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Understanding Concepts of Rebates, Gifts, and Inducements

White Paper

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Chances are, if you're selling insurance, you've thought about what you might offer prospects and clients to engage with you, stay with you, or buy your products. The rules for what can be given, at what point in the process they can be given, and at what point something becomes prohibited vary from state to state. Those specific details are covered in our [50-state survey](#). (Access to samples provided at the end of this white paper.)

Here, we provide you with an understanding of rebates, gifts, and inducements including dos and don'ts, a process to evaluate ideas, and real life case studies and disciplinary actions.

Before we dig into the details, let's define what is considered a rebate, gift, or inducement. Sometimes those terms seem to be used interchangeably. So, are they the same? For this answer we must turn to state unfair trade practices laws. Most states have a statement included in their law that says something like:

Issuing, delivering, or permitting agents, officers, or employees to issue or deliver company or capital stock, benefit certificates, shares in any common law corporation, securities, or any special or advisory board contracts or other contracts that promises returns and profits as an inducement is an unfair trade practice.

Paying, allowing, giving, or offering any of the following, if not specified in the contract, is an unfair method of competition and an unfair or deceptive act: rebates of premiums payable on the policy; special favors or advantages in the dividends or other benefits; any valuable consideration or inducement not specified in the policy; giving, selling, purchasing or offering, as an inducement, any stocks, bonds or other securities, any dividends or profits accrued, or anything of value not specified in the policy.

These are sections 4.F. Stock Operations and Advisory Board Contracts and 880-4.H. Rebates(1) from the [NAIC Model 880 Unfair Trade Practices 880](#), respectively. Most states have either adopted the model or have something similar in place.

Most states prohibit rebates and have made many inducements illegal. That is paying, allowing, giving, or offering something that is not specified in the contract as a way to induce the purchase of an insurance contract. When something is considered a rebate or inducement varies from state to state. Some states provide additional guidance about what the statutory language means, but not all states do. For many, the law is the only guidance.

There are two states that are the big exceptions to the rule when it comes to rebating. Florida and California. These two states do not prohibit rebating, although there are differences between them.

Florida

In Florida rebates are not illegal *as long as they are available to a broad class of client*. This is generally interpreted to mean that if something is offered to one, it has to be offered to all. Additionally, “anything of value in exchange for personal financial information or a one-on-one meeting where this type of information is secured for purposes of proposing an insurance product or service” is not rebating, “it is another form of an illegal inducement.” (SOURCE) Florida makes a distinction between rebates and illegal inducements. Advertising gifts are also separated. In order to be considered an “advertising gift” the value of the individual gift cannot exceed \$25. Further, these gifts must be “articles of merchandise” to be considered in the category of advertising. (SOURCE) Therefore gift cards, cash, or cash equivalents are not permissible, because they are not “articles of merchandise.” The regulatory idea appears to be that an “advertising gift” is not an inducement to someone to provide detailed financial and other personal financial information or to buy a policy.

California

In California rebating is not prohibited. California also does not have the same restrictions that we just discussed for Florida. Rebating can occur in California. However, in order to engage in rebating, insurance carriers must allow it. We don’t know of any that do, in either Florida or California. This is important because even if the law allows these practices, an agent, agency, or intermediary that doesn’t follow a company’s policies is a problem for a carrier. If a carrier prohibits a practice, and then accepts business that utilizes the prohibited practice, it indicates a lack of control and oversight of their field, which is a risk to the carrier.

There are some innovative programs under discussion and in the early stages of implementation that may test some of these long-standing rules and norms of the industry. This is likely to result in re-thinking some of these old standards. If a new idea for a program lands on your desk, here are some analytical tools that may be helpful to you as you grapple to determine whether such a program fits within the regulatory framework. The biggest challenge is the lack of specific guidance in many states.

5 Preliminary Key Gifting and Rebating Considerations

Are you looking to determine if a specific sales program may be considered a prohibited form of rebating? We recommend that you use the answers to these questions as a starting place to guide your research and decision-making.

1. Is something of value being given, paid for, allowed, or offered that is not stated in the contract?
2. Would receiving this item, meal, offer, etc. be something that is likely to encourage a prospect to make a purchase of insurance?
3. Is the program designed to acknowledge or reward existing customers?
4. Is this item unrelated to the insurance they may buy?
5. Does the promotion include a raffle, lottery, or other game of chance?¹

If “yes” to any of the above, it could well be considered an inducement or rebate. However, as indicated in the beginning, some states provide for some leeway around when, what type, and how much value for offers can be made. Therefore, we need to dig deeper to determine if something is allowable or not.

The following section of dos and don'ts can help take the initial analysis a bit deeper.

DOs and DON'Ts

In general, when it comes to offering something of value to anyone that is not specifically stated in the contract, here are some guidelines for making your decisions based on state rebating laws.

