

COMMONWEALTH OF VIRGINIA

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STATE CORPORATION COMMISSION BUREAU OF INSURANCE

October 10, 2001

Administrative Letter 2001-9

TO: All Insurers Licensed to Market Accident and Sickness Insurance in Virginia, all Health Maintenance Organizations, and all Health Services Plans Licensed in Virginia

RE: SCC ADVISES AGENTS TO BEWARE WHEN SELLING HEALTH INSURANCE COVERAGE

NOTE: EACH INSURER, HEALTH MAINTENANCE ORGANIZATION OR HEALTH SERVICES PLAN RECEIVING THIS ADMINISTRATIVE LETTER IS INSTRUCTED TO PROVIDE A COPY TO EACH OF ITS CURRENTLY APPOINTED AGENTS, AND TO EACH NEWLY APPOINTED AGENT COMMENCING IMMEDIATELY.

Nationwide, the health insurance marketplace is facing tougher times. Across the country, the cost of health insurance is increasing and consumers cope with difficult choices. Into this climate enter shady operators seeking to take advantage of consumers. Calling themselves "ERISA exempt," "ERISA plans," "union plans," "association plans," or some variation thereof, these entities boast low rates and minimal or no underwriting.

These entities claim that they are not subject to state insurance regulation because of "ERISA." Some claim that agents are used only as "labor consultants" or "business agents" to "enroll" or "negotiate" with potential members, and not to sell. Such claims should be viewed with skepticism. It is a violation of Virginia law for a licensed or unlicensed individual or agency to solicit or sell an unauthorized insurance product.

Legitimate ERISA plans (plans governed by the federal Employee Retirement Income Security Act of 1974) and union plans may be exempt from state insurance regulation, which is why some individuals try to fool people by making these claims. However, legitimate ERISA or union plans are established by unions for their own members or by an employer for the employer's own employees. They are not sold by insurance agents.

A typical fraudulent health insurance scam attempts to recruit as many local insurance agents as possible to market the coverage. The health coverage is not approved by the Bureau of Insurance. Agents are told it is regulated by federal, not state law. In fact, it may

be totally illegal. The coverage is typically offered regardless of the applicant's health condition and at lower rates and with better benefits than can be found from licensed insurers. The scam seeks to collect a large amount of premium as rapidly as possible. While claims may be paid initially, the scam will soon begin to delay payment and offer excuses for failure to pay. Unsuspecting consumers who thought they were covered for their medical needs are left responsible for huge medical bills. Employers may be liable for the medical bills of their employees as well.

Read all materials and websites carefully. Be suspicious, ask hard questions and do your homework. Make sure that the coverage is a state licensed insurance product by contacting the Bureau of Insurance. Ask for the name of the insurer and check the benefit booklet to see whether it names a licensed insurer that is fully insuring the coverage.

Consider the following list of some circumstances and plan characteristics that should prompt your very careful investigation, including contacting the Bureau of Insurance:

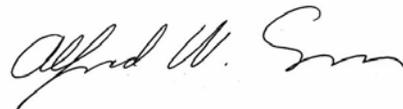
- Coverage that boasts low rates, generous benefits, and minimal or no underwriting.
- Coverage that indicates a license is not required because the coverage is not insurance or is exempt from regulation.
- Coverage that indicates it is an "employee leasing" arrangement with self-funded health coverage.
- Plans marketed as "ERISA" plans, "union" plans, or "association" plans.
- Plans that operate like insurance but claim that it is not.
- Plans covered only by "stop loss insurance" or "reinsurance."
- Plans that target individuals or groups with employees that have pre-existing conditions.

If you are approached to sell health coverage and it is represented as exempt from insurance regulation under "ERISA" or as a "union," you should check very carefully before agreeing to sell such a product. The insurance agent who does not check with the Bureau of Insurance takes an enormous risk. Pursuant to §§ 38.2-1802 of the *Code of Virginia*, representing an unlicensed insurer is a Class 1 misdemeanor. In addition to criminal penalties, the agent is subject to license revocation or suspension, civil fines, and may be subject to personal liability for any claims incurred under the unlicensed coverage. Insurance agents should contact the Bureau of Insurance at any time they are approached by an entity that seems suspicious.

In addition, the Bureau of Insurance has an informative website at <http://www.scc.virginia.gov/division/boi/>. The website provides information on companies licensed to do business in the state, tips for buying insurance, consumer guides, and consumer alerts.

<p><u>Questions regarding whether an AGENT is licensed, appointed, or needs to be licensed should be directed to:</u></p> <p>Agents Licensing Section Bureau of Insurance P.O. Box 1157 Richmond, Virginia 23218</p> <p>(804) 371-9631</p>	<p><u>Questions regarding whether a COMPANY is licensed or approved should be directed to:</u></p> <p>Financial Regulation Division Bureau of Insurance P.O. Box 1157 Richmond, Virginia 23218</p> <p>(804) 692-0467</p>
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Very truly yours,



Alfred W. Gross
Commissioner of Insurance