



DEPARTMENT OF INSURANCE, FINANCIAL
INSTITUTIONS AND PROFESSIONAL REGISTRATION

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

INSURANCE BULLETIN 10-07

Rebating, value-added services, charitable contributions, consumer gifts
Issued Nov. 5, 2010

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

From: John M. Huff, Director

Re: Rebating, value-added services, charitable contributions and consumer gifts

Rescinded and Inoperative

Earlier this year, the Missouri Department of Insurance, Financial Institutions and Professional Registration (DIFP) issued [Bulletin 10-01](#) to provide guidance to individual insurance producers (producers) and business entity insurance producers (agencies) regarding the provision of wellness programs under the anti-rebating statutes. Since the release of that bulletin, the DIFP has received many additional inquiries about compliance with the anti-rebating statutes. The DIFP recognizes that the nature of services that an insurance producer may provide in connection with the sale or service of insurance continues to evolve and recognizes the importance of value-added services that producers and agencies provide. This bulletin is being issued in an effort to provide further guidance to producers and agencies concerning the application of the anti-rebating statutes to producers or agencies providing value-added services, making charitable contributions, or providing gifts to consumers.

Rebating

While separate statutes prohibiting rebating exist for life and health insurance (§376.500) and property and casualty insurance (§379.356), the general statute regarding rebating for all lines of insurance is found in §375.936(9) of Missouri's version of the NAIC Model *Unfair Trade Practices Act*. Paragraph (a) of subdivision (9) defines what constitutes a "rebate." Since the paragraph is very long and complicated, it may be helpful to break it into its three primary clauses in order to better understand the meaning. Under §375.936(9)(a), a "rebate" is:

1. knowingly permitting or offering to make or making any contract of life insurance, life annuity, 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
2. 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
3. giving, or selling, or purchasing or offering or to give, sell, or purchase as inducement to such insurance contract or annuity or in connection therewith,
 - any stocks, bonds or other securities of any insurance company or other corporation, association, or partnership, or
 - any dividends or profits accrued thereon, or
 - anything of value whatsoever not specified in the contract.

For the purposes of this bulletin, the criteria set forth in the above statutory provisions might be best summarized by answering the following two questions:

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1. Is the item being provided to an insured or prospective insured outside the provisions of the insurance contract?
2. Is the item being provided to an insured or prospective insured intended to induce the purchase of an insurance contract?

If the answer to **both** of these questions is “yes,” the item being provided is likely a rebate.

Value-added services

Following the release of Bulletin 10-01 regarding wellness programs, the DIFP received numerous questions as to what types of value-added services may be provided by producers and agencies. The discussion of value-added services in this bulletin is not intended to supersede Bulletin 10-01, but is to be considered a supplement to that bulletin.

The following non-exclusive list of services, if appropriate in scope, are directly related to the insurance product being sold, intended to reduce claims, and provided in a fair and nondiscriminatory way, would generally not be prohibited by Missouri’s rebating statutes:

- Risk assessments, including identifying sources of risk and developing strategies for eliminating or limiting those risks
- Insurance consulting services such as examining, appraising, reviewing or evaluating the insurance provided
- Claim filing assistance, including the preparation of claim forms
- Certain services related to HIPAA, such as assistance in obtaining a certificate of creditable coverage from a prior carrier for an insured or applicant
- Certain services performed pursuant to COBRA such as billing former employees, collecting insurance premiums and forwarding the aggregate premiums to the employer policy or contract holder or to the insurer when offered in connection with the provision of accident and health insurance to all clients
- Insurance-related regulatory and legislative updates
- Providing information to group policy or contract holders and members under group insurance policies currently in place, as well as the forms needed for group insurance plan administration, enrollment in a group insurance plan, insurer Web links (including, for example, access through a website created by the insurance producer to an employee benefit portal that contains such information) and answers to frequently asked questions relating to insurance.

The following non-exhaustive list of services, if provided for free or at a reduced cost and not specified in the insurance contract being sold, could be viewed by the DIFP as violations of Missouri's anti-rebating statutes:

- Services related to employee compensation, discipline, job descriptions, leaves of absence, organizational development, business policies and practices, safety, staffing and recruiting that are used as an inducement to the purchase of insurance and are unrelated to risk management.
- Risk management or loss control services (1) that are not routinely available to all agency clients or (2) that exceed the insurance-related risk evaluation and underwriting of an account or (3) that are frequently provided on a fee for service basis
- Payroll services, such as providing employers with check creation and distribution services for their employees
- Referrals to third-party service providers through which an insured or prospective insured may receive a discounted rate contingent upon the purchase or renewal of insurance
- COBRA administration that goes beyond billing and collecting the insurance premiums for former employees that are to be forwarded to the contract holder or insurer
- Establishment and administration of employer-sponsored cafeteria plans, flexible spending accounts, and health reimbursement accounts
- General tax preparation or accounting services
- Legal services.

Please be advised that the preceding lists are not exclusive and are instead intended for illustrative purposes. Complaints regarding inducements and rebates are extremely fact-sensitive, and the DIFP will consider each situation on a case-by-case basis.

Charitable contributions

Insurance producers or agencies may contribute to charities, as long as such contribution is not made as an inducement to the purchase of insurance. The DIFP will investigate any questions or complaints that arise concerning charitable contributions on a case-by-case basis. Some of the factors that the DIFP will review in determining the acceptability of a charitable contribution are:

- The timing of the contribution
- The amount of contribution
- The producer/agency's history of giving
- The relationship between the producer/agency and the contribution recipient.

Consumer gifts

Gifts to a consumer of any value are prohibited if the gift is an inducement to, or conditioned upon, the purchase or renewal of an insurance policy. If it is unrelated to the purchase of insurance, a small item with a low fair market value may generally be given. Again, the DIFP will consider each complaint regarding gifts on a case-by-case basis.

Chapters 374, 375, 376 and 379 are available in their entirety at:

<http://www.moga.mo.gov/STATUTES/C374.HTM>,

<http://www.moga.mo.gov/STATUTES/C375.HTM>,

<http://www.moga.mo.gov/STATUTES/C376.HTM>, and

<http://www.moga.mo.gov/STATUTES/C379.HTM>.

Applicable statutes: Sections 374.046 -374.049, 375.932, 375.934, 375.936, 376.940, 375.942, 376.500, and 379.356, RSMo.

If you have any questions regarding this bulletin, please [contact DIFP](#) or call toll free at 800-726-7390.