

MEMORANDUM

To: All resident North Carolina surplus lines licensees  
All non-resident North Carolina surplus lines licensees

From: North Carolina Department of Insurance

Date: February 21, 2011

Subject: Placement of Accident and Health Insurance with Surplus Lines Insurers

The Department has become aware that there may be a misunderstanding of North Carolina's insurance laws regarding the placement of accident and health insurance products with non-admitted insurers. The Surplus Lines Act governs surplus lines insurance, surplus lines licensees, and non-admitted insurers authorized to write business in this State. N.C.G.S. §58-21-15(8) clearly states that surplus lines insurance does not mean "life and accident or health insurance" or "insurance independently procured pursuant to N.C.G.S. §58-28-5."

Accident and health insurance products cannot be written through surplus lines procedures under the Surplus Lines Act. However, N.C.G.S. §58-28-5(b) provides that "any person in this State may directly procure or directly renew insurance with an eligible surplus lines insurer, as defined in N.C.G.S. §58-21-10(3), without the involvement of an agent, broker, or surplus lines licensee, on a risk located or to be performed, in whole or in part, in this State." N.C.G.S. §58-28-5(b) clearly defines the specific requirements for insurance independently procured, including an affidavit of the insured attesting that the stated insurance coverage cannot be obtained from insurers licensed in North Carolina. Also, insurance independently procured is subject to a 5% gross premium tax.

N.C.G.S. §58-28-5(b) provides the only means through which accident and health insurance products, such as "high limits disability" and "income replacement insurance," can be written through eligible surplus lines insurers for North Carolina risks. The failure to pay the premium tax under N.C.G.S. §58-28-5(b) may also be viewed by the Department as a form of rebating.

This notice is being distributed not only to make you aware of North Carolina's insurance laws governing the placement of independently procured insurance, but to also advise you to contact NCDOI if you have placed accident and health insurance for North Carolina risks without ensuring that the 5% gross premium tax is paid to the Commissioner.

If you have any questions or concerns please let do not hesitate to contact me.

Respectfully,



Fred Fuller  
Regulatory Project Manager