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Course #111027

Are Your Ethics Compliant?

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Agenda

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- What does it mean to be "ethical"?
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- Watch Out, There are Risks Up Ahead!
- Safety First is My Motto!

Introduction

DEFINITION OF ETHICS & ETHICAL

Introduction

- **Ethics**
  - A set of moral principles: a theory or system of moral values (Merriam-Webster)
  - The rules of conduct recognized in respect to a particular class of human actions or a particular group, culture, etc. (Dictionary.com)
  - Moral principles that govern a person's behavior or the conducting of an activity (Oxford Dictionary)
- **Ethical**
  - Conforming to accepted standards of conduct (Merriam-Webster)
  - Involving or expressing moral approval or disapproval (Merriam-Webster)

What Does It Mean to Be Ethical?

-PROFESSIONALISM

-PROFESSIONAL/BUSINESS ETHICS

-ETHICS FOR INSURANCE AGENTS

Professional Ethics

- **Professionalism**
  - Originally used in Religious Orders, meaning “the act of professing”
  - Was secularized by 1675
    - Applying not only to Divinity, but also Law, Medicine and the Military
  - Definitions have changed over decades and includes many other professions
- **Common Characteristics of Professionalism**
  - Service to others
  - Assessment of client needs
  - Theoretical body of knowledge obtained through extended pre-service education
  - Standards for entry, practice, and ethical conduct
  - Professional association to maintain standards
  - Continuing education and life long learning

Professional/Business Ethics

- Professional Ethics-

“Professionally accepted standards of personal and business behavior, values and guiding principles. Codes of professional ethics are often established by professional organizations to help guide members in performing their job functions according to sound and consistent ethical principles.” (Business Dictionary)

Professional/Business Ethics

- An Occupation Becomes a Profession...
  - When group of individuals sharing the **same** occupation organize to work in a morally permissible way, or to work to support a moral ideal.
  - Members set and follow special standards for carrying on their occupational work.
  - At least one of these standards must go beyond what law, the marketplace, ordinary morality calls for.
  - These special standards are morally binding to “professed” members of the profession. If a member freely declares (or professes) themselves to be part of a profession, they are voluntarily implying that they will follow these special moral codes.

Ethics for Insurance Agents

- Insurance Agent’s Obligations:
  - Client
  - Agency/Self
  - Insurance Carrier

- POLL: Who do you serve? Who comes First?

Ethics for Insurance Agents

- Did you say the Client?
  - What if they withhold information?
  - What if they ask you to bend the truth in their favor?
  - What if you are afraid they will leave you if you share unfavorable news?

- Did you Say Agency/Self?
  - Continuing Education and lifelong learning
  - Having appropriate risk insurance in place
  - Protecting your business through honest practices

- Did you Say The Insurance Carrier
  - Provide truthful and complete information
  - Maintaining certifications i.e.. Medicare
  - Providing accurate information to the client about the carrier product

Ethics for Insurance Agents

- Ethical Values
  - Responsibility
    - Owning your Actions
  - Integrity
    - Doing the right thing when no one is looking
  - Caring
    - Having concern for those you serve
  - Selflessness
    - Seeking the interest of those your serve
  - Courage
    - The ability to do the difficult
  - Excellence
    - To the best of my ability

Ethics for Insurance Agents

- At a minimum, ethical behavior for Insurance Agents means compliance with state and federal regulations
- Laws, Regulations are NOT the same as Ethics
  - The Law is the minimum standard
  - Ethics guide the professional through making the best decisions when ethical dilemmas are present
  - The characteristics of Ethical behavioral go beyond the “minimum”
- Platinum Rule-Do unto others as they would like for you to do to them
  - More appropriate than the “Golden” Rule, does not force your values on others

Ethics for Insurance Agents

- Fundamental Elements of Professional Ethics for Agents:
  - Commitment
  - Sensitivity
  - Ethical Competency
  - Skill and Capacity
  - Continuing Education
  - Formal Association
  - Ability to Act with Integrity
  - Public Recognition

Whose Responsibility Is This Anyways?

-EMPLOYER LAW VS. INSURANCE LAW

-STATUTORY REQUIREMENTS VS. ETHICAL BEHAVIOR

-RESPONSIBILITY VS. EXPECTATIONS

Employer Law VS. Insurance Law

- **Employer Law vs. Insurance Law , Who is responsible?**
  - **Employer Law**
    - The employer is responsible for conducting their business in accordance with local, state and federal law
    - The employer is also bound by any contractual obligations that are legally binding agreements
  - **Insurance Law**
    - The licensed insurance professional is responsible to conduct themselves in accordance with local, state, federal law
    - The Agent is ALSO bound by contractual obligations, that are legally binding agreements
    - The Agent has a duty to the client and a duty to the insurance carrier

Statutory Requirements VS. Ethical Behavior

- Statutory Requirements
  - Those things dictated by law, regulation, ordinance or contract
    - Ex. Statutory licensing requirements to induce the purchase of an insurance product and be compensated
- Ethical Behavior
  - Those actions that go beyond the minimum requirements to ensure professionalism in transactions
    - Ex. Providing the client with the best available options, even if some of those options mean a lower commission for the agent
    - Ex. Sharing important compliance information even if you think it may impact their decision to place the insurance

Responsibility VS. Expectation

- Responsibility
  - Agents are responsible for:
    - Abiding by state requirements for licensed agents
    - Abiding by the terms of any signed contract (carrier, clients ,etc.)
    - Not conducting their business in a fraudulent manner
- Expectation
  - What do clients expect?
  - Do they expect more than the minimum?
  - Will you be able to keep them as a client with only the minimum required?
    - Is the agent down the street going above and beyond?
    - Are you having to compete with agents that may be offering services that could be considered rebating? How do you respond to that?

