



Illinois Department of Insurance

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TO: All Insurance Companies and Licensed Insurance Producers

FROM: Andrew Boron, Director of Insurance *AB*

DATE: December 19, 2012

RE: COMPANY BULLETIN 2012-11
Rebating, value-added services, charitable contributions, consumer gifts and referral fees

The Illinois Department of Insurance (the Department) receives inquiries regarding whether various programs and services can be offered to consumers or whether such programs and services constitute impermissible rebates.

The Illinois Insurance Code at 215 ILCS 5/151 provides in part:

Payment or acceptance of rebates prohibited. (1) No company doing business in this State and no insurance agent or broker shall offer, promise, allow, give, set off or pay, directly or indirectly, any rebate of or part of the premium payable on the policy, or on any policy or agent's commission thereon or earnings, profits, dividends or other benefits founded, arising, accruing or to accrue thereon or therefrom, or any special advantage in date of policy or age of issue, or any paid employment or contract for services of any kind or any other valuable consideration or inducement to or for insurance on any risk in this State, now or hereafter to be written, or for or upon any renewal of any such insurance, which is not specified in the policy contract of insurance, or offer, promise, give, option, sell, purchase any stocks, bonds, securities or property or any dividends or profits accruing or to accrue thereon, or other thing of value whatsoever as inducement to insurance or in connection therewith, or any renewal thereof which is not specified in the policy.

The essence of the above prohibitions concern the giving or offering by the insurance producer, of any rebate or other valuable consideration to the prospective insured as an inducement to purchase insurance or any renewal of coverage.

The purpose of this Bulletin is to provide guidance and clarification to licensed insurance producers as to what kinds of services (often referred to as "value-added" services) and marketing programs may be provided to insureds or potential insureds without running afoul of the rebating and inducement provisions in the Illinois Insurance Law. The DOI recognizes that the nature of services that an insurance producer may provide in connection with sale or service of insurance continue to evolve, but even in changing conditions, certain underlying principles can guide licensees in their conduct.

As a general matter, an insurer or insurance producer may not provide or offer to provide an insured or potential insured with any special benefit or discount, including any rebate from the premium, or any service or other incentive in conjunction with the sale of insurance, that is not specified in the policy or contract for insurance. Conversely, an insurer or insurance producer may not provide “free” insurance or offer to pay part of the insurance premium for an insured or potential insured as an incentive to purchase goods, services or even other insurance. The purpose of Illinois’ rebating and inducement provisions is to require insurers and producers to market insurance in a nondiscriminatory manner to like insureds and potential insureds, and to foster competition by leveling the playing field for the small and large insurers and producers that operate in this State.

Value Added Services

Acceptable

An insurer or insurance producer may provide a service not specified in the insurance policy or contract to an insured or potential insured without violating the anti-rebating and inducement provisions of the Insurance Law if:

1. the service directly relates to the sale or servicing of the policy or risk reduction or provides general information about insurance; and
2. the insurer or insurance producer provides the service in a fair and nondiscriminatory manner to like insureds or potential insureds

The following services generally will fall within the scope of services that an insurance producer may lawfully provide in connection with insurance sold by the producer if provided incidental to the insurance and in a fair and nondiscriminatory manner to like insureds or potential insureds.

