NORTH DAKOTA ANTI-REBATING GUIDELINE

COMMENTS

American Council of Life Insurers (ACLI)
Alabama Insurance Department
American Property Casualty Insurance Association (APCIA)
Center for Economic Justice
Chubb
Council of Insurance Agents and Brokers (CIAB)
Iowa Insurance Division
Maryland Insurance Administration
Missouri Department of Commerce
New York Life
Risk Management Society (RMS)
Washington Office of the Insurance Commissioner
Wisconsin Office of Commissioner of Insurance
August 28, 2019

Commissioner Jon Godfread, North Dakota Insurance Commissioner
Chair, Innovation and Technology (EX) Task Force
National Association of Insurance Commissioners
444 N. Capitol Street, NW, Suite 700
Washington, DC 20001

Via email to Denise Matthews at dmatthews@naic.org

Re: Consideration of NAIC Model Anti- Rebating Model North Dakota Guidance

Dear Commissioner Godfread,

On behalf of the American Council of Life Insurers (ACLI)1 and its member companies, thank you for the opportunity to comment on the work of the NAIC Innovation and Technology (EX) Task Force as well as the draft North Dakota Guidance on Rebating that was exposed at the recent NAIC National Meeting in New York. Anti-rebating is an important issue for ACLI, which our members approach from several vantage points. First, life insurance companies interact directly with individual consumers, in the course of which products and services may be provided or offered. Second, in the group context, a life insurance company may offer goods and services to the group policyholder, in addition to or apart from offerings that flow to the individuals covered by that group policy. Finally, life insurance companies have an interest in the rules that govern and limits placed on our valued producer community, as they can affect a company’s activities.

ACLI’s Policy and Views on Anti-Rebating

ACLI has long-supported the NAIC Model Unfair Trade Practices Act (Model Law #880), including Section 4(H) governing anti-rebating. ACLI continues to support prohibitions against rebating and inducements that protect consumers and maintain a level playing field among providers of insurance products and services. An individual’s decision to purchase insurance or obtain information about insurance products and services should be based on the value of the inherent benefits that are part of that insurance policy, and nothing more. We want consumers to purchase our products because they provide the protection and financial security wanted by the consumer, and not because of any other reason.

However, the ACLI agrees the anti-rebating language contained in the NAIC Model Law is dated, and we strongly support the effort to modernize state laws to allow for innovation that benefits consumers. We

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1 The American Council of Life Insurers (ACLI) advocates on behalf of 280 member companies dedicated to providing products and services that promote consumers’ financial and retirement security. 90 million American families depend on our members for life insurance, annuities, retirement plans, long-term care insurance, disability income insurance, and international forums for public policy that supports the industry marketplace and the families that rely on life insurers’ products for peace of mind. ACLI members represent 95 percent of industry assets in the United States. Learn more at www.acli.com.
also hope that reviewing and possibly updating the Model Law will be an opportunity to reach greater consensus and uniformity on what the anti-rebating rules should be and how they should be applied.

We also want to explicitly acknowledge the legitimate interest of regulators in understanding the kinds of value added services being offered in the marketplace. Insurers have an obligation to be transparent and responsive to requests for information. Regulators’ watchfulness can ensure that modernized anti-rebating laws foster innovation while continuing to protect consumers.

As has been discussed before the Task Force, while every jurisdiction has similar statutory language governing anti-rebating, the interpretation and implementation of these laws varies greatly by jurisdiction. This has been a persistent issue for both companies and producers that we hope this exercise will meaningfully address. Below are some of the key points that we believe should be incorporated into the discussion around modernizing anti-rebating laws:

- The historical rationale supporting anti-rebating provisions remains valid and consumers should base their insurance purchasing decisions solely on the coverages provided.
- As technology advances, anti-rebating laws should be written and applied in a manner that allows for a robust insurance market to exist.
- Anti-rebating laws should be interpreted and implemented in a reasonable manner that allows insurers and producers to meet consumer expectations and needs.
- Providing meals and other items associated with social activities should be permissible as long as they are of a reasonable value (perhaps subject to a specific monetary threshold).
- Promotional items and merchandise of reasonable value should also be permissible, as should the opportunity for prize drawings.
- Consumers can and do benefit from value added services that are aligned with the underlying coverage and these should not be prohibited.
- Offerings that have a nexus to or enhance the value of the insurance product being purchased should be allowable.
- Value added services that pertain to loss mitigation and loss prevention are important and should be allowed. But life insurers provide other important goods and services that are not directly related to loss mitigation and prevention, and these should also be allowable.
- Filing or other written disclosures of value added services related to the policy should not be required.
- Insurers should have the option to provide goods and services unrelated to the policy so long as they are disclosed in the contract.

