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March 21, 2018

Via E-Mail

Marisa Combs

Marisa.combs@mybenefitschannel.com

Corporate Counsel

Five Points Benefits Solutions, LLC

Re: Request for Interpretive Opinion No. 01-18, Applicability of Tenn. Code Ann. § 56-8-104

Dear Ms. Combs:

The Insurance Division (“Division”) of the Tennessee Department of Commerce and Insurance (“Department”) is in receipt of a request for an interpretive opinion from Five Points Benefits Solutions, LLC (“Five Points”), regarding Tenn. Code Ann. § 56-8-104(8). Five Points serves as an insurance brokerage firm. Five Points and its clients’ benefit administrators use a software platform called MyBenefitsChannel in the administration and service of employee benefits and insurance. Five Points includes as part of its business overhead the payment of licensing fees for the use of the MyBenefitsChannel software program so that its clients may access MyBenefitsChannel’s Benefits Related Services. The Benefits Related Services are used to fully integrate all of the clients’ needs as related to employee benefits and insurance and are used for member enrollment, servicing of policies, reduction of risk and error, as well as to otherwise provide general information about insurance and its cost to employees.

The inquiry is whether Five Points’ payment of licensing fees for its clients’ access to the MyBenefitsChannel’s Benefits Related Services is considered a rebate pursuant to Tenn. Code Ann. § 56-8-104(8). Tenn. Code Ann. § 56-8-104(8) prohibits rebating and provides, in part, that it is an unfair trade practice to knowingly permit or offer valuable consideration or an inducement to enter into an insurance policy, unless such consideration is specified in the policy.

As described in the request for interpretive opinion, MyBenefitsChannel’s Benefits Related Services are fundamental to the administration and service of the employee benefits and insurance sold by Five Points, through its agents, to its clients. The payment of the licensing fee by Five Points for its clients’ use of the Benefits Related Services does not constitute a consideration or inducement for customers to enter into an insurance policy. The payment is instead a business arrangement under which Five Points bears the cost of the Benefits Related Services which are a requisite to the administration and servicing of the employee benefits and insurance.

Five Points’ request specifically mentions concerns raised by Interpretive Opinion No. 05-17 (“Int. Op. 05-17”) which was issued by the Department in October of 2017. The interpretive opinion concluded that an online enrollment system, offered by brokers to some employer clients and not others, is a valuable

consideration and could be an inducement to enter into an insurance policy for a client who wishes to utilize the system.

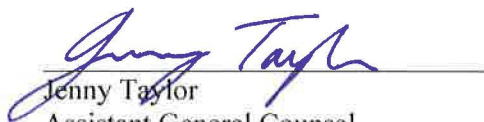
The utilization of the Benefits Related Services by Five Points' clients can be distinguished from the enrollment system fact scenario described in Int. Op. 05-17 because Five Points affords the use of the Benefits Related Services for all clients as a fundamental technological component of conducting business, whereas the scenario presented in Int. Op. 05-17 stated that brokers would offer to pay the cost for the system as a "value add" to some clients while requiring other clients to pay for the system. Historically, one of the main problems associated with rebating was that they were made available to some insureds and not others. *Tenn. Op. Att'y Gen. No. 86-016 (Jan. 24, 1986)*. The state has an interest in addressing unfair discrimination against consumers purchasing insurance and, in order to protect against such unfair discrimination, prohibits rebates. *Id.* In the fact scenario presented by Five Points, all of Five Points' clients are permitted the use of the MyBenefitsChannel's Benefits Related Services, in contrast to the fact scenario presented in Int. Op. 05-17, and use of the Benefits Related Services is a necessary component of the insurance product being sold by Five Points to its clients.

Please note that the Division has not made an independent investigation of the facts to determine the accuracy or completeness of the information supplied but has instead relied solely upon the information you have provided. If such information is incorrect or changes substantially, it would be necessary for the Division to reconsider the matter and the position stated herein would be void. This position is furnished solely for the benefit and use of the entities described herein. Please be advised that further publication or use of this position may only be made with the Division's prior written consent.

This response by the Division is to a specific fact situation and should not be construed as a legal position or opinion of the Commissioner of the Tennessee Department of Commerce and Insurance or of any other official in the Department. Please note that the conclusions contained herein are based upon the representations that have been made to the Division, and any different facts or conditions might require a different response. 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 by any person or entity. Any variation in the facts presented to the Division could result in a different conclusion than asserted herein.

If you have further questions or concerns regarding this letter, please feel free to contact me.

Sincerely,



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