CARLTON FIELDS

NAIC Task Force Gives Insurers a Holiday Rebating Gift

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Just in time for the holidays, the Innovation and Technology Task Force (Innovation TF) and the NAIC Executive (EX) Committee adopted revisions to Section 4(H) of the NAIC Unfair Trade Practices Act (Model 880). The long-awaited revisions to the rebating section of Model 880 come on the heels of lengthy discussions between regulators on how to protect consumers while fostering innovation in the insurance industry by allowing insurers and producers to provide consumers with value-added products and services that are not specified in the policy. In an effort to rein in the wide-spread variations among states' rebating restrictions, the Innovation TF decided to amend Model 880 instead of just providing guidance.Insurers or producers whose wish list includes offering value-added products or services should note the following six compliance implications of the revisions to Section 4(H):

1. **Permissible Benefits for Value-Added Products or Services**
   Insurers or producers who intend to gift a value-added product or service to a consumer must ensure the product or service (a) relates to the insurance coverage and (b) is primarily designed to satisfy one or more of the following goals:

   - Provide loss mitigation or control, post-loss services, or education about liability risks or about risk of loss to persons or property;
   - Reduce claim costs or claim settlement costs;
   - Monitor or assess risk, identify sources of risk, or develop strategies for eliminating or reducing risk;
   - Enhance health;
   - Enhance financial wellness through items such as education or financial planning services;
   - Incent behavioral changes to improve the health or reduce the risk of death or disability of a policy owner or insured; or
   - Assist in the administration of employee or retiree benefit insurance coverage.

   Commissioner Elizabeth Kelleher Dwyer explained that "primarily designed" means that the insurer or producer has a good-faith belief that the value-added product or service is related to the insurance and satisfies one of the enumerated goals, and the insurer or producer should be able to demonstrate its basis for such belief.

2. **Availability of Pilot Programs**
   The Innovation TF gave the insurance industry a present by permitting insurers or producers, on a pilot basis, to provide value-added products or services before having sufficient evidence that they satisfy any of the goals summarized above. However, the following conditions apply:

   - The insurer or producer must have a good-faith belief that the product or service relates to the insurance coverage and satisfies one of the above enumerated goals.
   - The product or service must be offered for no more than one year and in a manner that is not unfairly discriminatory.
   - The insurer must notify the applicable state insurance department about the pilot program and may launch the program after 21 days if the department does not object.

   Insurers and producers interested in establishing a pilot program should engage with the applicable state insurance departments as early as possible, as requirements will vary by state.

3. **Scope of Offers**
   If a value-added product or service is not offered to all insureds, it must be offered (a) based on documented objective criteria and (b) in a manner that is not unfairly discriminatory.

   The Innovation TF acknowledged that such "objective criteria" may include an analysis of the risk characteristics of a potential client. Additionally, insurers and producers must document and maintain records of any such objective criteria on which they rely.

4. **Impermissible Terminology**
   In response to a comment from New York, the Innovation TF added a subsection prohibiting insurers and producers from inducing the purchase of another policy by providing insurance. Insurers and producers also may not "use the words 'free,' 'no-cost' or words of similar import, in an advertisement."

5. **Limits on the Value of the Value-Added Products or Services**
   Under the revised Section 4(H), "the cost to the insurer or producer offering the product or service must be reasonable in comparison to the client's premium or insurance coverage for the policy class." Insurers and producers should look to the applicable state for its interpretation of the reasonable limit.

6. **Use of Third-Party Vendors**
   The Innovation TF made clear that insurers and producers offering value-added products and services through a third party are ultimately responsible for the actions of the third party. Insurers and producers, therefore, should establish policies and procedures to monitor the activities of any such third parties. Additionally, the customer must be provided contact information for assistance resolving issues with a third party's product or service.

*With assistance from Facundo Scialpi, a student at the University of Miami School of Law.

Authored By

Ann Young Black

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