

Nebraska Department of Insurance
Guidance Document
IGD - - C8

Title: Workers' Compensation Insurance

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Employers subject to the Nebraska Workers' Compensation Act should know of plans being marketed as replacements or alternatives to a workers' compensation insurance policy. This guidance document covers (1) contingent workers' compensation policies or endorsements; (2) occupational injury/accident or disability policies; and (3) workers' compensation plans that allege Employee Retirement Income Security Act ("ERISA") exemption. The purpose of this guidance document is to advise insurers, agents, and producers that the NDOI considers the following activities contrary to Nebraska law.

1. Some programs offer contingent workers' compensation policies or endorsements which promise to issue a workers' compensation policy after a workers' compensation claim or lawsuit is adjudicated. The endorsements are sold in conjunction with an occupational injury/accident or disability policy which provides coverage in the event of a bodily injury or disease occurring in the workplace. The endorsements which are sold must be written/underwritten by an insurer who is licensed in Nebraska to transact business of workers' compensation and must use policy forms which the NDOI has approved. The NDOI considers the use of policy forms/endorsements by insurers which have not been approved by the NDOI as a violation of the Property and Casualty Rate and Form Act and appropriate administrative action will be taken including penalties up to \$1,000.00 per violation.
2. Other programs offer an occupational injury/accident or disability policy representing that a policy meets all of the requirements and provisions of the Nebraska Workers' Compensation Act. In some cases, a policy filed with the NDOI does not meet the requirements of the Nebraska Workers' Compensation Act. Employers and agents should know that such programs do not comply with the Workers' Compensation Act. Principals and insurers which may require independent contractors to produce a certificate of insurance in order to do business with the principal should know that certificates of insurance based upon an occupational injury/accident or disability policy are not evidence of coverage under a workers' compensation policy. The NDOI considers the marketing of these products as a replacement

or an alternative to a workers' compensation policy a violation of the Unfair Insurance Trade Practices Act and appropriate administrative action will be taken, including penalties up to \$1,000.00 per violation as well as possible license suspension or revocation.

3. Other organizations appear to be marketing workers' compensation plans alleging they are exempt from NDOI regulation under ERISA. While it is possible to have ERISA exempt collectively-bargained employee welfare benefit plans, there is nothing in the law of the United States or of any individual state which exempts any plan from the state's workers' compensation insurance laws. Such plans are engaged in the unauthorized business of insurance in this state. Insurance agents, brokers, or other producers marketing this type of product should know that they are liable to the insured for the full amount of the claim or loss which the authorized insurer fails to pay in addition to possible disciplinary sanctions against their license.

The Property and Casualty Division can answer questions concerning this guidance document at 402-471-2201.