NY CLS Ins § 4224

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Insurance Law (Arts. 1 — 99) >

Article 42 Life Insurance Companies and Accident and Health Insurance Companies and Legal Services Insurance Companies (§§ 4202 — 4241)

§ 4224. Life, accident and health insurance; discrimination and rebating; prohibited inducements and interdependent sales.

(a) No life insurance company doing business in this state and no savings and insurance bank shall:

(1) make or permit any unfair discrimination between individuals of the same class and of equal expectation of life, in the amount or payment or return of premiums, or rates charged for policies of life insurance or annuity contracts, or in the dividends or other benefits payable thereon, or in any of the terms and conditions thereof;

(2) refuse to insure, refuse to continue to insure or limit the amount, extent or kind of coverage available to an individual, or charge a different rate for the same coverage solely because of the physical or mental disability, impairment or disease, or prior history thereof, of the insured or potential insured, except where the refusal, limitation or rate differential is permitted by law or regulation and is based on sound actuarial principles or is related to actual or reasonably anticipated experience, in which case the insurer, subject to the limitations contained in section twenty-six hundred eleven of this chapter, shall notify the insured or potential insured of the right to receive, or to designate a medical professional to receive, the specific reason or reasons for such refusal, limitation or rate differential;

(3) refuse to insure, refuse to continue to insure or limit the amount, extent or kind of coverage available to an individual, or charge a different rate for the same coverage solely because the insured or potential insured was prescribed pre-exposure prophylaxis (PrEP) medication for the prevention of HIV infection;

(4) knowingly permit, and no agent thereof and no licensed insurance broker shall offer to make or make, any policy of life insurance or annuity contract or agreement as to such policy or contract other than as plainly expressed in the policy or contract.

(b) No insurer doing in this state the business of accident and health insurance, as specified in paragraph three of subsection (a) of section one thousand one hundred thirteen of this chapter, and no officer or agent of such insurer and no licensed insurance broker, and no employee or other representative of such insurer, agent or broker shall:

(1) make or permit any unfair discrimination between individuals of the same class in the amount of premiums, policy fees, or rates charged for any policy of accident and health insurance, or in the benefits payable thereon, or in any of the terms or conditions of such policies, or in any other manner whatsoever;

(2) refuse to insure, refuse to continue to insure or limit the amount, extent or kind of coverage available to an individual, or charge a different rate for the same coverage solely because of the physical or mental disability, impairment or disease, or prior history thereof, of the insured or potential insured, except where the refusal, limitation or rate differential is permitted by law or regulation and is based on sound actuarial principles or is related to actual or reasonably anticipated experience, in which case the insurer, subject to the limitations contained in section twenty-six hundred eleven of this chapter shall notify the insured or potential insured of the right to receive, or to designate a medical professional to receive, the specific reason or reasons for such refusal, limitation or rate differential;

(3) refuse to insure, refuse to continue to insure or limit the amount, extent or kind of coverage available to an individual, or charge a different rate for the same coverage

solely because the insured or potential insured was prescribed pre-exposure prophylaxis (PrEP) medication for the prevention of HIV infection;

(4) knowingly permit or offer to make or make, any policy of accident and health insurance, other than as plainly expressed in the policy.

(c) Except as permitted by section three thousand two hundred thirty-nine of this chapter or subsection (f) of this section, no such life insurance company and no such savings and insurance bank and no officer, agent, solicitor or representative thereof and no such insurer doing in this state the business of accident and health insurance and no officer, agent, solicitor or representative thereof, and no licensed insurance broker and no employee or other representative of any such insurer, agent or broker, shall pay, allow or give, or offer to pay, allow or give, directly or indirectly, as an inducement to any person to insure, or shall give, sell or purchase, or offer to give, sell or purchase, as such inducement, or interdependent with any policy of life insurance or annuity contract or policy of accident and health insurance, any stocks, bonds, or other securities, or any dividends or profits accruing or to accrue thereon, or any valuable consideration or inducement whatever not specified in such policy or contract other than any valuable consideration, including but not limited to merchandise or periodical subscriptions, not exceeding twenty-five dollars in value; nor shall any person in this state knowingly receive as such inducement, any rebate of premium or policy fee or any special favor or advantage in the dividends or other benefits to accrue on any such policy or contract, or knowingly receive any paid employment or contract for services of any kind, or any valuable consideration or inducement whatever which is not specified in such policy or contract.

(d)

(1) No insurer authorized to do one or more of the kinds of insurance business specified in paragraph one, two or three of subsection (a) of section one thousand one hundred thirteen of this chapter or authorized to do the kind of insurance business specified in section three thousand two hundred twenty-two of this chapter shall

directly or indirectly, or by any of its agents or representatives, or by any broker or brokers, participate in any plan to offer or effect any kind or kinds of such insurance business in this state as an inducement to, or interdependent with, the purchase by the public of any goods, securities, commodities, housing, services or subscriptions to periodicals, except as provided by subsection (e) of section three thousand four hundred thirty-six, paragraph three of subsection (b) of section four thousand two hundred sixteen of this article, by subparagraph (E) of paragraph one of subsection (c) of section four thousand two hundred thirty-five of this article or by article forty-six of the public health law.

(2) This subsection shall not prohibit payment plans which are otherwise in compliance with this subsection and this chapter.

(e) This section shall not prohibit the giving by any company, in its discretion, of medical examinations and diagnoses and of nursing services to all or any part of its policyholders, under reasonable rules and regulations.

(f)

(1) This subsection shall apply only with respect to a group or blanket accident and health insurance policy issued by an insurer licensed to write accident and health insurance in this state or a group contract issued by a corporation organized pursuant to article forty-three of this chapter, or a health maintenance organization certified pursuant to article forty-four of the public health law.

(2) Notwithstanding subsection (c) of this section, a licensed agent or insurance broker may develop, implement, and administer wellness programs established in accordance with section three thousand two hundred thirty-nine of this chapter without charging a service fee or, in the case of a licensed insurance broker, for a reduced service fee pursuant to a written memorandum made in accordance with subsection (c) of section two thousand one hundred nineteen of this chapter, if such programs

are provided in a fair and nondiscriminatory manner and incidental to a group or blanket policy or contract sold by the insurance agent or insurance broker.

History

Add, L 1984, ch 367, § 1, eff Sept 1, 1984; amd, L 1986, ch 293, § 9; L 1989, ch 689, § 6, eff Jan 1, 1990; L 1994, ch 713, § 1, eff Jan 1, 1995; L 2002, ch 4, § 1, eff Dec 30, 2002, expired and deemed repealed Dec 30, 2003; L 2002, ch 13, § 8, eff March 19, 2002; L 2008, ch 592, § 2, eff Sept 25, 2008; L 2012, ch 291, § 2, eff Aug 1, 2012; L 2013, ch 496, §§ 1, 2, eff Nov 13, 2013; L 2024, ch 126, §§ 1, 2, effective June 28, 2024.

Annotations

Notes

Derivation Notes

This section formerly appeared, in part, as Ins §§ 193, 209 added by L 1939, ch 882; amd, L 1940, ch 519; L 1948, ch 359; L 1953, ch 130; L 1956, ch 437; L 1958, ch 665; L 1959, ch 583; L 1960, ch 18; L 1961, ch 254; L 1969, ch 190.

Editor's Notes

Laws 1989, ch 689, § 11, eff July 22, 1989, provides:

§ 11. This act shall take effect immediately; except that section 4600 and sections 4605 through 4619 of the public health law, as added by section one of this act, and sections three through ten of this act shall take effect January 1, 1990; and provided further that any regulations that are necessary to effectuate the purposes of this act may be promulgated in accordance with the provisions of this act prior to such date.

Laws 2002, ch 4, § 2, eff December 30, 2002, expires and deemed repealed December 30, 2003, provides:

§ 2. This act shall take effect immediately, provided that the amendments to section 4224 of the insurance law made by section one of this act shall expire and be deemed repealed one year after such effective date.

Amendment Notes

The 2024 amendment by ch 126, §§ 1, 2, added (a)(3) and (b)(3); renumbered former (a)(3) as (a)(4); and renumbered former (b)(3) as (b)(4).

Notes to Decisions

1. In general

Division of Human Rights has power to investigate and decide claim that disability insurance option (offered as part of automobile loan) was discriminatory term of credit under Human Rights Law, even though Insurance Department has statutory power and duty to determine whether policy premiums are rationally related to risks and expenses and to eliminate discriminatory practices in writing of insurance, since division has primary responsibility to "receive, investigate and pass upon" claimed discriminatory practices which violate Human Rights Law. Binghamton GHS Employees Federal Credit Union v State Div. of Human Rights, 77 N.Y.2d 12, 563 N.Y.S.2d 385, 564 N.E.2d 1051, 1990 N.Y. LEXIS 3490 (N.Y. 1990).

The Insurance Law is explicit as to commissions to be paid a life insurance agent, former § 213 [now § 4228] prohibiting the payment of any compensation greater than that which has been determined by agreement made in advance of the payment of the premium, and former § 209 [now § 4224] prohibiting the offering of inducements to insure by such an agent, as well as the giving of rebates. Friedman v Markman, 11 A.D.2d 57, 201 N.Y.S.2d 743, 1960 N.Y. App. Div. LEXIS 9215 (N.Y. App. Div. 1st Dep't 1960).

Construction of former § 142 [now § 3204] of the Insurance Law to require a modification of premium agreement to be made part of the policy, precluding the insurer from seeking restoration of special premium rates on the basis of misrepresentations of the insured in obtaining the premium reduction, would be in violation of the spirit of former § 208 [now § 4224]. Massachusetts Mut. Life Ins. Co. v Lord, 18 A.D.2d 69, 238 N.Y.S.2d 222, 1963 N.Y. App. Div. LEXIS 4230 (N.Y. App. Div. 1st Dep't), aff'd, 13 N.Y.2d 1096, 246 N.Y.S.2d 630, 196 N.E.2d 266, 1963 N.Y. LEXIS 835 (N.Y. 1963).

Neither CLS Ins § 3201, which gives Superintendent of Insurance authority to approve or disapprove policy forms for health insurance, nor CLS Ins § 4224(b)(1), which prohibits insurer from unfairly discriminating between individuals of same class with regard to health insurance, authorized superintendent to promulgate regulation (11 NYCRR § 52.27) barring individual and small group health insurance carriers from testing applicants for health insurance for presence of human immunodeficiency virus (HIV) or using such test results in determining applicant’s insurability; using test results for presence of HIV in determining insurability of applicant for health insurance is sound practice with regard to individual and small group policies in light of formidable financial threat of AIDS epidemic. Health Ins. Ass'n v Corcoran, 154 A.D.2d 61, 551 N.Y.S.2d 615, 1990 N.Y. App. Div. LEXIS 1836 (N.Y. App. Div. 3d Dep't), aff'd, 76 N.Y.2d 995, 564 N.Y.S.2d 713, 565 N.E.2d 1264, 1990 N.Y. LEXIS 4442 (N.Y. 1990).

Former § 89 [predecessor to former § 209, now § 4224] does not provide a specific penalty for giving a rebate which should be considered exclusive, but simply provides the manner in which the superintendent may restrain future disobedience. Equitable Trust Co. v Newman, 129 N.Y.S.