_North Dakota Draft Guidance on Rebating_

ACLJ appreciates the Draft Guidance as a vehicle to promote discussion of value added services and their relation to anti-rebating statutes. We support the allowance of value added services that reasonably align to insurance policies and the benefits and risks of those policies. However, we believe loss mitigation and loss control services are but one subset of the types of value added services that companies should be able to provide for the benefit of their consumers. In fact, life insurers may provide a number of additional value added services that are equally valuable to policyholders and that should
not be prohibited. Accordingly, we strongly recommend amending the guidance so that allowable value added services are not limited to those that “mitigate loss or provide loss control;” or that there be an evaluation of “how the service will reduce risk.” Instead, we suggest amending the guidance so that permissible “value added services” will more broadly include products and services provided by an insurer that reasonably align with policies, policy benefits, and/or policy risks, provided such products and services are provided in a non-discriminatory manner and are not offered as an inducement for the purchase of the policy. We would point to the language in the first part of our letter for inclusion:

Offerings that have a nexus to or enhance the value of the insurance product being purchased should be available.

Thank you again for the opportunity to comment and for your leadership of the Innovation and Technology Task Force. ACLI supports protecting consumers through appropriate inducement prohibitions, while also creating an environment where consumers can benefit from innovation through insurer offerings. We look forward to being active participants as the important issues surrounding anti-rebating and value added services are discussed before the Task Force. Please let us know if we can provide any additional information to assist the Task Force with this project.

Sincerely,

[Signature]

David M. Leifer
Of course, I am very much on board with what North Dakota is doing with this Bulletin, and I would compare it to a Regulation that Alabama implemented effective 9/1/19.

With Alabama’s Regulation and North Dakota’s Bulletin, the same technology and innovations are being addressed in that a value-added service or product is allowed if it mitigates loss or provides loss control. With Alabama, North Dakota and other states taking this step forward, new innovative ideas and products will be available to our consumers and have a significant impact on preventing or mitigating risk. The intent here is to open and encourage the market to bring innovative, value-added services and products to our states.

With that being said, the only area that I feel inhibits the process in North Dakota is having to notify the Commissioner and then it being reviewed by the parameters stated in the Bulletin. Information requests back and forth could delay the product or service being offered for a lengthy amount of time. In Alabama, our intent was to avoid the time and tech advancement hurdles that could present themselves. However, I do understand that parameters have to be established. All of the parameters listed should be a part of the description or service offered up front.

If you need anything else from us, just let me know.
September 6, 2019

The Honorable Jon Godfread
Commissioner, North Dakota Department of Insurance
Chair, NAIC Innovation and Technology (EX) Task Force
National Association of Insurance Commissioners
NAIC Central Office
1100 Walnut Street, Suite 1500 Kansas City, MO
64106-2197

Attn: Denise Matthews, Director - Data Coordination and Statistical Analysis

VIA Electronic Mail: dmatthews@naic.org

RE: ITTF – ND draft guideline in relation to anti-rebating issues

Dear Commissioner:

The American Property Casualty Insurance Association (APCIA)\(^1\) appreciates the opportunity to provide comment on the effort of the National Association of Insurance Commissioners (NAIC) Innovation and Technology (EX) Task Force to develop model regulatory guidance for insurers that choose to offer value-added services for loss control, loss mitigation, and rate reduction to policyholders.

The APCIA is committed to working collaboratively with the Task Force in support of innovation and the effort to leverage the advancements in technology to effectively respond to the changing risks and needs of our insureds; to enhance the engagement of the policyholder; and, to improve the insurer-consumer experience.

The APCIA is strictly focused on the issue of insurers’ ability to offer products or services in conjunction with a policy of insurance that are related to risk mitigation, loss control or otherwise educates or informs the insured about their risks. To that end, we believe to best serve consumers and the market a clarification should be pursued through legislation or rulemaking that provides uniformity and consistency. But where such a solution is not readily attainable, APCIA supports clarification through uniform bulletins issued by the various states. Regardless of the approach, we caution against overly prescriptive requirements that could risk stifling innovation.

The APCIA appreciates the work completed by the staff of the NAIC and the North Dakota Insurance

\(^1\) Representing nearly 60 percent of the U.S. property casualty insurance market, the American Property Casualty Insurance Association (APCIA) promotes and protects the viability of private competition for the benefit of consumers and insurers. APCIA represents the broadest cross-section of home, auto, and business insurers of any national trade association. APCIA members represent all sizes, structures, and regions, protecting families, communities, and businesses in the U.S. and across the globe.
Department to develop draft regulatory guidance (bulletin) for consideration by the Task Force. The revisions made to the initially exposed bulletin clearly addresses key concerns that APCIA raised during the Task Force meeting in New York. An edited version is attached to this letter that provides some additional edits, comment and question for the Task Force’s consideration.

Specifically, the APCIA encourages further discussion on the provision to require the insurance company to file or notify the department of any and every offer of a value-added product or service, potentially even when the company is simply beta-testing a product with its policyholders. The suggested edits consider that the primary impetus behind the attention raised to this matter is the emergence of commercially available IoT (“internet of things”) products that can be tailored to insurance consumers. Accordingly, the paragraph is re-worded so that it does not scope in long-standing loss control services or even a product like a fall protection harness. An amendment is further offered for consideration that rather than establishing a new reporting requirement, the company be directed to record and document the offering of an IoT Device that could be made available to the commissioner (department) upon request.

