

Time to Flush Certain Restrictions on Rebates?

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Ann Young Black



Jamie Bigayer

The NAIC and states are reviewing whether to flush those provisions of state anti-rebating laws that inhibit innovation in the insurance industry. The NAIC Unfair Trade Practices Act (#880) prohibits offering any premium rebate, special favor, valuable consideration, or anything of value not specified in the policy or annuity. The discussion circles around allowing insurers and producers to provide benefits in the form of products, services, or programs that prevent or mitigate risk while at the same time protecting consumers and the financial solvency of insurers. The NAIC and states' activities are summarized below.

North Dakota

North Dakota drafted the following proposed four-part test, with each part answered in the affirmative, in order for an insurer or producer to offer risk prevention, mitigation benefits, or value-added services for free, at a discount, or at market value:

1. Does the provision of the value-added service, taken as a whole, protect the solvency of the applicable insurers and protect consumers?
2. Does the provision of the value-added service, taken as a whole, protect consumers against unfair discrimination?
3. Is the value-added service, taken as a whole, related to the insurance coverage being provided?
4. Does the service mitigate loss or provide loss control that aligns with the risks of the policy, or assess risk, identify sources of risk, or develop strategies for eliminating or reducing those risks?

North Dakota's draft guidance requires that a description of the value-added services be filed within 30 days after its first use for review by the commissioner. "The description must briefly describe what the service is; who the service is offered to; when the service will be offered; and how the service will reduce risk." It also clarifies that no other form or rate filing would be needed.

The Innovation and Technology Task Force circulated North Dakota's proposed guidance as a starting point for a draft NAIC guideline or for revising the Unfair Trade Practices Act language to eliminate the current rebating restrictions.

Ohio

Similar to the North Dakota draft guidance, under Bulletin 2019-04, Ohio does not consider a value-added service provided for "rate reduction, loss control, and/or loss mitigation" an improper rebate when the product or service is not specified in the insurance policy if the product or service is:

1. Directly related to the type of insurance offered or purchased;
2. Intended to mitigate risks or reduce rates or claims to the benefit of policyholders; and
3. Offered or provided in a fair and nondiscriminatory manner to like policyholders.

Alabama

While Alabama enumerated more requirements, Regulation 482-1-163 adopts similar criteria for an insurer or producer to provide a value-added service or product as follows:

- a. The service or product is intended to
 1. mitigate loss or provide loss control; or
 2. assess risk, identify sources of risk, or develop strategies for eliminating or reducing those risks; or

3. has a nexus to or enhances the value of the insurance product.
- b. The service or product may be offered or provided to a policy/contract owner or insured/annuitant for free or at a discounted price.
- c. The service or product is incidental to the sale or servicing of an insurance policy or annuity contract.
- d. The service or product is offered or made available in a fair and nondiscriminatory manner.
- e. Providing the service or product will not violate any statute, regulation, or order beyond those mentioned in this chapter [of the regulations].
- f. If the insurer has directly contracted with the policy/contract owner or insured/annuitant for the service or product, the policy/contract owner or insured/annuitant may discontinue the value-added service or product at any time.

Proposed Legislation

Several states have proposed legislation that would wash the existing rebating restrictions down the drain, including:

- **Arizona**

Arizona Senate Bill 1008 proposes to allow “an insurer [to offer or provide] products or services that are ancillary or related to any insurance coverage and that are intended to minimize or prevent claims or claims-related expenses or harm to the public, including fire or smoke detectors, risk audits or assessments and products or services to deter property theft or damage.”

- **Massachusetts**

Massachusetts Senate Bill 1031 proposes to exclude from improper rebates “any advice or services provided ... related to risk assessment, risk management tools, claims assistance, claims reduction, administrative services, or advice or services designed to reduce risk, claims or claims expenses.”

- **New Hampshire**

New Hampshire House Bill 338 proposes to allow:

A value added service, activity, or product offered or provided without a fee, or at a reduced fee, if the provision of such value added service, activity, or product does not violate any other applicable statute or rule, and is:

1. Available to all insureds on an objective and fair basis; and
2. Directly related to the firm’s servicing of the insurance policy, annuity contract, or brokerage agreement, or offered or undertaken to provide risk control for the benefit of the client.

- **New York**

New York Senate Bill 3524 and Assembly Bill 6684 would allow services that are offered “in a non-discriminatory manner to all similarly situated insureds or potential insureds, whether or not such services are specified in such policy or contract, ... unless the superintendent determines, after a notice and hearing, that the offer and sale of such services constituted the sole reason for the purchase of ... insurance ... and that, but for ... such service, the purchase of [insurance] would not have taken place.”

As more states and the NAIC allow providing value-added products or services for loss control, loss mitigation, and rate reduction, it appears the existing restrictions are circling the drain.