

MEMORANDUM

To: All Life or Accident & Health Insurance Brokers

From: Denise Engle, Deputy Commissioner of Workers Compensation,
Rate and Form Compliance, Licensing and Continuing Education

Re: Life, Accident & Health Insurance Broker Act

October 3, 2011

The Oklahoma Insurance Department continues to receive inquiries regarding the life or accident & health broker license. Specifically, these inquiries concern issues regarding brokers being appointed with insurers. In responding to these inquiries, it has become readily apparent to the Department that there is confusion in this area and this memo will provide some guidance as to why there is confusion and what are current acceptable practices in this area.

The Oklahoma Life, Accident & Health Insurance Broker Act was enacted in 1983. 36 O.S. § 1461 et seq. Two main goals of the Act were to prevent the requirement of brokers being appointed with insurers and to prevent the requirement of brokers paying appointment fees. The Act was enacted when the Insurance Agents Licensing Act was in effect. 36 O.S. § 1421 et seq. Thereafter, Congress passed the Gramm-Leach-Bliley Act (GLBA). One of the major provisions of GLBA was a provision to create an organization known as the National Association of Registered Agents and Brokers (NARAB). If created, NARAB would preempt state licensing laws.

To prevent the creation of NARAB, the NAIC adopted the Producer Licensing Model Act (PLMA) which established guidelines for states to comply with reciprocity and uniformity guidelines on a number of licensing issues. A sufficient number of states, including Oklahoma, adopted the reciprocity provisions of the PLMA and NARAB was not created. When Oklahoma adopted the PLMA in 2001, it repealed the Insurance Agents Licensing Act and enacted the Oklahoma Producer Licensing Act. 36 O.S. § 1435.1 et seq. In working toward uniform national procedures, the PLMA eliminated the traditional distinctions between agents and brokers and encompassed all who sell, solicit or negotiate insurance with the term “producer”.

Herein causes the problem. The Oklahoma Life or Accident & Health Insurance Broker Act was enacted prior to the Oklahoma Producer Licensing Act. The PLMA does not recognize this broker license. Under the PMLA, if a producer is contracted with an insurer, the producer is acting as an agent for the insurer and needs to be appointed as the insurer’s agent. The Oklahoma Broker Act is in direct conflict with this requirement.

However, the broker act is still law in Oklahoma and that is the reason for the confusion. Currently there are 68 individuals and 14 agencies in Oklahoma that hold such a broker license. The Department will continue to recognize this broker license

until further notice and provides the following frequently asked questions to clarify the current Department position regarding the Oklahoma broker license:

FAQs

1. Is a person who holds a life or accident & health broker license required to pay appointment fees? No. As long as there is a Life and Accident & Health Broker Act the Department will not require payment of appointment fees by those individuals who still hold the broker license.

2. Is an appointment required to be paid renewal or other deferred commissions? No. As the Producer Licensing Act does not require a person to be licensed to accept renewal or other deferred commissions, there is no need for an appointment. 36 O.S. § 1435.14(C). However, an insurer may still require the appointment if that is a provision in an agency contract.

3. Must an individual and business entity agency both be appointed with an insurer if the agency is paid the commissions? Yes. An insurance company or producer shall not pay commissions for selling, soliciting or negotiating insurance unless the person is licensed and appointed. 36 O.S. §§ 1435.14(A), 1435.15(A). Person means an individual or a business entity. 36 O.S. § 1435.2(16).

Questions or comments applicable to this memo should be directed to Denise Engle (Denise.Engle@oid.ok.gov) or Julie Meaders (Julie.Meaders@oid.ok.gov), Oklahoma Insurance Department, Five Corporate Plaza, 3625 NW 56th, Suite 100, Oklahoma City, OK 73112.