The APCIA supports the effort of the Task Force to address these new innovations and the need to clarify that the offer of a value-added product or service is not a gift as inducement to purchase insurance; not a rebate or to represent a rebate of premium or commission; nor, any other impermissible consideration as those terms may be used in the state insurance laws and regulation or applicable unfair trades practices laws or regulations.

Thank you for the opportunity to provide comment. The APCIA looks forward to the continued effort to foster a straightforward path that can be achieved in prompt order to the benefit of our consumers.

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Respectfully Submitted,

David Kodama, Jr.
Assistant Vice President, Research & Policy Analysis
Technological innovations along with innovative products and services are having a significant impact on the insurance industry to the benefit of policyholders and insurers. Consumers are demanding that insurers provide innovative products, services or programs that prevent loss or mitigate risk, which will be referred to as value-added service henceforth. In turn, questions have been raised whether providing these types of benefits are considered rebates or inducements in North Dakota. This bulletin sets forth the Department’s general position for insurers that choose to offer value-added services for loss control, loss mitigation, and rate reduction to policyholders. Value-added services may be offered or provided at no additional charge, or at a discounted price, and may allow for a rate reduction of the premium.

This bulletin also sets forth the Department’s expectations for those value-added products or services promoted as IoT devices.

Value-Added Services

North Dakota law generally prohibits the offering or providing anything of value not specified in the policy of insurance as an inducement to purchase insurance or rebate of premium, and therefore a prohibited practice in the business of insurance. See N.D.C.C. §§ 26.1-04-03 (8) and 26.1-25-16.

It is the Department’s position, however, that an insurer, by or through its employees, affiliates, insurance producers or third-parties, may offer or provide value-added services in conjunction with a policy of insurance for free, at a discount, or at market value that are intended to educate about, assess, monitor, control or otherwise mitigate risk of loss to persons or property, and such offer or provision of products or services are not prohibited by N.D.C.C. §§ 26.1-04-03 (8) and 26.1-25-16 and are not required to be included in the form or rate filings.

[OPTIONAL] IoT Devices

With respect to value-added products or services promoted as Internet of Things devices (“IoT Devices”), every authorized insurer that provides IoT Devices in this state for free or at a discount in conjunction with a policy of insurance from that insurer shall record a description of the IoT Device offered in this state and maintain documentation for review by the commissioner. The description must briefly describe what the IoT Device is; who the IoT Device is offered to; when the IoT Device will be offered; and how the value added service, taken as a whole, related to the insurance coverage being provided.

Each situation is fact specific, however, in general, when analyzing a value-added service, the Insurance Department will evaluate the service using the following parameters:

1. Does the provision of the value-added service, taken as a whole, protect foster the solvency of the applicable insurers and protect consumers?
2. Does the provision of the value-added service, taken as a whole, offered in a manner to protect consumers against unfair discrimination that is not unfairly discriminatory to consumers?
3. Is the value-added service, taken as a whole, related to the insurance coverage being provided?
4. Does the service mitigate loss or provide loss control that aligns with the risks of the policy, or educate about, assess or monitor risk, identify sources of risk, or develop strategies for eliminating or reducing those risks?

As a result, value-added services must comply with all other provisions of North Dakota law. For example, value-added services must not translate to excessive or inadequate policy rates or result in unfair discrimination and must be proportional to the premium.

Commented [dk1]: Or, replace “prevent” with “assess, monitor, control”
Commented [dk2]: Each insurance department to determine whether it is necessary to file notification of each applicable offering. Would such a filing be deemed a public record? Or, may it be treated as proprietary?
Commented [dk3]: 1 focused on “solvency”; 2 on “(un)fair discrimination”; and 3/4 on “relevance to the underlying insurance risks.” These are 3 pillar concerns underlying the anti-rebating law.
Commented [dk4]: This question can be answered via Q4. If Q4 is answered affirmatively, then Q3 is likewise.
Commented [dk5]: How would “proportionality” be determined or measured?
The Department retains its authority to request additional information regarding any value-added service as it deems necessary.

Please note that the purpose of this bulletin is to provide guidance to insurers desiring to offer or provide products or services that add value related to the insurance policy and are intended to educate about, assess, monitor, control or otherwise mitigate risk of loss to persons or property. This bulletin does not modify or expand in any way make applicable the exception permitting a $100 aggregate retail value gift, prize, promotional article, logo merchandise, meal or entertainment activity an insurance producer may provide to a person in connection with marketing, promotion, or advertising business under N.D.C.C. §§ 26.1-04-03 (8) and 26.1-25-16.
Comments for the Center for Economic Justice

To the NAIC Innovation and Technology Task Force

Proposed Loss Prevention Services / Rebating Bulletin

September 6, 2019

The Center for Economic Justice offers the following comments on the exposed draft bulletin regarding loss prevention services and rebating. Our comments are organized by redlined edits to the draft language followed by discussion and rationale for the proposed changes.