259, 72 Misc. 52, 1911 N.Y. Misc. LEXIS 321 (N.Y. App. Term), rev'd, 146 A.D. 953, 131 N.Y.S. 1113, 1911 N.Y. App. Div. LEXIS 4095 (N.Y. App. Div. 1911).

The object of former § 89 [predecessor to former § 209, now § 4224], is to require life insurance companies to give equal terms to insurers of the same class, and to fix equal terms of insurance in their policies, and to give no special favor to any particular person or persons. The vice is not in giving of rebate, inducement or consideration but in the giving of any rebate, inducement or consideration not specified in the policy. In an action by an endorsee, who was not an innocent holder in due course, against maker of promissory note given for first premiums of certain policies of insurance issued upon his life by a foreign insurance company authorized to do business in this state, fact that note was payable without interest in eighteen months after delivery of policies does not constitute a violation of former § 89 [predecessor to former § 209, now § 4224]. If the transaction concerning the note came within the prohibition of former § 89 [predecessor to former § 209, now § 4224], it was incumbent upon the defendant to allege and prove that the note was taken and made upon the consideration or inducement for defendant’s taking out policies but not specified therein. McGee v Felter, 135 N.Y.S. 267, 75 Misc. 349, 1912 N.Y. Misc. LEXIS 671 (N.Y. County Ct. 1912), aff'd, 154 A.D. 957, 139 N.Y.S. 1132, 1913 N.Y. App. Div. LEXIS 4832 (N.Y. App. Div. 1913).

Unlike N.Y. Ins. Law § 4224, N.Y. Ins. Law § 3221, entitled “Group or blanket accident and health insurance policies; standard provisions,” is aptly included in N.Y. Ins. Law art. 32, entitled “Insurance Contracts-Life, Accident and Health, Annuities,” which governs the form and contents of the various types of insurance policies delivered or issued for delivery in New York. Polan v State of N.Y. Ins. Dep't, 3 A.D.3d 30, 768 N.Y.S.2d 441, 2003 N.Y. App. Div. LEXIS 12709 (N.Y. App. Div. 1st Dep't 2003), aff'd, 3 N.Y.3d 54, 781 N.Y.S.2d 482, 814 N.E.2d 789, 2004 N.Y. LEXIS 1608 (N.Y. 2004).

N.Y. Ins. Law § 4224(b)(2) is taken from a model regulation from the National Association of Insurance Commissioner’s Model Regulation on Unfair Discrimination § III, which is not intended to mandate the inclusion of particular coverages, such as benefits for normal pregnancy, or of

levels of benefits such as for mental illness, in a company's policies or contracts; in virtually every state, mandates of any coverages or benefits are the subject of separate legislation. The model unfair trade practices act has never been interpreted to provide the basis for such mandates but rather to assure that such coverage and benefits as are offered by insurers are provided on a basis which is not unfairly discriminatory among individuals of the same class. Polan v State of N.Y. Ins. Dep't, 3 A.D.3d 30, 768 N.Y.S.2d 441, 2003 N.Y. App. Div. LEXIS 12709 (N.Y. App. Div. 1st Dep't 2003), aff'd, 3 N.Y.3d 54, 781 N.Y.S.2d 482, 814 N.E.2d 789, 2004 N.Y. LEXIS 1608 (N.Y. 2004).

N.Y. Ins. Law § 4224(b)(2) is taken from the National Association of Insurance Commissioners' Model Regulation on Unfair Discrimination in Life and Health Insurance on the Basis of Physical or Mental Impairment § III, which identifies the following as unfairly discriminatory acts or practices: (1) refusing to insure, or refusing to continue to insure, or limiting the amount, extent, or kind of coverage available to an individual, and (2) charging a different rate for the same coverage solely because of a physical or mental impairment, except where the refusal, limitation or rate differential is based on sound actuarial principles or is related to actual or reasonably anticipated experience. Polan v State of N.Y. Ins. Dep't, 3 A.D.3d 30, 768 N.Y.S.2d 441, 2003 N.Y. App. Div. LEXIS 12709 (N.Y. App. Div. 1st Dep't 2003), aff'd, 3 N.Y.3d 54, 781 N.Y.S.2d 482, 814 N.E.2d 789, 2004 N.Y. LEXIS 1608 (N.Y. 2004).

2. Standard for determining propriety of distribution

Apportionment of surplus, as made by the company, will be regarded prima facie as an equitable apportionment, and a complaining policyholder who alleges abuse of discretion or application of erroneous principle will be required affirmatively to show that the principle on which the apportionment is based is so clearly erroneous as to be beyond the exercise of any reasonable discretion on the part of the company's directors. Rhine v New York Life Ins. Co., 248 A.D. 120, 289 N.Y.S. 117, 1936 N.Y. App. Div. LEXIS 6089 (N.Y. App. Div.), aff'd, 273 N.Y. 1, 6 N.E.2d 74, 273 N.Y. (N.Y.S.) 1, 1936 N.Y. LEXIS 1464 (N.Y. 1936).

The statutory test for the propriety of a distribution to policyholders of surplus in the form of dividends is whether the apportionment is equitable or whether it unfairly discriminates between individuals of same class. Rhine v New York Life Ins. Co., 248 A.D. 120, 289 N.Y.S. 117, 1936 N.Y. App. Div. LEXIS 6089 (N.Y. App. Div.), aff'd, 273 N.Y. 1, 6 N.E.2d 74, 273 N.Y. (N.Y.S.) 1, 1936 N.Y. LEXIS 1464 (N.Y. 1936).

Former § 209 [now § 4224] sets forth the statutory test for apportionment of divisible surplus by a mutual company among policyholders and prohibits the company from unfairly discriminating between individuals of the same class, and determination of whether there has been discrimination requires availability of specific facts and figures for comparison. Fidelity & Casualty Co. v Metropolitan Life Ins. Co., 42 Misc. 2d 616, 248 N.Y.S.2d 559, 1963 N.Y. Misc. LEXIS 1218 (N.Y. Sup. Ct. 1963).

Use of sex-based mortality tables for comuting retirement annuities is contrary to Title VII (42 USCS §§ 2000e et seq.); McCarran-Ferguson Act (15 USCS §§ 1011 et seq.) does not bar application of antidiscrimination laws to state insurance scheme. Spirt v Teachers Ins. & Annuity Ass'n, 735 F.2d 23, 1984 U.S. App. LEXIS 22294 (2d Cir. N.Y.), cert. denied, 469 U.S. 881, 105 S. Ct. 247, 83 L. Ed. 2d 185, 1984 U.S. LEXIS 3871 (U.S. 1984).

3. Propriety of particular acts and distributions

Mere proof that a policy bore a date two months earlier than its actual date of issue and that the insured paid premiums for those two months did not establish such discrimination as was prohibited by former § 89 [predecessor to former § 209, now § 4224] at the time of the issuance of the policy. Baker v Equitable Life Assurance Soc., 288 N.Y. 87, 41 N.E.2d 471, 288 N.Y. (N.Y.S.) 87, 1942 N.Y. LEXIS 1058 (N.Y. 1942).

Plaintiff’s showing was inadequate to establish that distribution of distributable surplus by a mutual company with respect to group hospital insurance policies was inequitable with respect to the policy taken out by the particular employer for the benefit of its employees, merely because it took into consideration all claims paid by the company on the particular policy and

many of such claims, during the period in question, were fictitious claims put in by a trusted employee who converted the proceeds to her own use, the employer having taken over the obligation of keeping all records and presenting all claims in order to obtain a cheaper premium rate. Fidelity & Casualty Co. v Metropolitan Life Ins. Co., 42 Misc. 2d 616, 248 N.Y.S.2d 559, 1963 N.Y. Misc. LEXIS 1218 (N.Y. Sup. Ct. 1963).

Department of Insurance regulation 11 NYCRR part 52, prohibiting insurers from requiring or considering body fluid tests for evidence of Human Immuno Deficiency Virus (HIV) in application for or risk management determinations of insurability for individual and small group health insurance, was not justified by CLS Ins § 4224, which prohibits unfair discrimination between individuals of same class, since class of individuals who are sero-positive (having HIV) is distinctly and substantially different in terms of morbidity, mortality and health expense risk from those who do not test positive. Health Ins. Ass'n v Corcoran, 140 Misc. 2d 255, 531 N.Y.S.2d 456, 1988 N.Y. Misc. LEXIS 415 (N.Y. Sup. Ct. 1988), modified, 154 A.D.2d 61, 551 N.Y.S.2d 615, 1990 N.Y. App. Div. LEXIS 1836 (N.Y. App. Div. 3d Dep't 1990).

N.Y. Ins. Law § 4224(b)(2) only forbids an insurer from discriminating between disabled and non-disabled persons in making coverage available, as the wording of the statute specifically refers to insurers, not insurance policies; moreover, the statute is included in N.Y. Ins. Law art. 42, entitled “Life Insurance Companies and Accident and Health Insurance Companies and Legal Service Insurance Companies,” which governs the capitalization, organization, and conduct of the various types of insurers doing business in New York and defines the various types of policies that may be offered to the public. Polan v State of N.Y. Ins. Dep't, 3 A.D.3d 30, 768 N.Y.S.2d 441, 2003 N.Y. App. Div. LEXIS 12709 (N.Y. App. Div. 1st Dep't 2003), aff'd, 3 N.Y.3d 54, 781 N.Y.S.2d 482, 814 N.E.2d 789, 2004 N.Y. LEXIS 1608 (N.Y. 2004).

Legislature does not intend for N.Y. Ins. Law § 4224(b)(2) to mandate that insurers provide the same coverage for mental disabilities as for physical disabilities. Polan v State of N.Y. Ins. Dep't, 3 A.D.3d 30, 768 N.Y.S.2d 441, 2003 N.Y. App. Div. LEXIS 12709 (N.Y. App. Div. 1st Dep't

2003), aff'd, 3 N.Y.3d 54, 781 N.Y.S.2d 482, 814 N.E.2d 789, 2004 N.Y. LEXIS 1608 (N.Y. 2004).

Trial court correctly affirmed a decision of the New York Department of Insurance and dismissed an insured's N.Y. C.P.L.R. art. 78 proceeding as an insurer did not violate N.Y. Ins. Law § 4224(b)(2) by providing more extended long-term disability coverage for physical disabilities than for mental disabilities. Polan v State of N.Y. Ins. Dep't, 3 A.D.3d 30, 768 N.Y.S.2d 441, 2003 N.Y. App. Div. LEXIS 12709 (N.Y. App. Div. 1st Dep't 2003), aff'd, 3 N.Y.3d 54, 781 N.Y.S.2d 482, 814 N.E.2d 789, 2004 N.Y. LEXIS 1608 (N.Y. 2004).

