

RE: DETERMINING THE “HOME STATE” FOR PURCHASING GROUP (PG) MEMBERS UNDER THE NRRA

ELANY is fielding numerous questions from member brokers regarding “home state” determination for PG members.

The NYS Department of Financial Services (fka NYS Insurance Department) issued Circular Letter No. 9(2011) dated July 22, 2011, which addressed this issue.

Revised, NY Insurance Law Section 2101(x)(3) defines the “insured’s home state” for a “group policy”, which is applicable to “purchasing groups” as follows:

- When the group policyholder pays one hundred percent of the premium from its own funds, then the “insured's home state” is considered the principal place of business of the group policyholder. [This may be the case with many "employer sponsored group excess policies".]
- When the group policyholder does not pay one hundred percent of the premium from its own funds [PG risks], then the “insured’s home state” is that of each group member.

Simply stated, excess line brokers must file affidavits and related individual certificates of insurance for each individual New York “home stated” member of the PG and pay premium taxes only to New York for New York “home stated” PG members. However, only one set of declinations and one master affidavit is required for each purchasing group. Same as in the past.

It has come to ELANY’s attention that other states may handle PG filings differently and consider the “insured’s home state” to be the state where the PG is headquartered and require premium taxes to be paid only to that state, regardless of where the individual PG member actually resides.

Consequently, tax liability issues will arise for excess line brokers when PG members are located in more than one state and those states have implemented conflicting PG filing requirements.

To avoid compliance problems and potential fines where more than one state asserts regulatory authority over such PG risks, ELANY suggests you consider creating two separate PGs. One would provide coverage to PG members in states that consider the “insured’s home state” to be the state where each individual member resides and the other PG would provide coverage to all PG members from states that define the “home state” as that of the PG itself.

For further information in this regard, please contact Gene Nunziata by e-mail at enunziata@elany.org or by phone (646) 292-5584.

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