefits thereon, *or any valuable consideration or inducement whatever not specified in the policy; or giving, or selling, or purchasing or offering to give, sell,* or purchase as inducement to the policy or annuity or in connection with the policy or annuity, any stocks, bonds or other securities of any insurance company or other corporation, association or partnership, or any dividends or profits accrued thereon, *or anything of value whatsoever not specified in the policy.* [emphasis added]

A 1986 Attorney General Opinion, in discussing the constitutionality of Tenn. Code Ann. § 56-8-104(7),[1] determined that the code section places a disclosure requirement on rebates and inducements to enter insurance policies. The 1986 Attorney General Opinion provides, "the plain language of the statute would appear not to prohibit offered rebates or other valuable consideration which have been *disclosed in the policy.*" [emphasis added]. The Opinion relies on the policy considerations existing at the time the legislation was passed. According to the Opinion, the primary concern with the common practice of rebating was that they were secretly offered to some and not others, thereby unfairly discriminating against similarly situated purchasers of insurance. Therefore, under the 1986 Attorney General Opinion rebates and inducements are permitted as long as they are disclosed in the policy.

The proposed Trupanion Program serves as a free service for the purpose of inducing consumers to extend their free trial and enter into a pet insurance policy. Based on the above Attorney General's Opinion, the Trupanion program is permitted to offer 30 days of free insurance without any further obligation as long as the terms of coverage are sufficiently disclosed in the policy. In addition, policies extended beyond the free trial period should disclose the terms of the new policy as well as the free trial offer that served as the initial inducement. Should the disclosure requirement be satisfied and all similarly situated purchasers of insurance not be unfairly discriminated against, then the Trupanion Program would be operating within the bounds of Tennessee Insurance Laws.

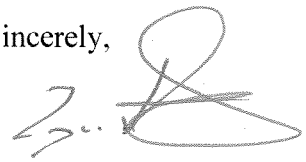
This response by the Insurance Division to a specific fact situation relating to the interpretation of the Tennessee Code should not be construed as a legal position or opinion of the Commissioner of Commerce and Insurance or any other official in the Department of Commerce

[1] Identical language is now found in Tenn. Code Ann. § 56-8-104(8).

and Insurance. As each inquiry is reviewed on the specific facts presented, this response is based only on such facts and may not be used as precedent. Any variation in the facts presented to the Insurance Division could result in a different conclusion than asserted herein.

If you have any questions regarding this matter, please do not hesitate to contact me at (615) 741-2176.

Sincerely,



Larry C. Knight, Jr.
Assistant Commissioner for Insurance

LCK/lvd

cc: Nancy Jones, General Counsel
Tony Greer, Chief Counsel for Insurance
Mark Jaquish, Director, Financial Affairs Section
Lauren Dantche, Assistant General Counsel