The purpose of this bulletin is to distinguish loss prevention services from a gift, prize, promotional article, logo merchandise, meal or entertainment activity an insurance producer may provide to a person in connection with marketing, promotion, or advertising business under N.D.C.C. §§ 26.1-04-03 (8) and 26.1-25-16. Technological innovations along with innovative products and services are having a significant impact on the insurance industry to the benefit of policyholders and insurers. Consumers are demanding that insurers provide innovative products, services or programs that prevent or mitigate risk, which will be referred to as value-added service henceforth. In turn, questions have been raised whether providing these types of benefits are considered rebates or inducements in North Dakota. This bulletin sets forth the Department’s general position for insurers that choose to offer value-added services, devices, information and/or incentives for loss control, loss mitigation, and rate reduction to policyholders. Loss Prevention Value-added services may be offered or provided at no additional charge or at a discounted price and may allow for a rate reduction of the premium subject to the guidance in this bulletin without violation of the anti-rebating prohibition.

CEJ Comment: The first three sentences are not needed to explain the purpose of the bulletin. Further, these three sentences include conjecture or unsubstantiated claims. The fourth sentence is part of the purpose of the bulletin, but we suggest an opening sentence that gets to the crux of the matter – a loss prevention service is not considered a rebate and not subject to the limitations that exist for gifts.

The purpose of the bulletin can be further provided by providing a title or subject for the bulletin: Loss Prevention Services and the Anti-Rebating Prohibition.
The term “value-added services” is vague and connotes a general benefit as opposed to the specific nature of the loss prevention services that are the subject of the bulletin. CEJ suggests that, instead of “valued-added services” for loss control, a better description would simply be services, devices, information and/or incentives for loss control, etc. And instead of the generic “valued-added” services, we suggest “Loss prevention services.”

Finally, the last sentence in the exposure draft, taken by itself, provides a blanket approval for “value-added services.” This is problematic because “value-added services” is generic and not limited to loss prevention and because the approval is not conditioned on anything – despite the guidance provided later in the bulletin.

North Dakota law generally prohibits offering or providing anything of value not specified in the policy of insurance as an inducement to purchase insurance or rebate of premium. See N.D.C.C. §§ 26.1-04-03 (8) and 26.1-25-16.

It is the Department’s position, however, that an insurer, by or through its employees, affiliates, or third-parties, may offer or provide loss prevention products and/or value added services in conjunction with a policy of insurance for free, at a discount, or at market value that are intended to educate about, assess, monitor, control or otherwise mitigate risk of loss to persons or property, and such offer or provision of products or services are not prohibited by N.D.C.C. §§ 26.1-04-03 (8) and 26.1-25-16 and are not required to be included in the form or rate filings.

A description of the loss prevention service should be included in the policy form or rate filing. If there is no rate effect – no premium discount or effect on overall rate levels – there is no need to include the loss prevention service in the rate filing. For policy form filings, the filing should include a Every insurer, by or through its employees, affiliates or third-parties, providing the value-added services shall provide a description of the service within thirty days after its first use in this state for review by the commissioner. The description sufficient to understand must briefly describe what the service is; who the service is offered to; the conditions or criteria for which the service will be offered, when the service will be offered; and how the service will reduce risk.

CEJ Comment: As discussed above, the term “value-added services” should be replaced with the more accurate and descriptive “loss prevention products and/or services.

It is illogical for several reasons to exclude loss prevention products and/or services from policy form and rate filings. First, the paragraph following, in the draft bulletin, requires filing of a description of the loss prevention service. It is illogical to require a separate filing for a service tied to a specific insurance policy.
Second, if the loss prevention service has a rate impact, that rate impact must be included in a rate filing. If a premium discount is offered, such discount must be included in a rate filing else the rate filing is incomplete. Even if there are no risk classification aspects – no discounts – there may still be an overall rate impact – such as lower expected costs than would otherwise occur due to the widespread use of the loss prevention service.

Third, including a description in the policy form and/or rate filing ensures that the loss prevention service will be offered in a consistent and fair manner. If the offer of loss prevention service – and this does not include general consumer information – is included in the policy form and/or rate filing, then it will be transparent to producers and consumers that such a loss prevention service exists and what the service contains.

Each loss prevention service situation is fact specific, however, in general, when analyzing a loss prevention value-added service, the Insurance Department will evaluate the service using the following criteria:

1. Is the service provided a loss prevention service? Does the service promote loss prevention for or recovery from perils covered by the insurance policy?

2. Does the provision of the loss prevention value-added service threaten, taken as a whole, protect the solvency of the applicable insurers and protect consumers?

3. Does the provision of the loss prevention value-added service, taken as a whole, ensure equal access and treatment for eligible and similarly-situated consumers? Do the procedures for offering and providing the loss prevention service protect consumers against unfair discrimination?

4. Is the loss prevention value-added service, taken as a whole, related to the insurance coverage being provided? Does the service mitigate loss or provide loss control that aligns with the risks of the policy, or assess risk, identify sources of risk, or develop strategies for eliminating or reducing those risks?

