

NAIC Task Force Tackles Patchwork of Anti-Rebating State Laws and Adopts Revisions to NAIC Model Law

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Rebating is where an insurer or insurance agent gives something of value as an inducement to purchase insurance that is not included in the policy itself, such as when a prospective insurance customer receives a refund of part of the commission from an insurance sale. State anti-rebating laws were intended to prohibit such rebates in an effort to protect consumers against discriminatory insurance sales practices, and to avoid enticing customers into coverage that is not appropriate; but over the years, state anti-rebating laws have also impeded new technologies and innovation in the insurance industry. For example, while technological advances have led to a wide range of new risk mitigation products such as home sensors and biometric wearables, offering an insurance customer one of these products could be considered a prohibited rebate under some state laws if the product was not specifically included in the terms of a policy. By prohibiting the offering of risk mitigation products like home sensors that clearly benefit consumers, state anti-rebating laws can hurt the very consumers they intend to protect.

Over the years, some states have sought to address this issue by revising their anti-rebating laws or issuing guidance to permit such product offerings, even if the product was not specifically included in the terms of a policy. For example, in July 2019, Ohio issued Bulletin 2019-04 to clarify that the insurance department does not interpret its anti-rebating laws to prohibit value-added products or services if certain criteria, such as risk mitigation, are met. ¹ West Virginia issued similar guidance in September 2019. ² While state anti-rebating reform efforts have been welcomed by the industry, it has also resulted in a patchwork of laws across the states that have been difficult to follow.

In an effort to resolve this inconsistency among the states and prompt more states to reform their anti-rebating laws, the National Association of Insurance Commissioners' ("NAIC") Innovation and Technology Task Force began a multi-year effort in 2019 to amend the anti-rebating provisions of the NAIC's Model Unfair Trade Practices Act ("Model Law"). After extensive input from industry participants and consumer protection groups, the Task Force adopted revisions to the anti-rebating provisions of the Model Law in December 2020.

The revised Model Law permits insurers and insurance producers to offer customers certain value-added products and services if the product or service (1) relates to the insurance coverage; (2) is designed to provide loss mitigation, reduce claim settlement costs, enhance health or educate the consumer about liability risks; and (3) is offered in a nondiscriminatory manner.

In response to the growing number of insurers and insurance agents seeking to implement new marketing and customer loyalty programs, the NAIC also revised the Model Law to permit an insurer or producer to offer non-cash gifts, items, or services, including to, or charitable donations on behalf of, a customer, in connection with the marketing, sale, purchase or retention of insurance contracts. The offering of such gifts or services is now permissible under the Model Law if the cost is deemed to be reasonable by a state insurance commissioner, the offer is made in a nondiscriminatory manner, and the customer is not required to purchase or renew an insurance policy in exchange for the gift, item, or service.

Widespread state adoption of the NAIC's amendments to the Model Law will help create uniform state anti-rebating laws that benefit industry and consumers.

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