Regulatory burden was not so severe as to render New York State Insurance Department Regulation 194, N.Y. Comp. Codes R. & Regs. tit. 11, pt. 30, arbitrary or irrational as even if the disclosure requirements of Reg. 194 led consumers to demand the sharing of commissions, N.Y. Ins. Law §§ 2324 and 4224 compelled all producers to refuse such demands. Sullivan Fin. Group, Inc. v Wrynn, 910 N.Y.S.2d 889, 30 Misc. 3d 366, 2010 N.Y. Misc. LEXIS 5632 (N.Y. Sup. Ct. 2010), aff'd, 94 A.D.3d 90, 939 N.Y.S.2d 761, 2012 N.Y. App. Div. LEXIS 1724 (N.Y. App. Div. 3d Dep't 2012).

Provision in employees' group annuity policy permitting insurer to increase premium rates for employees whose coverage commenced five years or more after the date of the contract, was not illegally discriminatory under the terms of former § 209 [now § 4224]. Freeport Sulphur Co. v Aetna Life Ins. Co., 206 F.2d 5, 1953 U.S. App. LEXIS 3683 (5th Cir. La. 1953).

4. Remedy for violation

Where, as a result of mutual mistake, the insured is issued a policy at a lower premium than those holding similar policies, thus effecting discrimination in his favor in violation of former § 89 [predecessor to former § 209, now § 4224] the insurance company is entitled to an equitable reformation of the policy. Metropolitan Life Ins. Co. v Trilling, 194 A.D. 178, 184 N.Y.S. 898, 1920 N.Y. App. Div. LEXIS 6626 (N.Y. App. Div. 1920).

An insurance company was entitled to have an insurance policy reformed to read $1000 instead of $2000, where the application showed that the defendant desired a policy in the sum of $1000 but figures $2000 were placed in policy by mistake of the scrivener and where the rate book figures showed $1000 as the largest paid-up value that could become available to such a class of policy, since there was an implied agreement between the parties for such paid-up value of $1000 by virtue of former § 89 [predecessor to former § 209, now § 4224] which prohibited discrimination by insurance companies between individuals in any life policies as to any conditions of said policies. Metropolitan Life Ins. Co. v Oseas, 261 A.D. 768, 27 N.Y.S.2d 65, 1941 N.Y. App. Div. LEXIS 7435 (N.Y. App. Div. 1941), aff'd, 289 N.Y. 731, 46 N.E.2d 348, 289 N.Y. (N.Y.S.) 731, 1942 N.Y. LEXIS 1298 (N.Y. 1942).

It would be a violation of former § 89 [predecessor to former § 209, now § 4224] not to enforce that provision contained in the application that if there were any misstatements of age, the insured could recover only that amount which the premium paid would have purchased at the correct age. Edelson v Metropolitan L. Ins. Co., 158 N.Y.S. 1018, 95 Misc. 218, 1916 N.Y. Misc. LEXIS 955 (N.Y. App. Term 1916).

Where a life insurance society discriminated against its policyholder in violation of former § 89 [predecessor to former § 209, now § 4224], by exacting a weekly premium of fifty cents instead of the proper premium of thirty-six cents so that there was in the hands of society or at least in those of its agent company moneys properly belonging to the insured, it is not beyond the power of the court to deem such moneys applied to payment of premium charges in order to prevent a forfeiture. Fogg v Morris Plan Ins. Soc., 188 N.Y.S. 867, 115 Misc. 491, 1920 N.Y. Misc. LEXIS 1997 (N.Y. App. Term 1920).

In action by policyholder who bought policies through life insurer’s allegedly illegal overseas operation, CLS CPLR §§ 203(g) and 213(8) governed claims for damages and rescission under CLS Ins §§ 4224 and 4226 and CLS Gen Bus § 349. Dornberger v Metropolitan Life Ins. Co., 961 F. Supp. 506, 1997 U.S. Dist. LEXIS 3549 (S.D.N.Y. 1997).

Disabled former employee's action against long-term disability insurer alleging discrimination in violation of Ins § 4224 is dismissed, even though such claim is not preempted by ERISA (29 USCS §§ 1001 et seq.), because there is no express private cause of action under statute, and none can be implied. Sparkes v Morrison & Foerster Long-Term Disability Ins. Plan, 129 F. Supp. 2d 182, 2001 U.S. Dist. LEXIS 488 (N.D.N.Y. 2001).

5. Miscellaneous

That a company soliciting and receiving consideration for insurance may avoid its obligation on the ground that either itself or its agent has violated the law is a proposition repugnant to familiar elements of the law. This view is in accordance with the policy of our law that no one will be permitted to profit by his own fraud or to take advantage of his own wrong or to found any claim upon his own iniquity or to acquire any property by his own crime. Statute of Pennsylvania invoked by defendant provides that insurants shall not receive any special favor or advantage "not specified in policy contract of insurance." Policy herein fully stated consideration therefor and terms of payments; hence there was no violation of this provision. Pennsylvania act provides that no insurance company doing business in that state shall make or permit any distinction or discrimination in favor of individuals between insurants of the same class and equal expectations of life in the amount or payment of premiums or rates, charge for policies of life or endowment insurance, or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of the contracts it makes. If any advantage or discrimination was given plaintiff herein it was voluntary act of defendant without participation therein by plaintiff, and it was not intended by statute to make such a contract void. Statute is aimed at insurance company and its agents, only applying to the insured, if at all, when the favor or discrimination was known to him, and it does not enable the defendant to profit by its own wrong as against one not in pari delicto. Quast v Fidelity Mut. Life Ins. Co., 226 N.Y. 270, 123 N.E. 494, 226 N.Y. (N.Y.S.) 270, 1919 N.Y. LEXIS 866 (N.Y. 1919).

A defendant, sued by an insurance agent for the amount of premiums advanced by an agent on life insurance policies procured for the defendant, who goes to trial on an answer which contains merely general denials, will not be allowed to amend his answer to set out an alleged agreement of the agent to pay back to the defendant a portion of his commissions, such alleged defense having been known to the defendant when the original answer was drawn, and suppressed for the time being until the statute of limitations might run against the offense of receiving rebates on premiums paid for life insurance. Myer Strasburger & Co. v Bonwit, 174 A.D. 215, 160 N.Y.S. 1064, 1916 N.Y. App. Div. LEXIS 7712 (N.Y. App. Div. 1916).

The defense, in an action on a life insurance policy, that extended term insurance to which the deceased insured was entitled on his election to take such insurance upon his default in payment of the quarterly premium, is based on the cash surrender value of the policy less the insured's indebtedness to the insurance company, will not be stricken out, where the contract option to take extended insurance cannot be fairly and reasonably interpreted to continue the policy at its face value less the indebtedness to the company for the period specified in the non-forfeiture table, since such construction would make for unfair discrimination. Miller v John Hancock Mut. Life Ins. Co., 277 N.Y.S. 244, 154 Misc. 316, 1935 N.Y. Misc. LEXIS 948 (N.Y. City Ct. 1935).

The failure of a life insurance company, organized in New Jersey and doing business in New York, to refund premium overcharges in the nature of "dividends" is a breach of contract, for which an individual policyholder may institute suit, without the necessity of bringing in the directors or trustees to compel a prior declaration of a dividend for the benefit of all policyholders of a class. Scholem v Prudential Ins. Co., 15 N.Y.S.2d 947, 172 Misc. 664, 1939 N.Y. Misc. LEXIS 2472 (N.Y. Sup. Ct. 1939).

Department of Insurance regulation 11 NYCRR part 52, prohibiting insurers from requiring or considering body fluid tests for evidence of Human Immuno Deficiency Virus (HIV) in application for or risk management determinations of insurability for individual and small group health insurance, was arbitrary and capricious and thus void since, inter alia, (1) testing for HIV

produces statistically valid basis for actuarial risk classification purposes as accurate, significant and substantial predictor of morbidity, mortality and future medical expenses, and (2) regulation did not afford similar protection or economic advantage to other admittedly high-risk persons infected with serious health-threatening diseases such as cancer, diabetes or cardio-vascular disease, thereby affording person infected with HIV preferred status over others infected with health-threatening diseases or life-styles. Health Ins. Ass'n v Corcoran, 140 Misc. 2d 255, 531 N.Y.S.2d 456, 1988 N.Y. Misc. LEXIS 415 (N.Y. Sup. Ct. 1988), modified, 154 A.D.2d 61, 551 N.Y.S.2d 615, 1990 N.Y. App. Div. LEXIS 1836 (N.Y. App. Div. 3d Dep't 1990).

“Limit the amount or extent of coverage because of handicap” in N.Y. Ins. Law § 4224(b)(2) cannot be read as “limit the amount or extent of coverage for handicap” as: (1) “because of” and “for” clearly have different meanings, and (2) that interpretation would raise vexatious questions for courts whenever they faced any limitation in a policy; such a construction would require insurers to have an actuarial basis or past experience in support of every limitation on coverage for anything that could be construed as a handicap, and had the legislature intended such a drastic change in the legal requirements on the way insurers do business, it would have made that intent clearer. Polan v State of N.Y. Ins. Dep't, 3 A.D.3d 30, 768 N.Y.S.2d 441, 2003 N.Y. App. Div. LEXIS 12709 (N.Y. App. Div. 1st Dep't 2003), aff'd, 3 N.Y.3d 54, 781 N.Y.S.2d 482, 814 N.E.2d 789, 2004 N.Y. LEXIS 1608 (N.Y. 2004).

In a class action against a life insurance company brought by the trustee of an irrevocable life insurance trust, a material issue of fact remained as to whether the company unfairly discriminated within a class of insureds by classifying insureds on the basis of face value of policies, as this factor was not clearly tied to life expectancy and seemed more closely associated with profitability, and the parties' experts disagreed about whether face amount and profitability were appropriate classification considerations under accepted actuarial standards. Fleisher v Phoenix Life Ins. Co., 18 F. Supp. 3d 456, 2014 U.S. Dist. LEXIS 60838 (S.D.N.Y. 2014).

Opinion Notes

Agency Opinions

1. In general

New York Insurance Law does not regulate private financial investment between licensee and client in connection with offering life insurance or accident and health insurance unless transaction involves rebating, inducing client to purchase goods or services, or otherwise as prohibited under CLS Ins § 4224. Insurance Department, Opinions of General Counsel, Opinion Number 03-07-13, 2003 NY Insurance GC Opinions LEXIS 194.

Other than CLS Ins § 4224(a)(3) pertaining to life insurance policies and annuity contracts and CLS Ins § 4224(b)(3) pertaining to accident and health policies, textual differences between § 4224(a)(3) and § 4224(b)(3) are of no substantive significance with regard to activities they prohibit. Insurance Department, Opinions of General Counsel, Opinion Number 05-10-12, 2005 NY Insurance GC Opinions LEXIS 226.

2. Propriety of particular acts and distributions

The receipt of commissions by a licensed broker, which is a wholly owned subsidiary of the corporation holding the annuity contract, is a violation of former § 209 [now § 4224]. 1945 N.Y. Op. Att'y Gen. No. 217, 1945 N.Y. AG LEXIS 10.

Agreement among stockholders of insurance agent corporation, whereby profits and earnings to be derived from commissions on group insurance policies procured through union welfare fund for eligible members of musician’s union local, and from other sources, are to be applied for purpose of providing public performances of musical compositions does not on its face violate former § 209 [now § 4224] of Insurance Law, but actions of corporation in carrying out plan could result in violation. 1955 N.Y. Op. Att'y Gen. No. 200, 1955 N.Y. AG LEXIS 66.

