

Round and Round – Will 2020 Bring the End to Inconsistent Anti-Rebating Prohibitions?

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Ann Young Black



Jamie Bigayer

Since mid-2018, the NAIC's Innovation and Technology (EX) Task Force (Innovation TF) has been considering how state anti-rebating laws impede insurers and producers' ability to offer innovative products and services to insureds. Innovation TF members sought to develop guidance or bulletins that would permit insurers and producers to provide "value-added" products and services. During 2019, the Innovation TF worked on language for a template bulletin as a potential alternative to revising the NAIC's model Unfair Trade Practices Act (Model #880).

The Innovation TF initially worked on draft guidance that would allow for value-added products and services to be offered to consumers. However, as the Innovation TF went round and round in the drafting process, it discovered that the interpretation and implementation of Model 880 was inconsistent among the several states. Adding to the complexity, while the Innovation TF worked on the draft bulletin, Alabama, Arizona, Connecticut, Florida, Massachusetts, Missouri, New Hampshire, New York, North Dakota, Ohio, Pennsylvania, South Carolina, Washington, and West Virginia have either proposed or adopted new legislation, rules, or bulletins addressing their states' anti-rebating prohibition.

While most of the new or proposed provisions would permit products or services that "mitigate," "minimize," or "assess" the insured "risk" or "loss," some states provided for additional products or services such as "education" or "servicing." In addition, some states imposed additional requirements. For example, Alabama also requires that the insurer be able to discontinue the service at any time. West Virginia requires the product or services to be "clearly identified and included in the policy."

As a result of the variations, the Innovation TF agreed at the NAIC's Fall National Meeting to abandon work on a template bulletin. Rather, to obtain more consistency across the states, the Innovation TF decided to draft Model 880 language to allow for providing value-added products and services. In 2020, a small drafting group will review draft language submitted by the American Property Casualty Insurance Association and comments and presentations received during 2019 and work on language for Model 880.

To increase the likelihood of uniformity among the states, the drafting group would also need to consider the Rebate Reform Model Act developed by the Financial Services and Multi-Lines Issues Committee of the National Council of Insurance Legislators. Hopefully, the Innovation TF will be able to develop revisions to Model 880 during 2020 that will be quickly adopted by the states to end inconsistent anti-rebating prohibitions.