- Risk assessments, market analysis, benefit analytics, including identifying sources of risk and developing strategies for eliminating or limiting those risks;
- Insurance-related regulatory and legislative compliance,
- Tax preparation on behalf of an employer of Schedule A of the Internal Revenue Service Form 5500 Annual Return/Report of Employee Benefit Plan, which requests information regarding insurance contract coverage, fees and commissions, investment and annuity contracts, and welfare benefit contracts;
- Information to group policy or contract holders and members under group insurance policies currently in place, as well as forms needed for plan administration, enrollment in a plan, ongoing enrollment management, employee benefit and compensation statements, insurer website links, and answers to frequently asked questions related to the insurance (including, for example, access through a website created by the insurance producer, to an employee benefit portal that contains such information);
- Certain services provided pursuant to the federal Consolidated Omnibus Budget Reconciliation Act (COBRA), such as billing former employees, collecting the insurance premiums, and forwarding the aggregate premiums to the employer policy or contract holder or to the insurer when offered in connection with the provision of accident and health insurance; and
- Certain services provided in accordance with the federal Health Insurance Portability and Accountability Act and the federal Patient Protection and Affordable Care Act, such as those pertaining to health care access, portability, and renewability, when offered in connection with the provision of accident and health insurance.
- Wellness Services and Programs
- Loss Control/Safety/Claims

Prohibited

However, because they are too attenuated to the provision of insurance, or would otherwise violate the law because the services are not specified in the policy, the following services, if provided by an insurance producer to an insured or prospective insured for “free” or at a reduced fee, or otherwise offered in conjunction with insurance services, could, in the Department’s estimation, run afoul of the rebating and inducement provisions set forth in the Insurance Law. Thus, the following services are prohibited:

- Flexible spending administration services;
- Paid Legal services;
- Payroll services, such as providing employers with check creation and distribution services for their employees;
- Referrals to non-insurance related third-party service providers through which an insured or prospective insured may receive a discounted rate while the producer is the producer of record;
- Advice regarding compliance with federal and state laws concerning human resource issues not relating to the insurance provided;
- Management of employee benefit programs, such as retirement programs and time-off/leave of absence programs, other than the insurance sold by the producer;
- Development of employee handbooks and training, which are unrelated to the insurance purchased; and
- Services related to employee compensation, discipline, job descriptions, leaves of absence, organizational development, business policies and practices, staffing and recruiting that are unrelated to the insurance purchased.

Promotional Items, Raffles, Charitable Donations

Acceptable

- The Department recognizes that a producer, agency, or carrier will have relationships with existing clients. It is often customary to engage these clients in social settings and activities that may include meals, sporting events, or other non-insurance related activities. These types of activities are allowed.
- The Department recognizes that producers and carriers advertise and market their service and products in a variety of methods. Gifts of minimal value such as pens, pencils, calendars, atlases, or golf balls are often provided to the general public. Marketing of a brand or logo on merchandise that is provided to the general public is generally acceptable. In addition, the sponsorship of events whether charitable or not is not considered a rebate. Educational seminars open to the general public where food may or may not be served are not considered rebates as long as no actual selling of a product or service takes place at the event.
- Contests or raffles in which a consumer receives a free chance to win a prize are acceptable as long as they are open to the public and there is no obligation for the consumer to purchase or renew insurance to enter, win, or claim the prize. This would also include an offer of a gift card to quote a consumer’s insurance where there is no obligation to purchase such insurance.
- Insurance producers may donate earned commissions to charities as long as clients or prospective clients have no influence over which charity receives the donation, the donation is not in the client’s name, and no client or prospective client becomes eligible for a tax benefit from the donation.

Referral Fees

Under 215 ILCS 5/500-80 a licensed producer may share commissions with another licensed producer for selling, soliciting, or negotiating insurance. In the event only one of the producers has the proper qualification, a commission or referral fee can still be shared as long as the non-qualified producer did not sell, solicit, or negotiate the insurance being sold. In addition, a producer may pay a referral fee to a non-licensed person as long as that person does not sell, solicit, or negotiate insurance as defined by 215 ILCS 5/500-10, or perform any other duty that would require a license as defined by 215 ILCS 5/500-30. If a producer chooses to pay a referral fee to a non-licensed person, the payment may not be conditioned on the purchase of insurance nor may the purchase or insurance be a factor in determining the amount of the referral fee.

The Department further recognizes that issues will come to our attention that are not addressed in this Bulletin. The Department reserves the right to evaluate any given circumstance independently to determine whether the offer of something of value would constitute an inducement or rebate.