Entity that was licensed as agent or broker could not return money to not-for-profit organization in order to make contribution for special event if it could be shown that “contribution” was quid

pro quo for placement of insurance through agent or broker, which would violate CLS Ins § 4224(c); as to property and casualty insurance, CLS Ins § 2324(a) similarly prohibits inducements to foster sale of insurance products. Insurance Department, Opinions of General Counsel, Opinion Number 00-02-15, 2000 NY Insurance GC Opinions LEXIS 116.

It would be violation of CLS Ins §§ 4224(c) and 4235(h) to lower commission of group term life and medical insurance policy for one particular group after policy had commenced. Insurance Department, Opinions of General Counsel, Opinion Number 00-03-06, 2000 NY Insurance GC Opinions LEXIS 109.

Attorney violates CLS Ins § 4224(c) when he or she waives fees for attorney work in exchange for client's life insurance business and, in lieu of those fees, accepts commission from sale of such life insurance. Insurance Department, Opinions of General Counsel, Opinion Number 00-03-07, 2000 NY Insurance GC Opinions LEXIS 108.

Policyholder violates CLS Ins § 4224(c) when he or she accepts inducement on purchase of life insurance policy that is not specified in policy. Insurance Department, Opinions of General Counsel, Opinion Number 00-03-07, 2000 NY Insurance GC Opinions LEXIS 108.

Dividends, rebates, or refunds may be distributed to policyholder via Internet if policyholder agrees and distribution is otherwise in accord with CLS Insurance Law; amount of dividend or refunds may be greater if distributed via Internet than if distributed by other means only if such difference would be allowable under applicable provisions of CLS Insurance Law, and amount of dividend or refund generally may not be greater if policyholder makes purchases from on-line merchants. Insurance Department, Opinions of General Counsel, Opinion Number 00-03-08, 2000 NY Insurance GC Opinions LEXIS 114.

Insurance agent or broker may not make contribution to charity of insured's choice for each new insurance policy written; such contribution would constitute improper inducement in violation of CLS Ins §§ 2324 and 4224. Insurance Department, Opinions of General Counsel, Opinion Number 00-03-12, 2000 NY Insurance GC Opinions LEXIS 104.

Insurer may not provide accidental death and dismemberment insurance to travel agents who would then give insurance to their customers as part of purchase price of airline ticket or travel package that involved air travel; such transaction would constitute tie-in sale in violation of CLS Ins § 4224(d)(1). Insurance Department, Opinions of General Counsel, Opinion Number 00-07-19, 2000 NY Insurance GC Opinions LEXIS 50.

Offering of prearranged funeral program that uses irrevocable trust, whereby owner of life insurance policy assigns ownership rights to policy's cash values to trust, which would use proceeds to pay for owner's funeral expenses on owner's death, violates CLS Ins § 4224. Insurance Department, Opinions of General Counsel, Opinion Number 00-09-05, 2000 NY Insurance GC Opinions LEXIS 34.

Proposed system in which rebate feature on credit card would be utilized to pay insurance premiums did not violate New York Insurance Law where credit card rebate accrued independently based on purchases made, and would do so regardless of whether consumer had insurance or wished to engage in program, rebate could be applied to any insurance company's policy, or to none, premium that was due was not affected in any manner by consumer's participation in program, insurer was due same premium whether consumer participated or not, rebate was clearly not prohibited rebate under CLS Ins §§ 2324 or 4224, and there was no prohibited inducement or interdependent sale. Insurance Department, Opinions of General Counsel, Opinion Number 00-10-04, 2000 NY Insurance GC Opinions LEXIS 22.

Insurance agent could not give $5 gift certificate to movie rental store, local gem, movie theater, etc., on giving free quote to new residence who moved into agent's area as part of "Welcome Wagon" packet which included directory of businesses and area; such certificate would constitute improper inducement in violation of CLS Ins §§ 2324 or 4224. Insurance Department, Opinions of General Counsel, Opinion Number 00-10-10, 2000 NY Insurance GC Opinions LEXIS 16.

It would constitute improper inducement in violation of CLS Ins §§ 2324 or 4224 for insurance agency, which was approved instructor for defensive driving course, to give $15 reduction in

cost of course to existing clients. Insurance Department, Opinions of General Counsel, Opinion Number 00-12-04, 2000 NY Insurance GC Opinions LEXIS 5.

It would constitute improper inducement in violation of CLS Ins §§ 2324 or 4224 for insurance agency to offer $15 refund to students of defensive driving course who take its course and then become clients of that insurance agency. Insurance Department, Opinions of General Counsel, Opinion Number 00-12-04, 2000 NY Insurance GC Opinions LEXIS 5.

Life insurer is free to set its own appropriate underwriting standards, including type of underwriting, without violating CLS Ins § 4224(a)(1) as long as such underwriting standards have factual and rational basis, are grounded in generally accepted insurance and actuarial principles, and are not contrary to law; use of different terms and conditions as to different policies is not prohibited provided such terms and conditions are consistent as to particular policy and not contrary to law. Insurance Department, Opinions of General Counsel, Opinion Number 00-12-05, 2000 NY Insurance GC Opinions LEXIS 4.

Insurance agency may not offer $500 discount to existing customers on new vehicles purchased or leased from car dealership, with whom it has commercial account. Insurance Department, Opinions of General Counsel, Opinion Number 01-01-10, 2001 NY Insurance GC Opinions LEXIS 219.

Agent or broker may not provide human resource services to its clients through vendor that charges approximately $3-$6 per employee per month for use of its system; such arrangement would CLS Ins § 4224. Insurance Department, Opinions of General Counsel, Opinion Number 01-02-15, 2001 NY Insurance GC Opinions LEXIS 199.

Insurance agency may not offer its insurance clients contractually arranged discounts from other businesses; advertising campaign promoting distribution of discounts to insurance agency's clients would constitute unlawful inducement or rebate in violation of CLS Ins §§ 2324 and 4224. Insurance Department, Opinions of General Counsel, Opinion Number 01-02-17, 2001 NY Insurance GC Opinions LEXIS 197.

Not-for-profit corporation, wholly owned by municipal cooperative formed by public school districts under CLS Gen Mun § 119-o, could properly be issued insurance broker's license to act as insurance broker for group accident and health insurance policies under cooperative's employee benefits programs, which insurance covered school district employees, retirees, and families, so long as corporation was competent and otherwise qualified to hold such license under CLS Ins § 2104; further, it would not constitute improper rebate of premium under CLS Ins § 4224 for insurer to pay, and corporation to receive, commissions on group accident and health insurance policies that covered school district employees, retirees, and families. Insurance Department, Opinions of General Counsel, Opinion Number 01-10-22, 2001 NY Insurance GC Opinions LEXIS 13.

Licensed insurer that sells health insurance products in New York may include option to pay premium by credit cards for its policies that are sold on direct response basis but not for its products that are sold by insurer's agency force. Insurance Department, Opinions of General Counsel, Opinion Number 02-02-12, 2002 NY Insurance GC Opinions LEXIS 140.

Company that is licensed as insurance broker in New York, which also sells non-insurance-related services (such as payroll and benefits administration services), may not make distinction in fees it charges for its non-insurance-related services based on whether or not customer also purchases insurance brokerage services; however, such insurance broker is not prohibited from making distinction in fees it charges for its non-insurance-related services where such distinction is based on type and amount of non-insurance-related services it provides to particular customer. Insurance Department, Opinions of General Counsel, Opinion Number 02-08-24, 2002 NY Insurance GC Opinions LEXIS 349.

Certain benefits provided by non-profit corporation, including accidental death and dismemberment insurance, group dental expense, and vision services coverage under blanket accident and health insurance policies that were presumably underwritten by one or more New York authorized insurers, would be in violation of New York Insurance Law if offered for sale in New York; thus, program could not be offered for sale in New York. Insurance Department,

Opinions of General Counsel, Opinion Number 03-03-28, 2003 NY Insurance GC Opinions LEXIS 35.

Company that is licensed as insurance broker in New York, which also sells non-insurance-related services (such as discount dental and vision program), may not make distinction in fees it charges for its non-insurance-related services based on whether or not customer also purchases insurance products through brokerage. Insurance Department, Opinions of General Counsel, Opinion Number 03-06-14, 2003 NY Insurance GC Opinions LEXIS 174.

With respect to property and casualty insurance, authorized insurer, insurance agent or broker, and employee or representative of any such property/casualty insurance company, agent, or broker may, under CLS Ins § 2324(a), provide to prospective clients promotional novelty item that does not exceed $15 value which has conspicuously stamped or imprinted thereon advertisement of insurer, agent, or broker; with respect to life, accident, and health insurance, agent or broker subject to provisions of CLS Ins § 4224(c) may not distribute promotional novelties in connection with sale of insurance unless it is specified in policy or contract. Insurance Department, Opinions of General Counsel, Opinion Number 03-06-21, 2003 NY Insurance GC Opinions LEXIS 183.

Discrimination in any manner whatsoever between individuals of same class is prohibited under CLS Ins § 4224(a)(1); allowing premium payment by credit card for new policies but not for renewals, or vice versa, violates statute. Insurance Department, Opinions of General Counsel, Opinion Number 03-07-01, 2003 NY Insurance GC Opinions LEXIS 206.

Former broker of record, who is licensed as insurance broker in New York and is now employed by insured, may accept share of commission for placement of insured’s accident and health insurance from current broker of record provided that neither broker engages in illegal, dishonest, or untrustworthy conduct. Insurance Department, Opinions of General Counsel, Opinion Number 03-10-18, 2003 NY Insurance GC Opinions LEXIS 289.

Insurance agent, or third party, may run promotional raffle in which restaurant dinner for 2 would be prize for winner whose name would be entered into raffle when such person refers prospective client to agency, as long as raffle is open to public, and not tied to either sale or solicitation of insurance product. Insurance Department, Opinions of General Counsel, Opinion Number 03-10-30, 2003 NY Insurance GC Opinions LEXIS 301.

Ticket for raffle held by either agent or broker, or third party, that meets following conditions, would not be considered as unlawful rebate: if raffle is “open”, meaning anyone may enter raffle, and entry into raffle is not tied to purchase or solicitation of insurance product, then ticket for such raffle would not be considered unlawful rebate because there is no prohibited inducement or tie-in to insurance contract. Insurance Department, Opinions of General Counsel, Opinion Number 03-10-30, 2003 NY Insurance GC Opinions LEXIS 301.

New York licensed insurance agent or broker may donate portion of his commissions and fees (earned from sale of life, and accident and health insurance products) to charities and publicize such donations to prospective clients if (1) prospective clients and insureds have no direct or indirect influence over choice of which charities receive donations, (2) no donations are made in name of insured or prospective client, or are otherwise made on behalf of insured or prospective client, and (3) no applicable tax deductions for such charitable contributions, or any other benefits—whether tangible or intangible, direct or indirect—stemming from such donations, inure to insured or prospective client. Insurance Department, Opinions of General Counsel, Opinion Number 04-03-02, 2004 NY Insurance GC Opinions LEXIS 54.

