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Licensing Guidelines for Those Who Provide Insurance Advice

Persons who render advice on insurance needs must be licensed as insurance consultants or producers in most states *even if they do not sell insurance*. More than half of the states currently require licensure to conduct insurance consulting activities, which are generally broadly defined under the applicable state's statutes. For example, an insurance consultant is described under the New York Insurance Code as "a person, firm, association or corporation [that] receive[s] any money, fee, commission or thing of value for examining, appraising, reviewing, or evaluating any insurance policy ... or mak[ing] recommendations or giv[ing] advice with regard [thereto]" or who "hold[s] himself or itself out to be an insurance advisor, insurance consultant or insurance counselor." N.Y. Ins. Code § 2102(b).

Thus, financial advisors, consultants, accountants, actuaries or any other professionals who provide advice on insurance coverage issues, even if it is incidental to personal financial reviews and planning, may be subject to state licensing requirements if such persons receive compensation from their clients for the advice. Some of the states that regulate insurance consultants have exemptions for certain professionals who render insurance consulting services in the normal course of their business or who do not receive compensation as a result of sale of insurance products. Some states even require that licensed insurance producers obtain separate licensure as insurance consultants in order to receive compensation for their consulting services independently of commissions generated by sale of insurance products. Furthermore, entities that employ insurance consultants or receive compensation for services rendered by insurance consultants would be required to obtain consultant licensure as a business entity in some of the states that regulate insurance consultants.

In addition, approximately 30 states expressly regulate insurance producers who receive compensation from both the insurer for the sale of insurance products and the insured for the consulting services. Approximately 1/3

of such states expressly prohibit receiving compensation from both parties, and the remaining states require that the insurance producer disclose to the insured the nature and source of the compensation and obtain consent therefrom. In light of the insurance abuses focused on by New York Attorney General Eliot Spitzer, additional disclosures or prohibitions on dual compensation may be expected.

Thus, in order to transact insurance consulting business, a person or entity must determine whether the state where such business would be transacted regulates insurance consultants and comply with applicable licensing requirements. Furthermore, if a person or entity is proposing to be compensated by both the insurer for the sale of insurance product and insured for the consulting services, then such person or entity must determine whether the applicable state allows such dual compensation, and if such compensation were allowed, comply with any disclosure or consent requirements.

ABOUT THE AUTHORS

Richard Hemmings and Robin Choi practice in the areas of insurance regulatory and corporate law.