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Bulletin 426
Rebates – Guidance for Producers
(Replaces Bulletin 384)

This Bulletin replaces Bulletin 384 and provides additional guidance for producers regarding what activities may be conducted under Maine's amended rebating statutes.

The purpose of Maine's anti-rebating laws is to protect both insurance consumers and the insurance industry. A consumer's choice to purchase insurance should not be influenced by inducements that could result in an unsuitable policy choice, and insurance must be provided in a nondiscriminatory manner to like insureds or potential insureds. Anti-rebating statutes are designed to protect insurer solvency and prevent predatory pricing, both of which can hurt market participants and consumers.

The general rule under Maine's rebating¹ 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 A determination whether a given arrangement violates Maine's rebating statutes is fact-specific and will depend upon the circumstances of the interaction between the parties. Some of the factors that the Bureau will evaluate in determining whether an arrangement violates the general prohibition on rebating will be the timing of the alleged inducement, the prior relationship between the parties, the type of benefit, and the recipient of the benefit. Section 2163-A of the Insurance Code establishes the permitted statutory exceptions to the general prohibition on rebating. Recent changes to this section have expanded the statutory exceptions by increasing the dollar thresholds and addressing the circumstances under which value-added services may be provided for free or at a reduced fee. These changes will go into effect on November 1, 2017.³ The purpose of this Bulletin is to give insurance professionals an overview of the statutory changes and provide guidance regarding how these new exceptions are interpreted by the Bureau.

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. § 2160. The corresponding provision for property and casualty insurance is located at 24-A M.R.S. § 2162. The provisions are not identical, but set forth the same basic principles for purposes of this Bulletin.

³ See P.L. 2017, ch. 84 (L.D. 1161).



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Gifts and Prizes

As of November 1, 2017, a producer may offer gifts valued up to \$100 per year per person in connection with the marketing of insurance, and conduct raffles or drawings with prizes valued at no more than \$500⁴, so long as there is no participation costs to entrants. These gifts may not be in the form of cash; however, cash equivalents (*e.g.*, pre-paid MasterCard or VISA gift card) are no longer prohibited. For group coverage, the \$100 limit applies on a per-applicant-or-policyholder basis; *i.e.*, \$100 per group, not \$100 per covered life.

“Value-added” services

Maine’s recent statutory changes clarify that in certain circumstances, value-added services may be provided to a customer or potential customer, for free or at a reduced fee, without violating the general prohibition on rebating. Those services or discounts that can be valued at \$100 or less per policy per year are clearly acceptable under 24-A M.R.S. § 2163-A(1). If the services are worth more than \$100, the limitation will depend upon whether the value-added service is offered selectively or to all existing customers or potential customers.

If services valued in excess of \$100 are offered to specific customers, the services must be either included within the insurance policy or “directly related to the firm’s servicing of the insurance contract or offered or undertaken to provide risk control for the benefit of a client.”⁵

In evaluating whether a value-added service is directly related to the servicing of the insurance contract, licensees should look at the type of insurance involved and the nature of the services to be offered. The Bureau appreciates that the marketplace has become more complicated, especially for employers in the group health insurance market, and producers want to be able to use their expertise to provide customer assistance in a number of new areas.

The following examples are not intended as a complete list of acceptable services, but are offered to illustrate the range of services that would **generally** not be considered prohibited rebates:

- Risk management assistance provided by the producer;
- Regulatory and/or legislative updates;
- Enhancements that operate to make the producer’s own services and office operations more efficient and convenient for the insured;
- System improvements, which could include software provided to employers, which make information about group benefits provided through the producer more accessible to employers and employees;
- Services provided for COBRA or HIPAA administration for group health insurance customers;
- Administration of employer-sponsored Section 125 plans, flexible spending accounts (FSAs), and health reimbursement accounts (HRAs) for group health insurance customers.

⁴ The dollar limits for gifts and raffles were formerly \$20 and \$100, respectively.

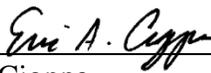
⁵ 24-A M.R.S. § 2163-A(2).

Producers and insurers should be cautious of providing services for free or at reduced cost for enhancements that provide significant value to the customer but have a relatively limited connection to the customer's insurance program. This is an important factor in determining whether the service has been offered primarily as a gift or inducement.

For example, the connection between the insurance coverage and the provision of assistance with payroll or human resource management is likely to be too attenuated to qualify for the "value-added" exemption. Additionally, services that are purchased by the producer from a third party (as opposed to being provided "in house") may be too far removed from the underlying insurance relationship.

Producers and insurers may offer value-added services for free or at a discount without regard to the underlying insurance relationship only when the receipt of services is not contingent upon the purchase of insurance and when the services are offered on the same terms to all potential insurance customers.⁶

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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.

⁶ 24-A M.R.S. § 2163-A(3).