- **DON'T** offer cash or cash equivalents. In some states, even fairly small gift cards are not allowed. The closer the thing of value is to cash the more likely it will be considered improper.
- **DO** review the specific guidance provided by states. Some allow specific items and have already determined that items are allowed. Often these are permitted because they have

¹ Gambling and lottery activities are generally not covered by insurance laws. Each state has rules and requirements for these specific types of activities, in addition to their own definitions of what constitutes as lottery and gambling. This white paper is not designed to advise on the legality of gambling and lotteries, and we encourage to obtain qualified legal advice for administering any lottery or game of chance.

a nexus to the insurance and/or they are considered to be marketing rather than rebating. Branded items are more likely to be permitted than non-branded items because they are more likely to be considered advertising and less likely to be considered an inducement to take any action. If it is not clear, use the process below to help evaluate the potential risk.

- **DON'T** make the offer conditional on the purchase of insurance. This goes to the heart of a rebate. If someone has to buy insurance in order to receive the thing of value it is more likely to be considered a rebate and an inducement to purchase the policy - it is the only way to get the "giveaway."
- **DO** separate the offer from any insurance sales process. This is the place where the line may be gray. Some states do allow incentivizing consumers to request a quote, but there are often restrictions around what the incentives can be. This can also be difficult for carriers to address because it often happens downstream in the distribution process. However, that does not mean that carriers will not be held responsible for what happens in individual programs that agents, BGAs, or IMOs offer.
- **DON'T** allow the offer to only a specific group. The more broad in scope the program is the less likely it will be considered an inducement for an identified group to purchase insurance. In addition, if a program is limited to a specific group, there is the potential for unlawful discrimination to occur. A full discussion of unlawful discrimination is beyond the scope of this paper, but conceptually, that is also a concern with some incentive programs.
- **DO** make the offer available to all. This is, of course, easy to say. But what does it mean to make it available to "all?" We recommend looking at your program to carefully review whether it is generally available. What does someone have to do in order to be eligible? If eligibility is based on some action taken by the individual, the analysis falls under the first four bullets above. If eligibility is based on some characteristic of the individual, these last two bullets are the problem. For example, if tickets to a sporting event are only being offered to a group of prospects with high net worth, it would appear that the insurance entity is looking to gain their business more than those with a lower net worth and it increases the risk of the offering crossing the line into being an illegal inducement.

We strongly recommend that you further explore individual state laws to understand what the limits are and what types of items and amounts are permissible. For a national program, it may be important to determine the most restrictive state and then decide whether to gear the program to meet those standards, thereby covering what would be allowed in some other states. Alternatively, the decision could be to look more broadly at the applicable standards and then put some state-specific restrictions on the program.

In terms of monetary value limits and what is or is not allowed, each state varies. Some provide additional guidance via bulletins and other communications, while others do not. When looking at a program, this is an easy way to limit risk. The less monetary value an item has the more likely it will be considered de minimis. In some states, if the item is not cash or a cash equivalent, it can have more value and, perhaps even more value if it is considered advertising. Would the program work if a branded item is given away rather than an unbranded item? If so, that may be a major factor to define a program that can work in a large number of states. We also recommend that your analysis be recorded and available to provide to a regulator. Being able to document that you have thought through these issues, analyzed the applicable state laws, and defined a program carefully is likely to help in any future market conduct or other disciplinary action. Forming a thoughtful plan will demonstrate that the laws are being taken seriously. We highly recommend documenting exactly how your offer does not influence the purchase of insurance.

Let's touch base on one area that can often lead to confusion around the question of "nexus" to insurance - "value added services." These are generally additional services offered by an agent/agency that are "add-ons" to the business core services (insurance). Typically, these are things like:

- 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 or other insurance-related advice,
- insurance-related regulatory and legislative updates, and
- claims form preparation, but excluding claims adjustment.

In short, these services must typically be incidental (note that these are quite a distance from cash or cash equivalents) and yet closely related to the administration of an insured's policy. In looking at whether services may fall within this exemption, the more they are offered free or at a reduced cost the more likely they will be considered a rebate. Similarly, those that are not incidental to the insurance contract are also more likely to be viewed as rebating. This proximity is a key point to analyze when evaluating potential offers and services - the further away from the policy, the more likely it is to be viewed as an illegal rebate or inducement.

Hypothetical Case Studies

Let's walk through a couple of examples to see how specific state rules can apply.

Case Study #1: Go Paperless Offer - Arizona

Insurer uses a third party to push out a survey to current clients requesting feedback on their customer experience. For participating, they'll reward clients with a \$100 gift card.

Does this constitute rebating or is it an illegal inducement?

In this case, no. Why?

AZ ST §20-452 "...does not prohibit an insurer from retaining an independent third party to conduct a customer feedback effort intended to help improve the quality of its products or services and to offer an insured...individual a reasonable incentive (not to exceed \$200). The incentive or feedback effort cannot be in connection with the application for or renewal of insurance coverage."

However, what if the survey *only* goes to those customers whose contracts are coming up for renewal? For example, a short term medical insurance policy. That would make the program much more likely to be viewed as a prohibited inducement.

