

**Nebraska Department of Insurance**  
**Guidance Document**  
**IGD - - E2**

Title: Collection of Insurance Consultant, Agent or Broker Fees or “Commissions” by Insurers

Issue Date: October 20, 2022

Previously: Issued as a Notice on June 03, 2015

Notice: This guidance document is advisory in nature but is binding on an agency until amended by such agency. A guidance document does not include internal procedural documents that only affect the internal operations of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document.

On May 27, 2015, Centers for Consumer Information and Insurance Oversight (CCIIO) issued a question and answer memorandum further addressing the issue of when an insurer may exclude, for medical loss ratio (MLR) reporting purposes, earned premium agent and broker fees or commissions paid in connection with a health insurance policy. In that memorandum, CCIIO set forth seven conditions which must be met before an issuer may exclude agent or broker fees from the MLR report. These seven conditions are:

1. The law of the state in which the policy is used does not deem the agent or broker to be a representative of the issuer;
2. The policyholder is not required to utilize an agent or broker to purchase insurance and may purchase a policy directly from the issuer;
3. The policyholder selects, retains, and contracts with the agent or broker on his or her own accord;
4. The policyholder negotiates and is responsible for the fee or commission separate and apart from premium;
5. The issuer does not include these agent or broker commissions and fees in rate filings submitted to the applicable regulatory agency;
6. The policyholder voluntarily chooses to pass the fee or commission through the issuer and is not required to do so, or the policyholder pays the fees or commission directly to the agent or broker; and,
7. The policyholder issues the 1099 to the agent or broker if a 1099 is required

An insurance consultant is obligated under NEB. REV. STAT. § 44-2629 to serve the interests of the client with objectivity and complete loyalty. This means that an insurance consultant does not receive a commission or fee from the insurer, rather, that fee is collected directly from the consultant’s client. As a reminder, a consultant also has a different licensure requirement than an agent and/or broker. The fee for the insurance consultant’s services is between the insurance consultant and the client, and the fee must be specifically noted in the consultant contract or agreement. Furthermore, it is unlawful for any insurance consultant, or any agency or sales organization with which the consultant is connected, to receive any part of any commission or compensation paid by an insurer in

connection with the sale or writing of any insurance which is within the subject matter of any consulting service performed prior to the sale of insurance and for which such consultant has contracted to receive a fee.

If an insurer collects fees on behalf of an insurance consultant, agent, or broker, the conditions as set forth from CCIO must be met.

Questions concerning this notice may be directed to the Legal Division at 402-471-2201.