STATE OF MISSOURI

DEPARTMENT OF INSURANCE, FINANCIAL
INSTITUTIONS AND PROFESSIONAL REGISTRATION

P.O. Box 690, Jefferson City, Mo. 65102-0690

INSURANCE BULLETIN 10-01

Agencies providing wellness programs to clients
Issued Jan. 27, 2010

To: All licensed insurers, all licensed producers, agencies, and third-party administrators, all trade associations, and the public.

From: John M. Huff, Director

Re: Health insurance and producer provided wellness programs – rebating

The Missouri Department of Insurance, Financial Institutions and Professional Registration (DIFP) recently received questions regarding whether insurance producers may offer wellness programs, including, but not limited to, the use of health clubs or exercise equipment, providing personal trainers and other personnel trained to provide wellness services and counseling, etc. without additional charge. The offer is made by producers and agencies to an employer group if the group purchases its health insurance plan from the producer or agency, the producer or agency will include a personalized wellness plan to the group free of charge. The program is offered in addition to the benefits included in the written policy. The group pays only for the health insurance plan. The producer or agency covers the cost of the wellness program out of the commission it receives for selling the insurance coverage.

The DIFP recognizes that worksite wellness program provide benefits for both the employer and employees. They not only reduce demand for medical services, helping companies reduce their health-care costs, they also provide intrinsic economic benefits such as reducing absenteeism and on-the-job injuries, as well as workers' compensation and disability-management costs. Providing these programs assist employees in adopting and maintaining healthy lifestyles, which, in addition to boosting worker morale, lead to increased productivity.

This bulletin provides the DIFP's position as it relates to the applicability of the Unfair Trade Practices Act (§§375.930 – 375.948, RSMo), specifically the provision in §375.936(9), RSMo, relating to rebates, and reminds producers and other regulated entities of their responsibility to comply with Missouri law.

Missouri law prohibits an insurance company, insurance producer or agency generally from providing inducements to the sale that are not provided for in the insurance contract. Because the additional wellness programs offered by the producers and agencies are not provided for in the insurance contract being sold to the employer groups, they constitute valuable consideration and an unlawful inducement or rebate in violation of the Unfair Trade Practices Act (Act), regardless of whether they are provided directly or indirectly by the regulated entities.

Section 375.936(9), RSMo, defines a "rebate" as

> "knowingly permitting or offering to make or making any contract of … accident and health insurance or other insurance, or agreement as to such contract other than as plainly expressed in the insurance contract issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract; or … or anything of value whatsoever not specified in the contract."

If the Director determines or believes that an insurer, which under §375.932(3), RSMo, includes individual producers, "has engaged, is engaging in, or has taken a substantial step toward engaging in an act, practice, or course of business constituting a violation" of the Act, the director may take administrative or civil enforcement action "for relief authorized under" either §374.046 or §374.048, RSMo. §375.942, RSMo. Each practice in violation of the Act is deemed a level two violation under §374.049, RSMo. *Id.* The Director can also take action under §375.940, RSMo, by filing a statement of charges against the "person or insurer" believed to have engaged in "any unfair method of competition," act or practice violating the Act.

Because the wellness programs offered by the producers or agencies are not provided in the insurance contract, they would constitute valuable consideration and an unlawful inducement or rebate, in violation of the prohibitions set out in §375.936(9), RSMo. For essentially the same reasons, an insurance producer or agency hiring an outside third party to provide the wellness services on a no-additional-fee basis that the insurance producer or agency may not directly or personally provide, also would constitute a prohibited practice.

The Department, therefore, cautions against any direct or indirect provisions by an insurance company, producer or agency of such services or programs at no additional charge to the customer, to avoid violating §375.936(9), RSMo and the prohibition against unlawful inducements and rebates. Unless the wellness program being offered by the producer or agency is included in the premium rates and specified in the insurance contract being sold, it runs the risk of violating Missouri law.

Chapters 374 and 375 are available in their entirety at:
http://www.moga.mo.gov/STATUTES/C374.HTM and
http://www.moga.mo.gov/STATUTES/C375.HTM.
Applicable statutes: **Sections 374.046 -374.049, 375.932, 375.934, 375.936, 376.940, and 375.942, RSMo.**

If you have any questions regarding this communication, please contact DIFP at http://insurance.mo.gov/help/comments.htm or call toll-free at 800-726-7390.

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