Case Study #2: Request a Quote - Alabama

An agency runs a program that offers a \$20 Starbucks gift card to anyone who requests a quote.

Does this constitute as rebating or an illegal inducement?

In this case, yes. Why?

Per AL ADC 482-1-088-.04 "A free gift, benefit, etc. is defined as a gift, benefit, etc., to invite an inquiry or quote from the insurance buying public. It is not an inducement or invitation to enter into an insurance contract. While the \$15 valuation has been established, if necessary, a "reasonableness" test will be used to determine whether the value of the gift actually acts as an inducement to enter into an insurance contract regardless of the semantics used in the advertisement."

At \$20, the gift card is over the \$15 limit. Note that even if the gift card is within the \$15 valuation, the Alabama regulators reserve the right to determine that an offer can still be a prohibited inducement if it is determined that the offer actually does act as an inducement to enter an insurance contract. The regulation goes on to say in paragraph .05: "The value of the gift, benefit, etc. cannot exceed \$15 per family and cannot be cash. No rebate can be used as part of a gift." This gives us additional information that the offer must be limited to a family and it cannot be cash.

Disciplinary Actions

Here are a few examples of where rebates and inducements resulted in action from state regulators.

[December 2016 - Washington](#): Have you heard of Zenefits? They have faced several fines from a number of states in 2016 and 2017 for using unlicensed agents, among other things. As part of their business model, they give away free HR software to customers who purchase insurance from them. However, Washington ordered Zenefits to cease and desist as they viewed this as an illegal rebate. Zenefits agreed to charge Washington businesses \$5 per user (although they continue to offer it for free in other states.) We believe this amount was likely based upon a determination of the market value of the software. ([SOURCE](#))

[October 2014 - Florida](#): Remember how Florida is one of the exceptions to the rebating rule? Despite the fact that there are ways to rebate legally in Florida, it is [uncommon for it to be done correctly](#). Here an agency was fined \$1500 for offering illegal inducements as well as using misleading advertising. Unfortunately, Florida did not tell us what the inducements and misleading advertising was in this particular case so we can't make that part of our general analysis. Additionally, the agency was placed on a one-year probation, during which time if the Department had "good cause" to believe the agency was violating the conditions imposed, the agency's license could be suspended or revoked.

[June 2013 - North Dakota](#): An agent was fined \$57,500 and given a one-year conditional license in which no other violations could occur, after it was determined the value of several customer appreciation dinners and paying for a trip to a Minnesota Vikings game over 2010-2011 was in violation of the state's rebating laws. In fact, the Department was so meticulous in their investigation that it calculated the amount that the agent went over the state limit to the exact cent, per person. The agent had spent \$97.86 per person, which they determined is \$47.68 above the \$50 per insurance client limit. Ultimately, this resulted in 21 separate rebating violations for one of the events. There was another dinner event included in the order, which also was calculated in detail to determine the violations. All together, there were 575 separate rebating violations.

As an example of regulatory thinking outside the context of disciplinary actions, the state of Virginia periodically publishes a list of "[Common Problems Found During Agent Investigations](#)." You know what issue frequently makes this list? You guessed it...rebating! The Virginia document states, "Agents will commonly hand out small items to their clients such as mugs, calendars, and other related items." Such items are generally considered advertising "as long as the receipt of the item is not contingent upon the purchase of insurance, there is no violation."

Quick Note on Referral Programs

Referrals are separate from rebates and inducements, although you may be considering a program that incentivizes those who make referrals, as well as those who they refer. When it comes to paying referral fees, one similarity to rebates and inducements is that the payment cannot be conditioned upon a prospect making a purchase. Some states may also have additional requirements such as a one-time only requirement.

Sample: 50-State Survey

Below you'll find a link to a couple of samples of the information and resources included in our 50-State Survey. For more information about how to purchase the full document, [click here](#).

[Click here to access the samples.](#)

Conclusion

Rebating and gifting is getting more complicated every day and there are firms and carriers that are pushing long-held views of what it means to offer a rebate or unlawful inducement. That is making many of us re-visit our understanding of these rules and how we have historically applied them. While this is true, regulatory guidance is not changing. As is often the case, regulators are far behind the innovation in the market place, which puts tremendous pressure on compliance professionals to determine what they can get comfortable with based on what we do know about regulatory attitudes.

Some states like Alabama view cash or gift cards that act as cash equivalents (like a Visa gift card) to be prohibited, but will allow for it to be a gift card to a specific entity, subject to any of their other limits - like Alabama's \$15 limit. Other states don't allow any gift cards - they require it to be a "token gift" or "article of merchandise" like calendars, t-shirts, notebooks, etc. that are meant as an advertisement. More commonly, states don't provide that level of guidance so it's all the more important to fully evaluate any offer that you're considering making and really be able to speak to why you determine that a program is or is not acting as an inducement to enter an insurance contract.