Client Expectations

- What are the client expectations of the modern day insurance broker?
  - Brokering a product?
  - Benefit Plan Design?
  - Administrative Services?
  - Disclosure expectations?
  - Advisor?
  - What Else?

I’m Sorry, Did I Just Create More Work for You?

-PRODUCT PLACEMENT & ETHICAL DILEMMAS

Product Placement

- **Product Placement**
- Ethical Questions?
  - Does the Product Placement make the employer subject to state or federal regulations?
  - Do those regulations put my client in jeopardy of fines, penalties or law suits?
  - Should I know what those requirements are for the Insurance plans I place?
  - Do I have a legal obligation to disclose?
  - Do I have an ethical obligation to disclose?
  - What if my E&O Doesn't Cover It, does that let me off the hook?

Examples of Compliance Impacting Product Placement:

- ERISA
- 5500
- COBRA
- PCORI
- FMLA
- 1094/1095 Reporting
- HIPAA
- Section 125 Plan Requirements
- Marketplace Notices
- Medicare Part D Notices
- CHIPRA Notices
- Women's Health & Cancer Rights Act Notice
- Non-Discrimination Testing
- Carrier Contract Requirements
- MEWA Requirements
- State Continuation Requirements

Product Placement

- Ethical Disclosure
  - Placed a new employer paid medical, dental, vision and life program for a client that is on a real tight budget. I know they need to have ERISA docs, implement COBRA, have non-discrimination testing for the life insurance program, oh and I forgot….they said they are reimbursing up to $500 per year of the EE’s deductible, (pre-tax), so they need some type of plan doc to allow for that
  - What do I do?
    - Can you just be quiet, or implement the group and come back later?
    - Do you have an obligation to tell them about federal requirements when you place the insurance?
    - Could you advise they could swap some of the benefits to voluntary to allow budget for making sure their plans are compliant?
    - What if there’s simply no additional budget and they decide not to move forward with benefits?

Product Placement

- Ethical Questions (Work in Group)
  - What are the concerns about discussing compliance in conjunction with product placement?
  - Is there liability for remaining silent?
  - Is there liability for speaking up?
  - Is it Ethical to remain silent?

What Else?

- Work with your group to Discuss :
  - What are other areas agents may not be required by law to address but may have an ethical obligation?
    - Related to Coverage Options
    - Related to Network Coverage
  - What about ethical obligations to the carrier?
    - Ex. Agent knows carrier A will “rate-up” if they know a group also offers an HRA alongside the group health plan, do they:
      - Notify the client that the proposed rates will increase when they implement the HRA and notify the carrier, proceed anyways and notify the carrier
      - Decide not to discuss it and let the client proceed
      - Tell the carrier and when the rates increase, tell the client it’s all the carrier’s fault
      - Encourage the client not to notify the carrier and the keep the HRA on the “down low”

      -Is there also a potential legal issue here?

Ethical Dilemma's

- Common Concerns
  - Lack of prior disclosure
    - "I've been their agent for 30 years and have never told them they are subject to ERISA"
    - Does that mean you should continue to stay quiet?
  - Concerns about losing clients
    - "What if I share this information and they decide they just can't move forward, or want to work with another agent that won't make them be compliant?"
  - Concerns about impact to clients
    - "What is it going to cost them to make this right?"
    - "What if I don't say anything and they are hit with a HUGE penalty or a lawsuit?"

Watch OUT! There are Risks Up Ahead

-EXPOSURE & RISKS

Exposure & Risk

- **Exposure & Risk**
  - Exposure to the client
    - Failure to comply with federal or state requirements
    - Penalties or legal remedies
  - Exposure to the broker
    - Potential loss of client
    - Potential legal remedies
  - E & O considerations
    - Do you have E & O coverage?
    - Do you know what it covers and what it doesn’t cover?
    - Do you have other types of business insurance, and what do they cover in the event you are sued?
    - Are you pro-active in risk avoidance?

Exposure & Risk

- New Legislation and Regulation
  - How does it impact compliance?
  - Who is responsible to stay on top of it?
  - How do ethics come into play?

Conducting Business During Crisis

  - HIPAA while working from
  - Meeting client needs virtually
  - Cyber Security at Home

POLL Question

Safety First is my Motto!

-ETHICAL SAFEGUARDS

Ethical Safeguards

- **Ethical Safeguards**
  - Identify Risk
    - Risk of conflict of interest
    - Risk of statutory violations
    - Risk of moral or ethical failures
  - Inform Client
    - Required disclosures
    - Proactive disclosures
  - Maintain Records
    - Business practices
    - Communications

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- Marketplace Notices
- Medicare Part D Notices
- CHIPRA Notices
- Women’s Health & Cancer Rights Act Notice
- Non-Discrimination Testing
- Carrier Contract Requirements
- MEWA Requirements
- State Continuation Requirements

Questions?

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Thank you for attending

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