Insurance agents are providing unlawful rebate on health insurance policies in violation of CLS Ins § 4224(c) by providing administrative services for such insurance sold to employers at no additional charge to employers. Insurance Department, Opinions of General Counsel, Opinion Number 04-03-25, 2004 NY Insurance GC Opinions LEXIS 77.

Insurance broker’s advertising campaign theme, which is offer to buy prospective clients “the biggest steak in town” if broker cannot save money on health insurance costs of prospective clients, constitutes valuable consideration and improper inducement in violation of CLS Ins §

4224. Insurance Department, Opinions of General Counsel, Opinion Number 04-07-15, 2004 NY Insurance GC Opinions LEXIS 170.

Despite CLS Ins § 4224, insurer may underwrite long term care insurance and refuse to issue policy of such insurance based on applicant having history of breast cancer if insurer bases rejection on sound actuarial principles or actual or reasonably anticipated experience. Insurance Department, Opinions of General Counsel, Opinion Number 04-07-18, 2004 NY Insurance GC Opinions LEXIS 173.

Under CLS Ins § 4224(c), insurance broker may not provide any free administrative services beyond those normally provided by insurance broker in connection with sale of health insurance; broker would have to charge additional fee for service pursuant to compensation agreement, in accordance with CLS Ins § 2119. Insurance Department, Opinions of General Counsel, Opinion Number 04-08-23, 2004 NY Insurance GC Opinions LEXIS 205.

Regarding services that insurance broker may lawfully provide to its clients, insurance broker that is too small to provide any additional services beyond those normally provided by insurance broker may not pay other businesses to provide such additional services. Insurance Department, Opinions of General Counsel, Opinion Number 04-08-23, 2004 NY Insurance GC Opinions LEXIS 205.

New York licensed insurance broker may advertise its services to small business group health insurance prospects by utilizing direct-mail marketing campaign that offers free customized report that illustrates various methods to lower health insurance costs of such businesses if broker does not require any prospect to purchase insurance, receive insurance quote, or fulfill any other condition to receive report (i.e., other than providing broker with data necessary to generate report for prospect). Insurance Department, Opinions of General Counsel, Opinion Number 04-08-27, 2004 NY Insurance GC Opinions LEXIS 209.

New York licensed insurance agent or broker may only donate portion of his or her commissions earned from sale of life insurance policies, to charities if: (1) prospective clients and insureds

have no direct or indirect influence over which charities receive donations; (2) no donations are made in name of insured or prospective client or are otherwise made on behalf of insured or prospective client; and (3) no applicable tax deductions for such charitable contributions, or any other benefits “whether tangible or intangible, direct or indirect” stemming from such donations, inure to insured or prospective client. Insurance Department, Opinions of General Counsel, Opinion Number 04-11-12, 2004 NY Insurance GC Opinions LEXIS 266.

Licensed insurance agent or broker may not send their clients gift basket valued at approximately $25.00 thanking clients for their business. Insurance Department, Opinions of General Counsel, Opinion Number 04-12-07, 2004 NY Insurance GC Opinions LEXIS 300.

Scope of CLS Ins § 4224(c) encompasses persons that are prospective, as well as, existing clients. Insurance Department, Opinions of General Counsel, Opinion Number 04-12-07, 2004 NY Insurance GC Opinions LEXIS 300.

Insurance agency, in partnership with non-insurance entity, may not participate in program where non-insurance entity provides discount for its services if client designates insurance agency as “agent of record” for health, life or disability insurance policy since such arrangement violates CLS Ins § 4224, which prohibits giving of inducements or valuable consideration, which are not specified in insurance policy. Insurance Department, Opinions of General Counsel, Opinion Number 04-12-14, 2004 NY Insurance GC Opinions LEXIS 307.

Authorized insurers, agents, brokers, and their representatives may not offer frequent flyer miles as incentive to purchase insurance as it would constitute prohibited inducement. Insurance Department, Opinions of General Counsel, Opinion Number 05-02-12, 2005 NY Insurance GC Opinions LEXIS 22.

Neither CLS Ins § 4224(c) nor CLS Ins § 2602 would be violated where insurance agent purchases group accidental death and dismemberment insurance (AD&D) for union or other employee group, agent earns no commission on AD&D policy, group policyholder notifies its members of coverage and delivers response card to each member offering them opportunity to

have representative of insurer contact him/her to arrange to deliver his/her coverage certificate and to discuss other available insurance products that may be of interest; however, such inducement (i.e., agent paying premium for AD&D policy and conditions necessary for continued payment of premium by agent) must be specified in underlying AD&D policy and coverage certificates, and each insured member must receive "...a certificate setting forth in summary form a statement of the essential features of the insurance coverage," whether or not they return response card and ask to meet with agent. Insurance Department, Opinions of General Counsel, Opinion Number 05-02-22, 2005 NY Insurance GC Opinions LEXIS 32.

By providing administrative health services for health insurance sold to clients at no additional charge, insurance broker would be providing valuable consideration or inducement on such policies in violation of CLS Ins § 4224(c), not CLS Ins § 2324. Insurance Department, Opinions of General Counsel, Opinion Number 04-10-14, 2004 NY Insurance GC Opinions LEXIS 253.

Insurance broker in New York, who sells administrative health services and human resources services (such as payroll and benefits administration services), may not make distinction in fees charged for these services based on whether client also purchases insurance brokerage services; if services are offered at no cost or at reduced cost to insurance clients, then such services would constitute valuable consideration or inducement in violation of CLS Ins § 4224 or § 2324, dependent on whether agent is selling life, health or property insurance. Insurance Department, Opinions of General Counsel, Opinion Number 04-10-14, 2004 NY Insurance GC Opinions LEXIS 253.

Insurance broker, in its capacity as administrative service provider, is not prohibited from making distinction in fees charged for administrative health services and human resources services (such as payroll and benefits administration services) where such distinction is based on type and amount of such services provided to particular client, independent of whether client has insurance or how much insurance. Insurance Department, Opinions of General Counsel, Opinion Number 04-10-14, 2004 NY Insurance GC Opinions LEXIS 253.

Insurance agency may not offer and advertise free accident prevention course as it would constitute inducement to purchase insurance in violation of CLS Ins § 2324 and/or § 4224. Insurance Department, Opinions of General Counsel, Opinion Number 04-11-04, 2004 NY Insurance GC Opinions LEXIS 258.

Since Standard Industrial Code (SIC) or its successor North American Industry Classification System (NAICS) classifications are not designed as risk assessment mechanisms, insurer is not required to utilize them. Insurance Department, Opinions of General Counsel, Opinion Number 05-03-34, 2005 NY Insurance GC Opinions LEXIS 76.

Insurance Department does not object to insurer using Standard Industrial Code (SIC) or its successor North American Industry Classification System (NAICS) so long as such use by some insurers appropriately stratifies insureds and complies with requirements of CLS Ins §§ 4216, 4224, and 4235. Insurance Department, Opinions of General Counsel, Opinion Number 05-03-34, 2005 NY Insurance GC Opinions LEXIS 76.

If insurer utilizes Standard Industrial Code (SIC) or its successor North American Industry Classification System (NAICS) in its risk assessment process and reassigns potential insured to different classification, it may be violation of CLS Ins § 4224(a) or (b). Insurance Department, Opinions of General Counsel, Opinion Number 05-03-34, 2005 NY Insurance GC Opinions LEXIS 76.

If insurer utilizes Standard Industrial Code (SIC) or its successor North American Industry Classification System (NAICS) in its risk assessment process and imposes surcharges based on classification assigned to particular industry, waiver of any surcharge applicable to particular insured in that industry may constitute violation of CLS Ins § 4224(a) or (b). Insurance Department, Opinions of General Counsel, Opinion Number 05-03-34, 2005 NY Insurance GC Opinions LEXIS 76.

If licensed accident and health insurance agent earns commissions from sale of accident and health insurance policies to members of unlicensed, New York not-for-profit organization when

he is president of such organization, agent may not have his commissions remitted directly to organization; regardless of whether licensed agent is president of organization, organization may receive commissions only if organization becomes licensed to act as accident and health insurance agent in New York. Insurance Department, Opinions of General Counsel, Opinion Number 05-04-11, 2005 NY Insurance GC Opinions LEXIS 90.

Regardless of whether remittance of commissions to not-for-profit organization violates CLS Ins § 4224, CLS Ins § 2103(i) would limit commissions received by organization (if and when such organization were to become licensed as accident and health insurance agent to legally receive commissions) to 10 percent of its aggregate net commissions obtained from sale of insurance to organization members. Insurance Department, Opinions of General Counsel, Opinion Number 05-04-11, 2005 NY Insurance GC Opinions LEXIS 90.

Insurance Law does not prohibit broker who offers administration of flexible spending accounts (FSAs, non-insurance product) from charging differing fees based on size of group; however, if such broker charges fees based on whether or not group is current accident and health insurance customer, broker would be violating CLS Ins § 4224, which prohibits rebating. Insurance Department, Opinions of General Counsel, Opinion Number 05-04-14, 2005 NY Insurance GC Opinions LEXIS 93.

There is no provision in Insurance Law that would prohibit or otherwise restrict insurer from insuring risks of aliens; however, if insurer declines to issue individual health insurance policy to resident who is not American citizen, on basis of non-citizenship, further investigation would be required to determine whether such insurer has violated CLS Ins § 2606, which prohibits discrimination based on race, color, creed, national origin, or disability, CLS Ins § 4224, which prohibits improper discrimination in life, accident and health insurance, or CLS Ins Art 24, which prohibits unfair methods of competition and unfair and deceptive acts and practices. Insurance Department, Opinions of General Counsel, Opinion Number 05-04-20, 2005 NY Insurance GC Opinions LEXIS 99.

There is no dollar limitation on prize offered by life insurance producer in raffle as long as raffle is open to public and not inducement for, or interdependent with, purchase of insurance. Insurance Department, Opinions of General Counsel, Opinion Number 05-05-33, 2005 NY Insurance GC Opinions LEXIS 134.

Insurance broker may not pay premium for one year on life insurance policy as charitable donation because such payment is violation of CLS Ins § 4224(c). Insurance Department, Opinions of General Counsel, Opinion Number 05-06-02, 2005 NY Insurance GC Opinions LEXIS 137.

If insurer, based on chronic medical condition, declines individual's application for disability income insurance, individual is entitled to copy of his physician's report which probably formed basis for declination unless health care provider has determined that release of information would be harmful. Insurance Department, Opinions of General Counsel, Opinion Number 05-06-10, 2005 NY Insurance GC Opinions LEXIS 145.

Insurer in underwriting life insurance policy which becomes aware of chronic condition that increases mortality risk may either decline application or charge additional premium. Insurance Department, Opinions of General Counsel, Opinion Number 05-06-10, 2005 NY Insurance GC Opinions LEXIS 145.

CLS Ins § 4224(c) and (d) prohibits "tie-ins" for sale of health insurance. Insurance Department, Opinions of General Counsel, Opinion Number 05-06-12, 2005 NY Insurance GC Opinions LEXIS 147.

