

NAIC UPDATES MODEL ACT TO EXPAND REBATE EXCEPTIONS

There has been much discussion on the topic of rebating in the past few years. So much so, that the NAIC commenced a group of regulators and industry members to review the current section of the Unfair Trade Practices Model Act dealing with rebates. And, in early December, 2020 the NAIC Executive Committee adopted a new amendment to the model language which allows for certain types of “rebates” to be offered to consumers.

Where We Are Today

Insurtechs, traditional insurance companies, producers and others stepped up to request that the anti-rebating laws be dusted off, and the amendment to the Unfair Trade Practices Model Act does just that.

While there is some similarity across state laws regarding anti-rebating language today, interpretations vary significantly due to insurance department bulletins, state laws dealing with anti-rebating exceptions, and case law. California does not have an anti-rebating law.

From a high-level view, rebating exceptions fall into five categories:

1. Promotional items
2. Raffles
3. Referrals
4. Charity donations, and
5. Value-added services.

The most state variation appears in the “*promotional items*” category where the statutory threshold ranges from \$10 to \$200. Many states have raised the value amount in recent years.

“*Value-added Services*” cover many of the emerging technologies used for risk management and identification, such as water sensors given to homeowners for early detection of water damage. Another example is a class or a device given to a member to improve their health. Some states have provided a guideline to help in determining whether value-added services constitute a rebate. Most of the time, this guideline requires that the add-on be spelled out in the policy, be directly related to sales, service or risk reduction, and be offered in a nondiscriminatory manner to all customers.

“*Raffles, referrals and charity donations*” have not received as much recent attention from regulators.

Many states apply the anti-rebating law to all lines of insurance even though the NAIC Model Act applies to Life, Annuity and Health insurance.

Rebates are Changing

The new amendment is to the [NAIC's Unfair Trade Practices Act, Model 880](#). This [marked up copy](#) shows the specific changes made. Of course, each state will determine what non-rebate language in the model applies in their state.

Here are highlights of the amendment:

- **Value-added Products or Services:**

- Can be offered at no or reduced cost if they relate to insurance coverage, and:
 - Provide loss mitigation or loss control
 - Reduce claim costs
 - Provide education about liability risk or risk of loss to persons or property
 - Monitor or assess risk, identify sources of risk, or develop strategies to eliminate or reduce risk
 - Enhance health
 - Enhance financial wellness through education or financial planning services
 - Provide post-loss services
 - Incent behavioral changes to improve health or reduce the risk of death or disability
 - Assist in the administration of employee or retiree benefit insurance coverage.
- The cost to the insurer or producer must be reasonable in relation to the customer's premium.

- **Promotional Items, Value-added Services and Charitable Donations:**

- Insurers and producers can offer or give:
 - non-cash gifts, items, services, including meals or charitable donations on behalf of a customer,
 - in connection with the marketing, sale, purchase, or retention of insurance contracts so long as the cost does not exceed an amount determined to be reasonable by the commissioner per policy year.
- The cost of the gift or services cannot be included in any amounts charged to another person or entity.

- **Raffles:**

- Insurers and producers can conduct raffles or drawings if:
 - there is no financial cost to entrants to participate
 - the drawing or raffle does not obligate participants to purchase insurance or renew a policy
 - the prizes are not valued more than a reasonable amount determined by the commissioner, and
 - the drawing or raffle is open to the public.

- **Alternative Option:**

- The amendment allows states to choose a maximum amount or use what the drafters suggest which is “the lesser of 5% of the current or projected policyholder premium or \$250” for Promotional Items, Value-added Services, Raffles, Referrals and Charity Donations.”

Next Steps

The amendment is intended to be responsive to the emergence of Insurtech and other innovative insurance business models. Let’s hope the amendment will be adopted by individual states quickly and encourage state uniformity on the issue of rebates.

[First Consulting](#) has the expertise to assist you in determining anti-rebate laws in each state so you can easily manage the changes to come. Contact us today to learn more on how we can help with your rebating, advertising or filing needs.



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Kathy has over 30 years of insurance compliance experience in product development, filings, legal research, advertising review, and compliance monitoring of state and federal laws. She has worked with all types of life and health products, including individual and group.