REBATES UNDER NEW HAMPSHIRE INSURANCE LAW
July 24, 2010

Rebates

Rebates are “side deals” that are not included within the terms of the insurance policy and therefore are not guaranteed or available to all policyholders.

Rebates can result in unfair market advantage for those insurers or insurance producers that can afford to, or are willing to offer the most generous or desirable rebates. In addition, there is the potential for market instability as rebates may result in consumers shopping for new coverage midterm or upon renewal in order to benefit from bigger and better rebate offers.

Anti-rebating Law

Anti-rebating laws protect consumers and provide market stability by prohibiting insurers and producers from directly or indirectly offering inducements to purchase insurance to some but not all policyholders.

RSA 402:39 is New Hampshire’s anti-rebating law. In addition to prohibiting the reduction of premiums, RSA 402:39 prohibits an insurance company or producer from giving or promising anything of value as an inducement to purchase insurance except as provided for in the policy contract. Knowingly giving (directly or indirectly) a rebate as an inducement to purchase insurance is also an unfair trade practice in violation of RSA 417:4, IX (a).

Exceptions to Anti-Rebating Law

There are some limited exceptions to New Hampshire’s anti-rebating law. RSA 402:41 lists those exceptions. Of special interest to producers are the following three exemptions.

1. Value Added Services, Activities and Items

RSA 402:41 exempts “value added” services, activities or products that are offered or provided without a fee or at a reduced, fee, from the anti-rebating prohibition. These services, activities or products must be related to the coverage provided by the insurance policy. In addition, the services, activities or products must be either:

1. Clearly identified and included in the insurance policy or brokerage agreement <u>or</u>
2. Directly related to the producer’s servicing of the insurance policy or brokerage agreement, <u>or</u>
3. Offered or undertaken to provide risk control for the benefit of the insured.

Examples of value added services include, but are not limited to, risk assessments, risk control tools, claims assistance, legislative updates or administration consulting.

The Department is preparing FAQs to address frequently asked questions about rebates and the exceptions to the anti-rebating law and will post these FAQs shortly.

2. Promotional Items

Promotional items are a form of advertising, which is by definition an attempt to influence consumers to purchase insurance. Because RSA 402:39 prohibits producers and insurers from giving anything of value to induce a consumer to purchase insurance, giving promotional items could be considered unlawful rebating under RSA 402:39. Generally promotional items like calendars, gift cards, thank-you gifts and the like will not fall under the "value added service" exemptions of RSA 402:41.

However, a 2010 amendment to RSA 402:41 now specifically permits a producer or insurer to give promotional items in the marketing of insurance products. This new exemption to the anti-rebating law is found at RSA 402:41,I(e). **In order to fall within this statutory exemption, the item must be a tangible item or gift card (not cash) with a fair market value of $25.00 and the total value of promotional items per consumer, per year cannot exceed $25.00**. Items with a fair market value of <u>more</u> than $25 are not permitted. A promotional item meeting the exemption can be given prior to sale or after the sale of a policy.

3. Raffles or Drawings

Another new exception to the anti-rebating law is found at RSA 402:41,I(f). This exception permits insurers and producers to conduct raffles and drawings in the marketing or promotion of insurance products. In order to fall under the provisions of RSA 402:41,I(f), the producer or insurer conducting the raffle or drawing must comply with <u>three</u> requirements:

1. The total prize value for all raffles or drawings in any given 12-month period (not calendar year) must not exceed **$1,000**;

2. There must be no cost to participants to enter the raffle; AND

3. The raffle or drawing must be open to all consumers – including those who are not policyholders. The consumer cannot be required to purchase a policy in order to be eligible to enter the raffle or receive a raffle prize.

The Department is preparing FAQs to address frequently asked questions about rebates and the exceptions to the anti-rebating law and will post these FAQs shortly.