

May 2, 2000

To: COMPANY PRESIDENTS  
MADELYNNE L. BROWN

From: ASSISTANT DIRECTOR

(217) 785-1258

Re: (CB #2000-04) HIPAA PRODUCER COMMISSIONS

Reply to: YVONNE CLEARWATER (217) 524-0194

The following department policy has been established with regard to COMPANY BULLETIN #97-4 HIPAA QUESTIONS AND ANSWERS - SET #1. It is the department's intent to clarify the response to Question 1A of that bulletin.

In that bulletin, the department specifically stated that "[p]aying no commission or a reduced commission to discourage insurance producers from placing "bad risks" . . . is an unfair trade practice which circumvents HIPAA."

The department has recently been apprised that companies are segmenting the small group market, as defined by HIPAA, through variations in commissions paid to producers based on the size of the small group.

As in the past, the department views such practices as violating the Unfair Trade Practices Act and HIPAA, and will take the necessary action to prohibit such practices. The Health Care Financing Administration (HCFA) has clearly stated that "[i]f an issuer pays agents less through all forms of agent compensation (commissions, bonuses, or other rewards) for higher risk individuals or groups than it pays for those with better risk profiles, this constitutes a circumvention of the insurance provisions of HIPAA." (HCFA Transmittal No. 98-01, March 1998). Further, "[f]or an issuer to modify the normal operation of its marketing and distribution system so as not to attract its fair share of the . . . small groups protected by HIPAA does not accord with the intent of the statute to protect these . . . groups." (Ibid.)