Loss prevention As a result, value-added services must comply with all other provisions of North Dakota law. For example, value-added services must not translate to excessive or inadequate policy rates or result in unfair discrimination and must be proportional to the premium.

The Department retains its authority to request additional information regarding any value-added service as it deems necessary.

CEJ Comment: As discussed above, “loss prevention service” is a better term than “value-added service.” The first sentence of this section can be shortened as shown in the redlined text above – it is clear than when the Department analyzes a loss prevention service, the Department is evaluating that service.
Point 4 seems to be a definition of loss prevention services that are the subject of the bulletin. As such, this criteria should be moved to number 1 – Is the service provided a loss prevention service? Does the service promote loss prevention for or recovery from perils covered by the insurance policy? CEJ suggests simpler, but clearer language for this criterion.

We note that point 4 again refers to the policy – “align with the risks of the policy.” Again, this criterion is consistent with filing a description of the loss prevention service as part of the policy form filing and is inconsistent with filing a description of the loss prevention service separately from the policy form filing.

Point 1 in the draft includes vague terms – “taken as a whole” and “protect consumers.” It is unclear what is meant by a loss prevention service “taken as a whole.” It is also unclear what “protect consumers” adds to protecting the solvency of insurers. CEJ suggests that consumer protection is addressed in original points 2, 3 and 4. Finally, the concern over solvency is better stated as a threat to solvency.

We suggest additional language to clarify the original point 2 regarding unfair discrimination. Again, we suggest deleting “taken as a whole” as this phrase is, at best, unclear in terms of modifying loss prevention service. If there is a specific issue the authors are trying to address with “taken as a whole,” more descriptive and targeted language is necessary.

The inclusion of original point 3 – that the loss prevention service is related to the coverage provided – as an evaluation criterion makes clear that the loss prevention service should be included in the policy form filing. If the loss prevention service is related to the coverage provided and the coverage provided is set out in the policy form, it follows that the loss prevention service description should be included in the policy form.

The regulatory review structure set out in the draft is illogical – that a description of the service must be filed and the service must meet the same statutory standards as filings for policy forms and rates, but the filing of the description is separate from the policy form and/or rate filing. At best, this makes review of the loss prevention service filing more difficult because the reviewer must review the policy form and rate filing to answer the evaluation criteria. At worst, there will be inconsistencies between the various filings with resulting violations because of different reviewers at different points in time.

Please note that the purpose of this bulletin is to provide guidance to insurers desiring to provide products or services that add loss prevention services value related to the insurance policy and are intended to educate about, assess, monitor, control or otherwise mitigate risk of loss to persons or property. The purpose of this bulletin is to distinguish a loss prevention service from a is bulletin does not modify or expand the exception permitting a $100 aggregate retail value gift, prize, promotional article, logo merchandise, meal or entertainment activity an insurance producer may provide to a person in connection with marketing, promotion, or advertising business under N.D.C.C. §§ 26.1-04-03 (8) and 26.1-25-16
CEJ Comment: We suggest language to clarify that a loss prevention service, as defined and described in the bulletin, is separate and distinguishable from marketing, promotion and advertising. The proposed language is unclear in that regard – it may be read to limit a loss prevention service to a value of $100.
September 6, 2019

Via E-mail

Ms. Denise Matthews
Innovation and Technology (EX) Task Force
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
Kansas City, MO 64106

RE: NAIC Innovation & Technology (EX) Task Force: Request for Comments on Draft North Dakota Rebating Bulletin

Dear Ms. Matthews:

Thank you for the opportunity to provide comments on the draft North Dakota rebating bulletin. Chubb is very supportive of efforts to modernize insurance regulation to foster innovation for the benefit of consumers while still protecting their interests. Uniformity across the States is a key component of these modernization efforts.

As a matter of historical context, anti-rebating laws first came into existence over 100 years ago to regulate the agent practice of inducing a customer to purchase a life insurance policy. The practice of agents sharing their commission with an insured began to threaten the solvency of life insurance companies and raised questions around unfair discriminatory practices. Today, nearly all States have passed some version of the NAIC Model Unfair Trade Practices Act, which generally prohibit insurers from offering premium rebates, special favors or other benefits as an inducement to purchase insurance.

The insurance industry is seeking to innovate in a way that benefits consumers and insurers. New loss control technologies and services (e.g., leak prevention systems, telematics, home sensors, fire prevention services, wearables and other IoT connected devices) help predict and prevent losses versus having to repair or replace after an event; this reduction of losses is a win for both consumers and insurers. In fact, anti-rebating laws were not
intended to address services and devices that are directly related to controlling losses under the policy.

Furthermore, and as the Task Force is aware, losses are a significant factor in both rate increases and cancellations of coverage. Allowing insurers to provide a discount or to provide such devices/services at a discounted rate is a win-win for insureds and insurers. For a state to allow loss mitigation devices/services but then to place dollar limitations or require that such devices/services be included within a policy filing, only stifles innovation. Accordingly, these pro-consumer services and devices should be exempt from the anti-rebating laws. Such an exemption would mean that there is no dollar limitation on the service or device and that such device or service is not required to be included in the policy.