Third party administrator of health claims may require that health care provider join its network and thus provide services for other insurers that have contracted to utilize its network. Insurance Department, Opinions of General Counsel, Opinion Number 05-06-12, 2005 NY Insurance GC Opinions LEXIS 147.

Under CLS Ins § 4224, life insurer may not provide inducement or valuable consideration of any kind that is not specified in insurance contract. Insurance Department, Opinions of General Counsel, Opinion Number 05-10-09, 2005 NY Insurance GC Opinions LEXIS 223.

It is violation of Insurance Law for insurance agent to inform residents of his community that, if they purchase insurance from him, he will donate $50-$100 from each purchased policy to specific community organization. Insurance Department, Opinions of General Counsel, Opinion Number 05-08-23, 2005 NY Insurance GC Opinions LEXIS 190.

Broker may charge different fees under CLS Ins § 2119 based on different kinds, levels, and amounts of services provided, and such differences would not violate either CLS Ins § 2324 or § 4224, which generally prohibit inducements and rebates in making of insurance contracts; however broker may not charge different fees for same services. Insurance Department, Opinions of General Counsel, Opinion Number 05-11-24, 2005 NY Insurance GC Opinions LEXIS 259.

Insurance agent may not offer drawing for free dinner for people who call his agency to review their insurance, since such type of drawing would constitute improper inducement under CLS Ins § 2324 or § 4224. Insurance Department, Opinions of General Counsel, Opinion Number 06-01-04, 2006 NY Insurance GC Opinions LEXIS 4.

There are 2 requirements to hold raffle that is not in violation of anti-rebating provisions of CLS Ins § 2324 or § 4224; first, raffle must be open to public, and second, ability to win or enter in raffle must not be inducement for, or interdependent with purchase or solicitation of insurance. Insurance Department, Opinions of General Counsel, Opinion Number 06-01-04, 2006 NY Insurance GC Opinions LEXIS 4.

With respect to life, accident and health insurance, agent or broker subject to CLS Ins § 4224(c), may not distribute promotional novelties in connection with sale of life, accident and health insurance unless it is specified in policy or contract as it would constitute inducement to purchase such insurance in violation of § 4224(c), even if recipient of such promotional novelty

did not purchase life or accident and health insurance policy. Insurance Department, Opinions of General Counsel, Opinion Number 05-11-19, 2005 NY Insurance GC Opinions LEXIS 254.

Insurance agent may not offer prize of iPod to random current client who submits answers in response to questions posed in agent's quarterly newsletter that is distributed to insurance agent's current clients; such contest would constitute improper inducement under CLS Ins § 2324(a) or § 4224(c). Insurance Department, Opinions of General Counsel, Opinion Number 06-01-24, 2006 NY Insurance GC Opinions LEXIS 24.

Insurance broker receiving commissions from Health Maintenance Organization based on contracts previously issued may not render services related to other employee benefits with no additional compensation, since such practice would constitute violation of CLS Ins § 4224(c). Insurance Department, Opinions of General Counsel, Opinion Number 06-01-25, 2006 NY Insurance GC Opinions LEXIS 25.

New York licensed insurance agent or broker may donate to charity portion of his or her commissions earned from sale of life insurance policies only if: (1) prospective clients and insureds have no direct or indirect influence over which charities receive donations; (2) no donations are made in name of insured or prospective client or are otherwise made on behalf of insured or prospective client; and (3) no applicable tax deductions for charitable contributions, or any other benefits "whether tangible or intangible, direct or indirect" stemming from such donations, inure to insured or prospective client. Insurance Department, Opinions of General Counsel, Opinion Number 06-02-06, 2006 NY Insurance GC Opinions LEXIS 32.

Under CLS Ins §§ 2324 and 4224 with respect to rebating, as long as raffle (established for current customers who provide referrals to an agent) is open to public and not tied to either sale or solicitation of product, then, within guidelines of CLS Ins § 2114, § 2115, or § 2116 with respect to referrals, raffle may be held with no dollar limitation. Insurance Department, Opinions of General Counsel, Opinion Number 06-02-13, 2006 NY Insurance GC Opinions LEXIS 39.

CLS Ins § 2324, which applies to property/casualty insurance, allows insurance agent or broker subject to its provisions to distribute as "keepsake" item that does not exceed $15.00 in value, and is designed to keep name of insurer or producer before customer by conspicuously stamping or printing insurer's or producer's name on item; CLS Ins § 4224 does not contain similar exception. Insurance Department, Opinions of General Counsel, Opinion Number 06-02-14, 2006 NY Insurance GC Opinions LEXIS 40.

Insurance Law does not limit compensation that may be given for referral under CLS Ins § 2114, § 2115 or § 2116 provided that referral does not include discussion of specific insurance policy terms and conditions and compensation for referral is not based on whether sale is made. Insurance Department, Opinions of General Counsel, Opinion Number 06-02-14, 2006 NY Insurance GC Opinions LEXIS 40.

Insurance agent or broker may compensate nonlicensee who makes referral to insurance agent or broker with entries in raffle run by insurance agent provided that raffle is open to anyone who makes referral and is not conditioned on nonlicensee purchasing insurance or submitting to solicitation for insurance, and provided that entry is not conditioned on referral resulting in sale of insurance. Insurance Department, Opinions of General Counsel, Opinion Number 06-02-14, 2006 NY Insurance GC Opinions LEXIS 40.

Insurance agent or broker may rent space within premises of other businesses where rent is calculated based on sales of insurance agent or broker at location; however, if business also makes referrals to agent or broker under CLS Ins § 2114, § 2115 or § 2116, total sales on which rent is calculated may not include sales resulting from referrals by employees or other representatives of business. Insurance Department, Opinions of General Counsel, Opinion Number 06-02-14, 2006 NY Insurance GC Opinions LEXIS 40.

In connection with sale of group health and/or life insurance policies to employer, broker or agent may not provide—at no extra cost to covered employees—employee benefits statement, since such service, provided free of charge, would constitute improper rebate in violation of CLS Ins § 4224(c); however, insurance broker may do so for separate fee obtained in accordance

with CLS Ins § 2119. Insurance Department, Opinions of General Counsel, Opinion Number 06-03-02, 2006 NY Insurance GC Opinions LEXIS 48.

Group policyholder may not be compensated for referring members of group to broker, since this would violate CLS Ins § 4224. Insurance Department, Opinions of General Counsel, Opinion Number 06-03-06, 2006 NY Insurance GC Opinions LEXIS 52.

Trade association may be reimbursed up to amount it expended on actual administrative expenses related to its group insurance programs, so long as those services would normally be performed by insurer, agent or broker. Insurance Department, Opinions of General Counsel, Opinion Number 06-03-06, 2006 NY Insurance GC Opinions LEXIS 52.

Any refund of premium paid by insured would be considered rebate and thus in violation of CLS Ins § 2324 or § 4224; however, insurance consultant may offset its consulting fee to extent that it receives commission on policy, so long as consulting agreement allows it to receive commission on policy. Insurance Department, Opinions of General Counsel, Opinion Number 06-03-07, 2006 NY Insurance GC Opinions LEXIS 53.

Former New York life insurance agent may execute exchange of annuity on his own life pursuant to Internal Revenue Code § 1035; however, insurer may not pay former insurance agent commission or any other compensation for executing exchange, since agent is not currently licensed as insurance agent or broker. Insurance Department, Opinions of General Counsel, Opinion Number 06-04-11, 2006 NY Insurance GC Opinions LEXIS 92.

Accident and health insurance agent may not offer $8 novelty item to potential insured in exchange for opportunity to quote insured's group health insurance pursuant to CLS Ins § 4224(c). Insurance Department, Opinions of General Counsel, Opinion Number 06-05-09, 2006 NY Insurance GC Opinions LEXIS 108.

Where insured's check that had been deposited in insurance producer's sweep account was dishonored and insurer had already withdrawn funds representing premium from producer's account, producer's actions would not constitute rebate or valuable inducement under either

CLS Ins § 2324 or § 4224. Insurance Department, Opinions of General Counsel, Opinion Number 06-05-12, 2006 NY Insurance GC Opinions LEXIS 111.

Except with respect to assigned risk automobile insurance policy, insurer may not reimburse insurance producer for premium, issue bill directly to insured for premium, and issue notice of cancellation for non-payment of premium if insured fails to pay bill after insured's premium check that was deposited in insurance producer's premium sweep account was dishonored and insurer had already withdrawn funds representing premium from producer's account. Insurance Department, Opinions of General Counsel, Opinion Number 06-06-05, 2006 NY Insurance GC Opinions LEXIS 116.

Insurance agent or broker may donate to charity portion of its commissions earned from sale of life insurance policies only if: (1) prospective clients and insureds have no direct or indirect influence over which charities receive donations; (2) no donations are made in name of insured or prospective client or are otherwise made on behalf of insured or prospective client; and (3) no applicable tax deductions for charitable contributions, or any other benefits—whether tangible or intangible, direct or indirect—stemming from such donations, inure to insured or prospective client. Insurance Department, Opinions of General Counsel, Opinion Number 06-06-11, 2006 NY Insurance GC Opinions LEXIS 122.

Compensation for referral may not be limited to those clients who have made referrals; compensating only clients for referrals would violate CLS Ins § 2324 or § 4224. Insurance Department, Opinions of General Counsel, Opinion Number 06-06-13, 2006 NY Insurance GC Opinions LEXIS 124.

Licensed insurance agent in New York may not pay consulting firm for providing its customers with certain services such as audit in how client complies with state and federal laws in area of human resources. Insurance Department, Opinions of General Counsel, Opinion Number 06-09-09, 2006 NY Insurance GC Opinions LEXIS 170.

By agreeing with prospective insured to invest in business in which prospective insured is invested as condition of sale of life insurance policy, both prospective insured and insurance agent are violating CLS Ins § 4224(c). Insurance Department, Opinions of General Counsel, Opinion Number 06-09-11, 2006 NY Insurance GC Opinions LEXIS 172.

As requirement of purchasing life insurance policy, prospective insured may not require life insurance agent who executed sale to split sales commission with another agent; such requirement would be inducement that is prohibited under CLS Ins § 4224(c). Insurance Department, Opinions of General Counsel, Opinion Number 06-09-11, 2006 NY Insurance GC Opinions LEXIS 172.

Insurance broker who, in order to obtain prospective client's health insurance business, may not provide for free, or offer to pay, that client's premiums on a group life or accidental death and dismemberment ("AD & D") policy from commissions he would receive if he obtained that client's health insurance business. Insurance Department, Opinions of General Counsel, Opinion Number 06-09-14, 2006 NY Insurance GC Opinions LEXIS 175.

Insurance broker may not offer administrative services under either Comprehensive Omnibus Budget Reconciliation Act of 1986 (COBRA), 29 USCS §§ 1161 et seq., or Flexible Spending Administration, for free, in order to get prospective client's health insurance business; however, if done under CLS Ins § 2119(c), broker may offer such services for fee. Insurance Department, Opinions of General Counsel, Opinion Number 06-09-14, 2006 NY Insurance GC Opinions LEXIS 175.

There is no prohibition in New York Insurance Law against use of credit card to pay premium on insurance policy. Insurance Department, Opinions of General Counsel, Opinion Number 06-11-04, 2006 NY Insurance GC Opinions LEXIS 193.

