

STATE OF NEW MEXICO  
**OFFICE OF SUPERINTENDENT OF INSURANCE**

**SUPERINTENDENT OF INSURANCE**  
Russell Toal



**DEPUTY SUPERINTENDENT**  
Jennifer A. Catechis

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**BULLETIN 2022-004**

**April 4, 2022**

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**TO: ALL CARRIERS WHO SELL INDIVIDUAL OR SMALL GROUP QUALIFIED HEALTH PLANS**

**RE: PROHIBITION ON DIFFERING COMMISSION STRUCTURES FOR THE SALE OF QUALIFIED HEALTH PLANS**

It has come to the attention of our office that some carriers in other states have created commission structures that pay differing commissions depending on the metal tier of the plan sold, or do not pay commissions on plans purchased during a special enrollment period, and/or do not pay commissions on certain plans offered. Structuring commissions in this manner induces the sale of those plans for which the carrier will pay commissions, while discouraging the sale of those plans for which no commission is paid. This practice would be in violation of §59A-16-17 NMSA 1978.

Discouraging the sale of plans to minimize carrier risk constitutes an implicit additional rule of eligibility based upon factors related to an individual's health status, contrary to §59A-23E-11 NMSA 1978, and is an "unfair method of competition, or unfair or deceptive act or practice," which is prohibited pursuant to §59A-16-3 NMSA 1978. The Superintendent further notes that eliminating or reducing commissions on the basis of the aforementioned conditions induces unfair discrimination in the contracting of health insurance in violation of §59A-16-11(B).

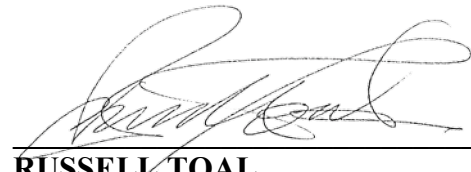
While we are unaware of any health insurers in New Mexico that are currently employing differing commission structures, we want to give fair notice that the practice is and would continue to be subject to enforcement actions to remedy those violations. Such actions could include, but not be

limited to, administrative penalties of up to \$10,000 per violation, and suspension of any certificate of authority or license issued under the insurance code.

Thank you for your attention to this matter. Please direct any questions concerning this guidance to [cass.brulotte@state.nm.us](mailto:cass.brulotte@state.nm.us). We appreciate your cooperation in avoiding this practice.

**ISSUED** this 4<sup>th</sup> day of April, 2022.

**SUPERINTENDENT OF INSURANCE**

A handwritten signature in black ink, appearing to read "Russell Toal", written over a horizontal line.

**RUSSELL TOAL**