In the spirit of seeking uniformity, and capitalizing on the anti-rebating modernization work done by other States to recognize the value of loss control and mitigation services/devices, we encourage the Task Force to review and adopt the approach recently taken by Ohio and Alabama (done by bulletin and regulation, respectively) or Arizona and Pennsylvania (done through law change) to exempt loss control and mitigation services and devices from their anti-rebating laws/regulations.

Taking the above into consideration, we offer the following specific comments to the North Dakota draft bulletin. We appreciate that the North Dakota draft no longer requires the loss control or mitigation device or service be included within the policy; however, that requirement unfortunately seems to have been replaced with other innovation-unfriendly requirements as set out below.

1. The fourth paragraph requires every insurer to provide a description of the value-added service within 30 days after its first use in the State for review by the commissioner. The next paragraph then sets forth the criteria to be used. It is unclear whether these provisions are some sort of approval process cloaked as a “review.” We understand that Departments of Insurance will want to understand the nature of the value added services being provided to consumers. However, and as set forth explicitly in the draft Bulletin, the Departments already have the authority to request additional information about these products and services. To truly foster innovation, the Bulletin should avoid additional requirements that will be interpreted and implemented differently across the states. Accordingly, we urge the Task Force to delete paragraphs four and five of the draft bulletin and to adopt the “clean” exemption approach taken by Ohio, Alabama, Arizona and Pennsylvania.

2. The sixth paragraph states that “value-added services must not translate to excessive or inadequate policy rates or result in unfair discrimination and must be proportional to the premium.” It is unclear what this italicized and underlined wording actually means or is intended to accomplish. We urge the Task Force to look at how Alabama, Arizona, Ohio and Pennsylvania have cleanly exempted loss control and mitigation devices and services.
In conclusion, loss control/mitigation devices and services are directly related to claims under a policy and were never intended to be within the scope of the anti-rebating laws. We urge the Task Force to adopt the “exemption” approach for these services and devices that the Alabama, Arizona, Ohio and Pennsylvania Departments of Insurance have taken rather than adopt a different approach that creates additional burdens on the process.

Thank you for the opportunity to provide Chubb’s comments and we look forward to continuing to work with the Task Force in modernizing the anti-rebating laws to allow for innovation and, at the same time, ensure that appropriate consumer protections are in place.

Sincerely,

Deborah Stalker  
Deputy General Counsel, Director of Global Business Support

Tracey Laws  
Sr. V. P. & General Counsel, Global Government Affairs
September 6, 2019

Via Electronic Mail – dmatthews@naic.org

Honorable Jon Godfread  
Chair, Innovation and Technology Task Force  
National Association of Insurance Commissioners  
1100 Walnut Street, Ste. 1500  
Kansas City, MO 64106-2197

RE: North Dakota Draft Rebating Guideline

Dear Chair Godfread:

The Council of Insurance Agents and Brokers (“The Council”) appreciates the National Association of Insurance Commissioners (NAIC) Innovation and Technology Task Force’s request for comment on the draft North Dakota rebating guideline. As we understand it, the Task Force intends to consider adapting this draft North Dakota document into an NAIC guideline as a first step in the process of reforming state rebating prohibitions, to be followed by amending the NAIC Unfair Trade Practices Act (UTPA) rebating provisions.

By way of background, The Council represents the largest and most successful employee benefits and property/casualty agencies and brokerage firms. Council member firms annually place more than $300 billion in commercial insurance business in the United States and abroad. Council members conduct business in some 30,000 locations and employ upwards of 350,000 people worldwide. In addition, Council members specialize in a wide range of insurance products and risk management services for business, industry, government, and the public.

Based on the discussion at the August meeting of the Task Force, The Council understands that the rationale for promulgating guidelines at this time is to provide, under the constraints of current statutory language, some standardizing framework for state insurance regulators and the insurance industry with respect to interpretation of state anti-rebating laws and rules. At your August meeting, it was clear that Task Force members view guidance as an initial step to be followed by more comprehensive reform, including amending the UTPA and state laws.
Although we have some concerns about the substance of the current draft guideline, we greatly appreciate your commitment to move quickly on this important issue and support the process the Task Force has adopted. Having said that, we see some danger that once guidelines are adopted, the Task Force and the NAIC more broadly might feel less urgency to move to step two – amending the UTPA. We believe amendment of the UTPA and state laws are essential to reform state rebating prohibitions in a meaningful way and hope that the Task Force will commit to continuing your reform efforts without delay once the guidelines are adopted.

With respect to the substance of the draft guidelines, The Council has four recommendations:

1. **The draft should be revised to apply to producers independently of insurers.** As currently drafted, the guidelines apply to insurers, only extending to producers and other persons and entities “by or through” their relationship with an insurer. Producers have their own relationships with their clients. They not only sell, solicit, and negotiate insurance, they also provide other products and services to their clients that may not be “by or through” their relationship with the insurer providing coverage. Moreover, brokers technically work for the insured, not the insurer, so the narrow draft language could be interpreted to exclude brokers altogether.

