

Commonwealth of Virginia

ALFRED W. GROSS
COMMISSIONER OF INSURANCE

BOX 1157
RICHMOND, VIRGINIA 23218
TELEPHONE: (804) 371-9741
TDD/VOICE: (804) 371-9206

STATE CORPORATION COMMISSION BUREAU OF INSURANCE

September 9, 1997

ADMINISTRATIVE LETTER 1997-9

TO: All Carriers Licensed to Write Life Insurance, Annuities, Accident and Sickness Insurance, Variable Annuities, or Variable Life Insurance in Virginia

RE: Application and Enrollment Forms

The Bureau of Insurance ("Bureau") has recently received a number of inquiries regarding filing and approval requirements applicable to application forms and enrollment forms. This letter serves to respond to a number of these inquiries, and to address additional issues which have come to our attention in recent months. All carriers are expected to revise and refile any forms which are in nonconformity with any of the requirements elaborated below.

1. Group Enrollment Forms or Cards

§ 38.2-316 B of the Code of Virginia requires that application forms to be used with those policy forms and related documents specified in § 38.2-316 A must be filed with the Commission. As is further clarified in § 38.2-316 C 1, application forms used with applicable products delivered or issued for delivery in this Commonwealth must be approved in writing by the Commission prior to usage. The Bureau expects and requires that all enrollment forms or enrollment cards used with products delivered or issued for delivery in Virginia be submitted for review and approval prior to usage in Virginia. It should be noted that the Bureau does not consider a listing of covered or eligible individuals provided by a group policyholder (i.e. an employer) to an insurance carrier to be an enrollment form.

The Bureau is aware that many employers design and develop their own enrollment forms for selecting insurance coverage(s) as well as other types of benefits. Regardless of how and by whom the form is developed, it is the carrier's responsibility

to ensure that the form has been appropriately filed with and approved by the Bureau prior to its usage in Virginia. Often these single case enrollment forms offer coverage through two or more carriers. Multi-company application or enrollment forms are addressed in item (5) in this administrative letter.

Because the Bureau is aware that many carriers assumed that enrollment forms or cards were not subject to filing and approval requirements, no disciplinary action will be taken against carriers currently using unapproved enrollment forms or cards, provided they are submitted to the Bureau within sixty (60) days of the date of this letter. Carriers using enrollment forms or cards in Virginia subsequent to this sixty day period that have not been filed with and approved by the Commission will be considered to be in violation of § 38.2-316 of the Code of Virginia, and may be subject to disciplinary action, as set forth in § 38.2-218 of the Code of Virginia.

2. Faxed Application Forms

A number of carriers have inquired as to whether it is permissible to transmit application forms to or from the agent and the carrier's home or administrative office via telecopy or fax. The Bureau considered this question, both from the perspective of faxing blank application forms to the agent for completion, as well as faxing completed, signed application forms from the agent to the carrier's home or administrative office. It has been determined that facsimile transmissions are permissible in either of these instances; however, the Bureau must be provided with copies of any form revisions made to accommodate faxing. Changes in pagination, i.e. duplex to simplex printing, must be submitted to the Bureau. Forms revised simply to accommodate faxing, with no material textual changes, will not be required to be assigned a new form number and will retain their original approval dates. If any material changes are made to the text, however, the revised form must be assigned a new form number and will be granted a new approval date.

3. Fraud Warning Notices

The Bureau is aware that, due to requirements in other states, many companies are including "Insurance Fraud" disclaimers on many application and claim forms. "Insurance Fraud" is not a defined term under the Code of Virginia, and an individual therefore cannot be guilty of "Insurance Fraud" in Virginia. This being the case, a warning such as those required in other states would be misleading in Virginia. Carriers with application forms or other forms on file with the Bureau are expected and required to revise such forms by either removing or modifying any such notice, and must refile revised forms within sixty (60) days from the date of this letter to avoid disciplinary action. Revised forms will be granted a new approval date and must be assigned a new form number.

The Bureau will allow the inclusion of insurance fraud notices if it is clearly and prominently disclosed that the notice does not apply in Virginia or if there is a listing of the states in which the notice does apply and Virginia is not included among them. The Bureau will consider other modifications to the notice provided no reference is made to "Insurance Fraud". Carriers considering the use of alternative wording are encouraged to contact the Bureau with the proposed wording for this notice before submitting forms for approval.

4. Disclosure Authorization Form, Notice of Information Practices

Many carriers include forms, notices and disclosures required by Chapter 6 of Title 38.2 of the Code of Virginia (§ 38.2-600 et seq.) directly in their application forms, although they are often perforated for removal so that they can be left with the applicant. Until recently, the Bureau's approval of application forms did not extend to these forms and notices. It had been the Bureau's position that these forms were placed with the application as a matter of convenience, but were not technically part of the application form itself, and that it was the carrier's responsibility to ensure compliance with any applicable requirements. Because of an increasing number of inconsistencies found during on-site examinations and through consumer complaints, however, the Bureau has begun reviewing all such notices included in application forms and disapproving those applications where the included notices are found to be in noncompliance with applicable requirements. Through the course of these recent reviews, it has become apparent that there are a substantial number of application forms currently being used in Virginia which include incorrect or incomplete forms or notices. Carriers are expected and required to review all application and enrollment forms as well as any other forms currently in use which include this information and to carefully review Chapter 6 of Title 38.2 of the Code of Virginia to ensure compliance with all requirements specified therein. Revised forms must be assigned a new form number and will be granted a new approval date. Notices which are separate and apart from the application form do not need to be filed and approved; however, compliance will be monitored through market conduct examinations and investigations involving consumer complaints.

5. Multi-Company Application or Enrollment Forms

The Bureau has received a number of inquiries regarding the acceptability of application or enrollment forms used by two or more carriers who may or may not be affiliated. We will accept and approve multi-company forms provided the full and proper corporate name of each carrier is prominently disclosed on the form, and the form clearly discloses the type of coverage being provided by each carrier. Multi-company forms must be designed in such a way that the form clearly indicates, or can be marked by the agent or applicant to indicate the carrier to which the application is being made. Each carrier must independently submit the form for approval in accordance with the usual filing procedures. A carrier may not use a multi-company

application or enrollment form in Virginia until it has been approved in writing by the Commission, regardless of whether the form has been approved for another carrier.

Although each carrier must submit the form for approval in accordance with the guidelines prescribed in 14 VAC 5-100-10 et seq., the Bureau has no objection to the independent submissions being included in one package. In fact, we encourage carriers to identify identical submissions so as to ensure consistency and expedite our processing of the forms.

Any questions with regard to any of the above matters should be directed **IN WRITING** to:

Jacqueline K. Cunningham
Supervisor, Forms and Rates Section
Life and Health Division
Bureau of Insurance
P.O. Box 1157
Richmond, Virginia 23218

Very Truly Yours,

Alfred W. Gross
Commissioner of Insurance

AWG/jkc