



STATE OF TENNESSEE
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October 26, 2017

Via E-Mail

rgrose@pmgbenefits.com

Ryan Grose
PMG Benefits Consulting, LLC

Re: Request for Interpretive Opinion No. 05-17, Applicability of Tenn. Code Ann. § 56-8-104

Dear Mr. Grose:

The Insurance Division (“Division”) of the Tennessee Department of Commerce and Insurance (“Department”) is in receipt of your request for an interpretive opinion regarding whether certain offers or programs are considered rebates pursuant to Tenn. Code Ann. § 56-8-104. The first program described in the inquiry is a type of “performance guarantee” program offered by brokers to an employer group client. The “performance guarantee” provides for one of the following if the client’s expectations are not met or if the insurance producer fails to meet specific targets with regard to plan cost controls: the insurance producer will refund to the client all fees paid during a certain time period if the client’s expectations are not met; or, the insurance producer will refund to the client all fees paid in the past quarter up to fifteen thousand dollars (\$15,000).

Tenn. Code Ann. § 56-8-104(8) prohibits rebating and provides, in pertinent part, that it is an unfair trade practice to knowingly permit or offer valuable consideration or an inducement to enter into a policy, unless such consideration is specified in the policy. A Bulletin issued by the Division in February of 2015 states that “[g]ifts and offers that are provided exclusively to those who purchase a policy will be presumed to be inducements and rebating in violation of Tenn. Code Ann. § 56-8-104(8) unless such gifts and/or offers are specified in the policy forms” *State of Tennessee Department of Commerce and Insurance, Rebating Bulletin issued 2/13/15.*

The “performance guarantee” program is a valuable consideration offered if certain expectations are not met and it is improbable that the insurer would offer any type of “performance guarantee” to anyone other than purchasers of a policy. Therefore, the “performance guarantee” program appears to be a rebate and a violation of Tenn. Code Ann. § 56-8-104(8) unless the “performance guarantee” offers are specified in the policy forms. To date, the Department is not aware of the receipt of any policy form filings which include this type of “performance guarantee” feature as part of the policy.

The second part of your inquiry is regarding whether an online enrollment system offered by a broker to an employer client is considered a rebate. In the fact scenario provided, the enrollment system is not essential to the operation of the client’s coverage but serves to make enrollment easier and simpler to access by its employees. The client is not obligated in any way to use the enrollment system; however, if the client chooses to use the system then the client will pay a per employee per month cost associated

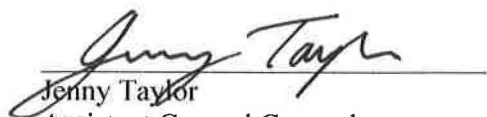
with use of the system. The inquiry is whether a broker who offers to pay the cost for the system as a “value-add” to some clients, while requiring other clients to pay for the system is considered a rebate? A broker’s payment for the enrollment system is a valuable consideration and could be an inducement to enter into an insurance policy for a client who wishes to utilize the system. The fact that the cost for the enrollment system will be provided to some clients and not others is indicative of the program being a rebate pursuant to the aforementioned Division Bulletin which states that “[g]ifts and offers that are provided exclusively to those who purchase a policy will be presumed to be inducements and rebating in violation of Tenn. Code Ann. § 56-8-104(8) unless such gifts and/or offers are specified in the policy forms” *State of Tennessee Department of Commerce and Insurance, Rebating Bulletin issued 2/13/15*. Again, the Department is not aware of the receipt of any policy form filings which include the cost for an enrollment system as a feature of the policy.

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 letter expresses the Division’s position on enforcement action only and does not purport to express legal conclusions on the issues presented. 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 by Mr. Ryan Grose 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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