2. **The requirement that services be filed with and approved by the insurance department within 30 days after first use should be deleted.** This burdensome requirement is unnecessary and will only serve to inhibit producers from offering services that their clients want and need. Moreover, there are procedural problems with the scheme. For instance, how will the filing process work? This may be less of a concern for insurers who already file products for approval, but this would be an entirely new process for producers who are not subject to any similar requirements currently. In addition, what happens if the insurance department decides the service that is being provided is a rebate? Is the producer subject to a regulatory penalty? Must the producer go back and charge all clients that received the service some additional amount or somehow take the service back? Finally, how will this process work on a multi-state basis in terms of timing, approvals, and rolling out services for clients? Logistically, this would be very challenging for producers to provide services to their clients in a meaningful way.

3. **Language restricting permissible services to only those related to mitigating risk of loss should be removed.** We believe the requirement that the services be restricted to services “intended to educate about, assess, monitor, control or otherwise mitigate risk of loss to persons or property” is too limiting, as is the draft’s general focus on technological products and services. These limitations arguably would disqualify many services that brokers provide – or want to be able to provide – to their clients, particularly in the employee benefits space. Services in connection with COBRA administration, human resources administration, ERISA compliance, non-discrimination testing, and others do not necessarily “mitigate the risk of loss” but nonetheless are helpful to clients. Moreover, the language conflicts with statutes and guidance in other states, which require a nexus between the services and insurance provided, but do not restrict the services to risk mitigation. (See, e.g., N.H. Rev.
Stat. § 402:41(d); NY St. Ins. Dept. 2009 Circular Letter No. 9, Re: Permissible services of insurance agents and brokers; rebating and inducements.)

4. Finally, we note that the $100 limitation on gifts, prizes, etc. in connection with marketing, promotion and advertising will continue to cause compliance headaches for producers, particularly producers active in multiple states (as we noted in our oral and written testimony previously submitted to the Task Force, the states all impose differing dollar limits on such items). Moreover, such limitations, like the rebating restrictions generally, actually harm consumers by taking benefits out of their hands, while providing questionable protection, particularly in the commercial insurance space. As we noted previously, although there may be a benefit to such limitations in the individual insurance market, it is hard to believe that a sophisticated commercial policyholder will be “induced” to purchase a policy if a producer spends a few hundred dollars on sports tickets or a steak dinner. **States should not impose a dollar limit on gifts for commercial clients. If the Task Force continues to believe that dollar limits are necessary, we urge you to: (1) make the dollar limits uniform across the states; and (2) set the dollar limits at a level high enough to enable reasonable gifts and entertainment, particularly in the commercial insurance space.**

Attached is a red-lined draft of the guideline reflecting The Council’s recommendations.

Thank you for your consideration of The Council’s views. Again, we strongly support the process the Task Force is undertaking to review and reform current rebating prohibitions, and appreciate the opportunity to provide you with the perspective of the broker community as you develop these guidelines and work toward amending the UTPA.

Respectfully submitted,

John P. Fielding  
General Counsel  
The Council of Insurance Agents & Brokers  
701 Pennsylvania Avenue, NW  
Suite 750  
Washington, DC 20004-2608
ND Guideline

Technological innovations along with innovative products and services are having a significant impact on the insurance industry to the benefit of policyholders and insurers. Consumers are demanding that insurers and producers provide innovative products, services or programs that prevent or mitigate risk and help them administer their policies and benefits, which will be referred to as value-added service henceforth. In turn, questions have been raised whether providing these types of benefits are considered rebates or inducements in North Dakota. This bulletin sets forth the Department’s general position for insurers and producers that choose to offer value-added services to policyholders that relate to: loss control, loss mitigation, rate reduction, risk reduction, and general services that directly relate to the value-insurance program. Value-added services may be offered or provided at no additional charge or at a discounted price and may allow for a rate reduction of the premium.

North Dakota law generally prohibits offering or providing anything of value not specified in the policy of insurance as an inducement to purchase insurance or rebate of premium. See N.D.C.C. §§ 26.1-04-03 (8) and 26.1-25-16.

It is the Department’s position, however, that an insurer or producer, by or through its employees, affiliates, or third-parties, may offer or provide value-added services in conjunction with a policy of insurance for free, at a discount, or at market value that are intended to educate about, assess, monitor, control or otherwise mitigate risk of loss to persons or property, and such offer or provision of products or services are not prohibited by N.D.C.C. §§ 26.1-04-03 (8) and 26.1-25-16 and are not required to be included in the form or rate filings.

Every insurer, by or through its employees, affiliates or third-parties, providing the value-added services shall provide a description of the service within thirty days after its first use in this state for review by the commissioner. The description must briefly describe what the service is; who the service is offered to; when the service will be offered; and how the service will reduce risk.