Where insurer, agent, or broker agrees to accept payment by credit card, it cannot accept it from some insureds but not other insureds that are within same general class. Insurance Department,

Opinions of General Counsel, Opinion Number 06-11-04, 2006 NY Insurance GC Opinions LEXIS 193.

Insurance broker may provide, for fee, services to insureds or prospective insureds pertaining to Comprehensive Omnibus Budget Reconciliation Act of 1986 (COBRA), 29 USCS §§ 1161 et seq. or Flexible Spending Administration, provided that such services are not offered as inducement in violation of CLS Ins § 4224, and such insureds or prospective insureds are not charged different amounts for same services; in addition, insurance broker must comply with requirements in CLS Ins § 2119(c)(1), which prohibits broker from receiving compensation, other than commissions, in absence of written memorandum that is signed by party to be charged. Insurance Department, Opinions of General Counsel, Opinion Number 07-02-18, 2007 NY Insurance GC Opinions LEXIS 17.

While insurance agency may make charitable donations, it may not advertise that it will donate sum to charity every time it receives call for insurance quote; such charitable donations constitute unlawful inducement of sort that Insurance Law proscribes. Insurance Department, Opinions of General Counsel, Opinion Number 07-03-07, 2007 NY Insurance GC Opinions LEXIS 27.

If insurer, insurance agent or broker provides, at no additional fee, services that are not normally performed by insurer, insurance agent or broker in connection with sale of health insurance, and services are not provided by insurance contract, then insurer, insurance agent or broker violates CLS Ins § 4224(c), which prohibits unlawful inducements or rebates. Insurance Department, Opinions of General Counsel, Opinion Number 07-03-10, 2007 NY Insurance GC Opinions LEXIS 30.

Insurance agent or broker may conduct informational seminars regarding insurance, and provide refreshments at such events, provided that such seminars are open to general public, without regard to insured status, and no obligation is imposed on attendees to apply for or purchase insurance. Insurance Department, Opinions of General Counsel, Opinion Number 07-05-15, 2007 NY Insurance GC Opinions LEXIS 53.

Sharing of commission would not violate CLS Ins § 4224(c) where (1) licensed life insurance agent in New York, duly appointed by insurer, is co-producing life insurance policy in conjunction with another New York licensed life insurance agent similarly appointed by same insurer, (2) both are to receive commission directly from insurer, (3) policy is to be sold to sole shareholder of corporation, which does not sell insurance, and (4) one agent is employee of corporation. Insurance Department, Opinions of General Counsel, Opinion Number 07-05-24.

Proposed policy rider would not be acceptable where (1) consideration is not sufficiently specified, (2) there is no nexus between non-insurance goods and services being offered to prospective insureds, and insurance provided under policy, and (3) insurer disclaims responsibility for goods and services so provided. Insurance Department, Opinions of General Counsel, Opinion Number 07-06-03, 2007 NY Insurance GC Opinions LEXIS 64.

Insurance producer may not offer interest-free premium financing to customer by allowing insured to pay designated premium in installments with no interest, because such practice would constitute impermissible inducement under CLS Ins § 2324 or § 4224; licensing requirements of CLS Bank § 555 would also be violated. Insurance Department, Opinions of General Counsel, Opinion Number 07-06-10, 2007 NY Insurance GC Opinions LEXIS 71.

Licensed insurance broker would violate anti-rebating provisions of Insurance Law if he or she offered to compensate only clients of broker that referred persons to insurance broker for purpose of purchasing insurance, and clients were only compensated if referred person, in fact, purchased insurance from broker. Insurance Department, Opinions of General Counsel, Opinion Number 07-06-16, 2007 NY Insurance GC Opinions LEXIS 77.

Life and health insurance agent may hold raffle that is open to general public, so long as entry into raffle is not tied to sale or solicitation of insurance. Insurance Department, Opinions of General Counsel, Opinion Number 07-06-22, 2007 NY Insurance GC Opinions LEXIS 83.

Insurance agent may not advertise to potential clients that agent's commissions will be donated to charity, since agent would be making unlawful inducement in violation of CLS Ins § 2324 or §

4224. Insurance Department, Opinions of General Counsel, Opinion Number 07-06-26, 2007 NY Insurance GC Opinions LEXIS 87.

Insurance agent or broker, in connection with sale of group health insurance to employer, may not provide prescription drug discount cards, or enrollment in online information service that rates and provides information about physicians, at no cost to employer, unless such benefits are specified in insurance policy. Insurance Department, Opinions of General Counsel, Opinion Number 07-07-17, 2007 NY Insurance GC Opinions LEXIS 104.

In connection with sale of group health insurance to employer, insurance agent or broker may provide, at no cost to employer, access through website created by agent or broker to "employee benefit portal" that contains useful information about group insurance plans currently in place, forms needed for plan administration, and insurance company website links and answers to frequently asked questions related to insurance. Insurance Department, Opinions of General Counsel, Opinion Number 07-07-17, 2007 NY Insurance GC Opinions LEXIS 104.

In connection with sale of group health insurance to employer, insurance agent or broker may provide, at no cost to employer, complete Comprehensive Omnibus Budget Reconciliation Act of 1986 ("COBRA"), 29 U.S.C.S. §§ 1161 et seq., administration services provided by either agent or broker, or through third-party vendor hired by agent or broker, depending on type of services offered. Insurance Department, Opinions of General Counsel, Opinion Number 07-07-17, 2007 NY Insurance GC Opinions LEXIS 104.

In connection with sale of group health insurance to employer, insurance agent or broker may not provide, at no cost to employer, human resource consulting services provided by either agent's or broker's in-house human resource consulting business, or third party hired by agent or broker. Insurance Department, Opinions of General Counsel, Opinion Number 07-07-17, 2007 NY Insurance GC Opinions LEXIS 104.

In connection with sale of group health insurance to employer, insurance agent or broker may not provide, at no cost to employer, access to online employee benefits management system

whose cost is paid by agent or broker that provides customized website for human resources (HR) administration and benefit communication. Insurance Department, Opinions of General Counsel, Opinion Number 07-07-17, 2007 NY Insurance GC Opinions LEXIS 104.

Payroll company that is affiliated with insurance agent or broker may not charge lower fees for payroll administration services to client who purchases insurance from agent or broker, as that would constitute rebate or inducement that violates CLS Ins § 4224. Insurance Department, Opinions of General Counsel, Opinion Number 07-07-17, 2007 NY Insurance GC Opinions LEXIS 104.

Bank that is affiliated with insurance agent or broker may not provide lower interest rate, loan approval or reduced banking fees to banking client who purchases insurance from agent or broker, as that would constitute rebate or inducement that violates CLS Ins § 4224. Insurance Department, Opinions of General Counsel, Opinion Number 07-07-17, 2007 NY Insurance GC Opinions LEXIS 104.

Licensed insurance agent may not share, with employer, commissions which agent earns on life and accident and health policies purchased by employer for benefit of its employees, because such payment would violate CLS Ins § 2114, § 2115 or § 2116 and constitute rebate or inducement prohibited by CLS Ins § 4224. Insurance Department, Opinions of General Counsel, Opinion Number 07-07-24, 2007 NY Insurance GC Opinions LEXIS 111.

If licensed insurance agent or broker were to share, with client, any “finders” fee paid by investment advisor to agent or broker, that would constitute violation of CLS Ins § 4224(c). Insurance Department, Opinions of General Counsel, Opinion Number 07-08-02, 2007 NY Insurance GC Opinions LEXIS 116.

Life insurance agent or broker may not pay expenses associated with qualified settlement fund in connection with sale or potential sale of structured settlement annuities or any other insurance. Insurance Department, Opinions of General Counsel, Opinion Number 07-09-24, 2007 NY Insurance GC Opinions LEXIS 155.

Licensed insurance agent or broker that sells structured settlement annuities may not advertise that agent or broker makes or has made donations to not-for-profit organization of concern and interest to potential purchasers of insurance or annuities, such as association representing trial lawyers; such action would constitute inducement for purchase of annuities in violation of CLS Ins § 4224. Insurance Department, Opinions of General Counsel, Opinion Number 07-09-24, 2007 NY Insurance GC Opinions LEXIS 155.

It would violate CLS Ins § 4224(c) for insurer or insurance agent to offer flexible spending administration services at no cost in order to get prospective client's health insurance business. Insurance Department, Opinions of General Counsel, Opinion Number 07-10-13, 2007 NY Insurance GC Opinions LEXIS 173.

There is nothing in Insurance Law or regulations promulgated thereunder that mandate that insurer provide domestic partner coverage, whether to opposite-sex or same-sex partners. Insurance Department, Opinions of General Counsel, Opinion Number 07-11-10, 2007 NY Insurance GC Opinions LEXIS 183.

Nothing in Insurance Law or regulations promulgated thereunder require that insurer that voluntarily provides domestic partner coverage to same-sex partners must also provide such coverage to opposite-sex partners. Insurance Department, Opinions of General Counsel, Opinion Number 07-11-10, 2007 NY Insurance GC Opinions LEXIS 183.

There is rational basis for insurer's decision to limit domestic partner coverage to same-sex partners, because same-sex partners do not have ability to marry and demonstrate family relationship required for coverage under current New York law, except by relying on their status as dependents; opposite-sex partners, however, have ability to marry and obtain coverage on such basis. Insurance Department, Opinions of General Counsel, Opinion Number 07-11-10, 2007 NY Insurance GC Opinions LEXIS 183.

Insurer's limitation of group coverage to same-sex domestic partners is not prohibited by Insurance Law or regulations, and enactment of SONDA in 2002 (CLS Exec § 296) does not on

its face appear to compel different conclusion. Insurance Department, Opinions of General Counsel, Opinion Number 07-11-10, 2007 NY Insurance GC Opinions LEXIS 183.

Insurer does not have obligation to accept use of credit card by insured to pay premium on insurance policy; however, there is no prohibition in Insurance Law against use of credit card to pay premium on insurance policy as long as there is no discrimination among members of same general class. Insurance Department, Opinions of General Counsel, Opinion Number 08-04-07, 2008 NY Insurance GC Opinions LEXIS 75.

If insurer accepts use of credit card by insured to pay premium on insurance policy, then insurer must pay credit card transaction fee imposed on it by credit card issuer. Insurance Department, Opinions of General Counsel, Opinion Number 08-04-07, 2008 NY Insurance GC Opinions LEXIS 75.

Cruise line or tour operator may not pay commission on trip package that includes travel insurance to travel agent that is not licensed to sell insurance. Insurance Department, Opinions of General Counsel, Opinion Number 08-04-29, 2008 NY Insurance GC Opinions LEXIS 86.

If health insurance producer presents quotation to customer for experience-rated group health insurance policy at specific rate with specific commission, insurance producer or insurer may not as general matter provide, or offer to provide, reduction in premium by simply reducing producer’s commission; however, if filed rates with respect to such policy form reflect commission adjustments attributable to articulated factors, including but not limited to level and type of insurance services to be provided by producer, then commission may be correspondingly reduced, as specified in insurer’s filed rates. Insurance Department, Opinions of General Counsel, Opinion Number 08-05-05, 2008 NY Insurance GC Opinions LEXIS 101.

