Paul R. LePage
GOVERNOR

STATE OF MAINE
DEPARTMENT OF PROFESSIONAL
AND FINANCIAL REGULATION
BUREAU OF INSURANCE
34 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0034

Eric A. Cioppa
SUPERINTENDENT

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Rebates – Guidance for Producers

The general rule under Maine's rebating[1] laws is that no person may offer a discount or other inducement to a purchaser or prospective purchaser of insurance unless it is specified in the policy or the insurer's filings.[2] However, a producer may offer gifts valued up to $20 per year per policy or quote in connection with the marketing of insurance, and conduct raffles or drawings with prizes valued at no more than $100, so long as there is no participation costs to entrants. The incentives may not be in the form of cash or cash equivalent.[3]

A number of insurance producers have raised questions about the operation of this prohibition and its exceptions, in practice. Some of these questions raise novel issues, as competitive pressures and technological advances have led producers to explore new ways to distinguish themselves in the marketplace. The purpose of this Bulletin is to provide guidance regarding these issues in order to assist insurance professionals in their efforts to remain legally compliant.

Gift cards and similar inducements

Gift card incentives are increasingly being seen, especially in the area of personal insurance. Merchant gift cards, gift certificates, and "gas cards" have gained popularity as a versatile and flexible type of marketing incentive. They are obviously easy to value in terms of the $20 limitation. The issue they implicate is whether they are impermissible "cash equivalents."

A card that is accepted only by a specified merchant will not be viewed as a cash equivalent, and therefore may be used as a customer incentive as long as it is within the $20 limitation. However, a card that is widely accepted by merchants in a manner similar to a credit card, such

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[1] The subject of this Bulletin is compliance with laws prohibiting improper sales inducements. It does not relate in any way to the health insurance premium rebates that are required by state and federal law when insurers fail to meet minimum medical loss ratio standards.

[2] The rebate provision concerning life and health insurance is found in the Maine Insurance Code at 24-A M.R.S.A. § 2160. The corresponding provision for property and casualty insurance is located at 24-A M.R.S.A. § 2162. The provisions are not identical, but set forth the same basic principles for purposes of this Bulletin.

[3] 24-A M.R.S.A. § 2163-A.

as a prepaid debit card, will be considered a cash equivalent and may not be used as an incentive under the rebate laws, regardless of its value.

As examples, a $15.00 gas card accepted at only one brand of service station, or a $20.00 gift card accepted at a particular department store, coffee shop or grocery store chain, would not be considered cash equivalents and would therefore be allowed. On the other hand, a $10.00 prepaid MasterCard or VISA would be considered a cash equivalent and not allowed even though its value is below $20.00.

"Value-added" services

Another question that often arises, especially in the commercial context, such as group employee health insurance benefits, is how to distinguish when a producer is striving to compete by offering superior customer service, and when a producer is engaging in rebating by offering some additional product or service for free as an inducement to buy insurance. Producers, insurers, and insurance agencies have more means at their disposal than ever before to increase their level of customer service. As a result, the Bureau has received a number of inquiries from producers wishing to provide enhanced services to their commercial insurance clients.

Certain factors will be particularly relevant for evaluating whether a producer is providing genuine enhancements in the level of service, or providing inducements that violate the rebate laws. Enhancements to the efficiency or effectiveness of the insurance services provided by the producer are not likely to be considered a rebate. Enhancements to the customer's own business are more likely rebates. In particular, services that the customer would normally pay for separately would be considered a rebate if the producer purchased them or provided them to the customer.

While it is not possible to list all possible variations, the following examples illustrate a range of acceptable situations that would not be considered rebates:

- Risk management assistance provided by the producer.
- Technological enhancements such as computer programs that aid in the efficient administration of the insurance program provided through the producer.
- System improvements, which could include software provided to employers, that make information about group benefits provided through the producer more accessible to employers and employees in a timelier and more easily accessible fashion.
- Upgraded computer software that allows an insurance agency's staff to offer customers an improved level of service.
- Generally, enhancements that operate to make the producer's own services and office operations more efficient and convenient for the insured.

The following examples, on the other hand, would be considered rebates:

- Software provided to employers for administering a broad range of employee matters in addition to insurance, such as payroll, unemployment, and Social Security withholding.

- Services paid for or directly provided by the producer for various matters, such as COBRA or HIPAA administration, which the employer would otherwise pay to procure from a third party.

- Generally, enhancements that operate to make the customer's own operations more efficient.

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Eric A. Cioppa
Superintendent of Insurance

NOTE: This Bulletin is intended solely for informational purposes. It is not intended to set forth legal rights, duties, or privileges, nor is it intended to provide legal advice. Readers should consult applicable statutes and rules and contact the Bureau of Insurance if additional information is needed.