If health insurer offers experience-rated group health insurance policy to customer through insurance producer at specified quoted premium and commission rate, insurer may not then offer same policy to customer through second producer at reduced commission rate with commensurately reduced insurance premium, unless reduced commission is reflected in

insurer's filed rates for that policy form, and filed rates articulate factors that may result in commission adjustments. Insurance Department, Opinions of General Counsel, Opinion Number 08-05-05, 2008 NY Insurance GC Opinions LEXIS 101.

Insurer may reject life insurance applicant on grounds that applicant intends to be living organ donor, if insurer bases decision on sound actuarial principles or actual experience, and in accordance with underwriting guidelines that insurer applies uniformly. Insurance Department, Opinions of General Counsel, Opinion Number 08-07-03, 2008 NY Insurance GC Opinions LEXIS 164.

Life insurer may reject life insurance applicant because of applicant's past organ donation, if rejection is based on sound actuarial principles or actual experience, and in accordance with underwriting guidelines that insurer applies uniformly. Insurance Department, Opinions of General Counsel, Opinion Number 08-07-03, 2008 NY Insurance GC Opinions LEXIS 164.

If organ donation occurs after effective date of life insurance policy, insurer may not terminate policy, unless insured has made material misrepresentation or fraudulent statement on application concerning organ donation, and insurer becomes aware of such statement within 2 years of issuance of policy. Insurance Department, Opinions of General Counsel, Opinion Number 08-07-03, 2008 NY Insurance GC Opinions LEXIS 164.

If organ donation occurs prior to effective date of life insurance policy, and applicant has made material misrepresentation or fraudulent statement on application concerning donation, insurer may, if misrepresentation caused insurer to issue policy, contest policy within first 2 years after issuance. Insurance Department, Opinions of General Counsel, Opinion Number 08-07-03, 2008 NY Insurance GC Opinions LEXIS 164.

Broker may offer non-insurance related services such as wellness program, provided that broker, as well as wellness program provider, do not limit such offer to purchasers of insurance, require that recipients of wellness program also purchase insurance or otherwise induce recipients to purchase insurance, receive insurance quote, or require recipients to fulfill any

other similar conditions related to insurance. Insurance Department, Opinions of General Counsel, Opinion Number 08-07-26, 2008 NY Insurance GC Opinions LEXIS 187.

Broker would not be required to include wellness program offer in all insurance policies sold by broker, under CLS Ins § 4224, in order to lawfully maintain link to free wellness program offer on broker's website. Insurance Department, Opinions of General Counsel, Opinion Number 08-07-26, 2008 NY Insurance GC Opinions LEXIS 187.

Insurance agent or broker may not give book "Insurance for Dummies" to insureds and prospective insureds even if retail price of book is $21.99 and its wholesale price is less than $15. Insurance Department, Opinions of General Counsel, Opinion Number 08-09-06, 2008 NY Insurance GC Opinions LEXIS 206.

Regardless of whether insurer or agent or broker purchases book "Insurance for Dummies," if it is inducement for valuable consideration not specified in policy, then neither insurer nor agent nor broker may distribute it to insureds or potential insureds. Insurance Department, Opinions of General Counsel, Opinion Number 08-09-06, 2008 NY Insurance GC Opinions LEXIS 206.

Nothing in Insurance Law prohibits publisher from advertising sale of book "Insurance for Dummies" to insurance agents or brokers as prospecting tool. Insurance Department, Opinions of General Counsel, Opinion Number 08-09-06, 2008 NY Insurance GC Opinions LEXIS 206.

Although insurance broker is not required to collect its duly earned commissions from insurer, broker may not charge flat fee in lieu of commissions, which in turn causes reduction in quoted premium, whether (1) insured changes insurer, (2) insured retains existing policy of one of hospitals, with all hospitals being enrolled under such plan, or (3) hospitals change to partially self-funded plan. Insurance Department, Opinions of General Counsel, Opinion Number 08-09-07, 2008 NY Insurance GC Opinions LEXIS 217.

Under CLS Ins § 4224(c), payroll company may not offer potential client discount on payroll services as inducement for client to designate, as "broker of record" of client's health and pension plans, broker with whom payroll services company has relationship. Insurance

Department, Opinions of General Counsel, Opinion Number 08-09-07, 2008 NY Insurance GC Opinions LEXIS 217.

Agent's fee offset for person attending retirement planning seminar against compensation paid for insurance subsequently purchased by that person would violate CLS Ins § 4224(c). Insurance Department, Opinions of General Counsel, Opinion Number 09-12-05, 2009 NY Insurance GC Opinions LEXIS 96.

Broker may not pay client any part of his commissions from sale of insurance for purpose of offsetting client's increased cost of insurance as between policy originally selected and more expensive policy subsequently purchased, even if client's original selection was based on incorrect or incomplete information from insurer; to do so would constitute unlawful rebating under CLS Ins § 4224(c). NY Ins Dep't Gen Counsel, Opinion No. 10-09-13, 2010 NY Insurance GC Opinions LEXIS 48.

Insurance producer may not pay compensation to association of employers that provides welfare benefits to employees of its employer members, pursuant to multiple employer welfare arrangement under ERISA, for association to provide access to its employer members so producer can sell them group policies of life, accident and health insurance covering their employees; any such payment would constitute rebate or inducement that runs afoul of CLS Ins § 4224(c), and would also constitute unlawful payment of commissions by producer to unlicensed person. NY Ins Dep't Gen Counsel, Opinion No. 11-01-02, 2011 NY Insurance GC Opinions LEXIS 41.

Insurance producer may provide specified administrative services to association of employers, and its employer members, for association's group insurance policies (e.g., information about insurance policies, forms needed for plan administration, enrollment services, billing employers for group health insurance premiums on behalf of association and forwarding premiums to insurer, insurance consulting services and other insurance-related advice, and providing insurance-related regulatory and legislative updates) without running afoul of rebating and inducement prohibitions of CLS Ins § 4224(c), provided that such producer offers such services

in fair and nondiscriminatory manner to like insureds or potential insureds. NY Ins Dep't Gen Counsel, Opinion No. 11-01-02, 2011 NY Insurance GC Opinions LEXIS 41.

Licensed insurance agent or broker may co-sponsor seminars with law firm in order to provide general insurance advice to employers, as long as seminars do not violate CLS Ins § 2324 or § 4224, or any other applicable Insurance Law provision. NY Ins Dep't Gen Counsel, Opinion No. 11-01-07, 2011 NY Insurance GC Opinions LEXIS 34.

3. Remedy for violation

Insurance company may institute program to assess fines against its agent who it deems in violation of its internal company policies, and company would not have to obtain Insurance Department’s approval prior to instituting such program; further, such program would not violate prohibitions against discrimination and rebating by insurers under CLS Ins §§ 4224 and 2324. Insurance Department, Opinions of General Counsel, Opinion Number 01-08-22, 2001 NY Insurance GC Opinions LEXIS 42.

4. Miscellaneous

Settlement of potential lawsuit could be “inducement” under CLS Ins § 4224(c) if it appeared that settlement was inducement to or interdependent with insured’s placement of insurance policies with agent; however, there would be no violation of “anti-rebating Law” if it can be shown that there is bona fide dispute between agent and insureds, that terms of settlement are not out of proportion to agent’s potential liability, and that settlement is not dependent on or inducement for insureds placing business with agent. Insurance Department, Opinions of General Counsel, Opinion Number 00-01-10, 2000 NY Insurance GC Opinions LEXIS 133.

Authorized insurer may purchase membership lists from several nonprofit membership organizations and pay for those lists where (1) insurer pays each membership organization flat fee per member based on insurer’s profitability (its loss ratio) in state in which membership organization is located (flat fee per member would be adjusted on annual or monthly basis), (2) fee is based on insurer’s premium in that state, and (3) annual fee represents flat fee for each

member of organization that is insured. Insurance Department, Opinions of General Counsel, Opinion Number 02-11 07, 2002 NY Insurance GC Opinions LEXIS 253.

Insurer may refuse to issue or renew travel insurance policy solely on ground of advanced age of applicant or insured; however, insurer may such underwriting decision must not be unfairly discriminatory, and must be based on sound actuarial principles or related to actual or reasonably anticipated experience. Insurance Department, Opinions of General Counsel, Opinion Number 04-10-07, 2004 NY Insurance GC Opinions LEXIS 246.

Whether 70-year-old applicant will pay more or less than, or same amount as, 45-year-old applicant for same insurance policy depends on rating classifications (which must be, inter alia, supported by and reflective of actuarially sound statistical data) of insurer that is underwriting risk. Insurance Department, Opinions of General Counsel, Opinion Number 04-10-07, 2004 NY Insurance GC Opinions LEXIS 246.

As unfiled class of inland marine insurance, property/casualty rate components of travel insurance policies are generally not subject to any filing requirements under CLS Ins Art 23, but are subject to applicable rating standards of Article 23; accident and health rate components of travel insurance policies are subject to various sections of CLS Ins Art 32 and Art 42. Insurance Department, Opinions of General Counsel, Opinion Number 04-10-07, 2004 NY Insurance GC Opinions LEXIS 246.

Stop-loss policy that is purchased by self-funded health plan from New York authorized insurer is subject to certain Insurance Law benefit requirements. Insurance Department, Opinions of General Counsel, Opinion Number 07-09-22, 2007 NY Insurance GC Opinions LEXIS 153.

Same-sex parties to marriages validly performed outside of New York must be treated as “spouses” for purposes of New York Insurance Law, including all provisions governing health insurance. Insurance Department, Opinions of General Counsel, Opinion Number 08-11-05, 2008 NY Insurance GC Opinions LEXIS 235.

Service that provides second medical opinion based on review of insured's medical records when insured is diagnosed with certain serious or life-threatening condition constitutes limited health insurance benefit; therefore, authorized life insurer may not offer such service in conjunction with individual life insurance policy, even for no separately identifiable charge, unless insurer is licensed to write accident and health insurance; life insurance policy must specify this limited health insurance benefit in order to comport with CLS Ins § 4224(c). NY Ins Dep't Gen Counsel, Opinion No. 10-12-02, 2010 NY Insurance GC Opinions LEXIS 78.

Research References & Practice Aids

Cross References:

This section referred to in §§ 1108, 2324, 2402.

Codes, Rules and Regulations:

Reporting of income and expenses. 11 NYCRR §§ 90.1 et seq.

Allocation of income and expenses. 11 NYCRR §§ 91.1 et seq.

Compensation to agents and fees or other allowances under certain plans sponsored by union-management welfare funds. 11 NYCRR §§ 202.0 et seq.

Rules governing advertisements of life insurance and annuity contracts. 11 NYCRR §§ 219.1 et seq.

Insurance department: recognition of the 2001 CSO mortality table. 11 NYCRR Part 100 (Regulation 179).

Treatises

Appleman on Insurance:

1 New Appleman New York Insurance Law § 9.05.

3 New Appleman New York Insurance Law § 40.12.

Hierarchy Notes:

NY CLS Ins, Art. 42

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