Each situation is fact specific, however, in general, when analyzing a value-added service, the Insurance Department will evaluate the service using the following parameters:

1. **Does the provision of the value-added service, taken as a whole, protect the solvency of the applicable insurers and protect consumers?**

2. **Does the provision of the value-added service, taken as a whole, protect consumers against unfair discrimination?**

3. **Is the value-added service, taken as a whole, related to the insurance coverage being provided?**

4. **Does the service mitigate loss or provide loss control that aligns with the risks of the policy, or assess risk, identify sources of risk, or develop strategies for eliminating or reducing those risks?**

As a result, value-added services must comply with all other provisions of North Dakota law. For example, value-added services must not translate to excessive or inadequate policy rates or result in unfair discrimination and must be proportional to the premium.

The Department retains its authority to request additional information regarding any value-added service as it deems necessary.

Please note that the purpose of this bulletin is to provide guidance to insurers and producers desiring to provide products or services that add value related to the insurance policy and are intended to educate about, assess, monitor, control or otherwise mitigate risk of loss to persons or property. This bulletin does not modify or expand the exception permitting a $1000 aggregate retail value gift, prize, promotional article, logo merchandise, meal or entertainment activity an insurance producer may provide to a person in connection with marketing, promotion, or advertising business under N.D.C.C. §§ 26.1-04-03 (8) and 26.1-25-16.
September 6, 2019

Innovation and Technology (EX) Task Force
c/o Denise Matthews
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500 444 North Capitol Street, N.W.
Kansas City, MO 64106-2197
DMatthews@naic.org

RE: Comments to the North Dakota Rebating Guideline

Dear Ms. Matthews:

The Iowa Insurance Division submits the following written comments to the North Dakota Guideline regarding anti-rebating issues.

We observe that the provision of value added services offered for the primary good-faith purpose to prevent or mitigate risk and not offered or provided primarily for the purpose of inducing the purchase an insurance policy, does not constitute an unlawful inducement or rebate.

We recognize that a bulletin may provide additional guidance regarding the interpretation of rebating laws. Yet, the Iowa Insurance Division would not promulgate a bulletin establishing a substantive review process generally applicable to all carriers requiring them to file any document regarding the offer or provision of a value added service for review. This would require a regulation. Presently, we are not persuaded that such regulation requiring filings and reviews is necessary.

We would advise insurers to offer or provide value added services that prevent or mitigate risk of loss or claims in a fair and nondiscriminatory manner to all policyholders.

Finally, a bulletin does not alter the statutory authority of the commissioner to enforce the provisions of the Unfair Trade Practices Act or its prohibition of unlawful inducements or rebates.

Respectfully,

Douglas M. Ommen
Iowa Insurance Commissioner

CC: Jon Godfread, Chair
Comments from Maryland Insurance Administration
Contact: Robert Baron, Associate Commissioner, Property and Casualty
Email: robert.baron@maryland.gov

Thank you for providing North Dakota's Guideline with respect to value added product/service offerings and anti-rebating laws. The North Dakota guideline works well in the context of providing guidance to insurers for value-added filings in a state (like Maryland) where the current law is interpreted to mean that a value added product/service must be specified in the policy, and therefore must be filed and approved prior to use.

Many stakeholders have expressed the desire to move away from the requirement to file such programs as part of the policy on the premise that if the product/service reduces risk and/or minimizes damage; is offered to all policyholders in a non-discriminatory manner; and, has the potential to reduce loss costs and premiums, then the program is a win/win for both consumers and insurers. Insurers and producers want the ability to make these offerings in concert with the speed of technological development, unencumbered by the filing process.

Maryland is in the process of analyzing our existing laws against this backdrop in order to determine our best course of action from a public policy perspective. The ND Guideline does provide an excellent working template for our consideration as an interim step that might be used to bridge the gap in time between now and when we reach a conclusion regarding the need, if any, for a legislative change.

Thanks again to ND for sharing and we will reciprocate with the group as our own analysis progresses.
August 29, 2019

Via Email to Denise Matthews at dmatthews@naic.org

Commissioner Jon Godfread, North Dakota Insurance Commissioner  
Chair, Innovation and Technology (EX) Task Force  
National Association of Insurance Commissioners  
1100 Walnut Street, Suite 1500  
Kansas City, Missouri 64106-2197

Re: Comments on Revised North Dakota Bulletin on Rebating

Dear Commissioner and Members of the Task Force:

Thank you for sharing the revised draft North Dakota Bulletin and for soliciting comments from Task Force members and interested parties. Director Lindley-Myers from Missouri is a member of the Task Force and it is my pleasure to submit these comments on behalf of Missouri.

Similar to other states’, our Department has been challenged with how to reconcile current rebating prohibitions with wanting to encourage technological advances which benefit consumers. It has become increasingly difficult. Modernizing our state’s current rebating laws is of significant interest to the Missouri insurance industry. We want to thank the North Dakota Department for its efforts in compiling and sharing this draft to initiate the conversation on this very important topic. I look forward to participating in the ongoing discussion in terms of the development of a model law.

For Missouri, we would prefer a model law over a Bulletin, for the simple fact that under Missouri law, Bulletins are not binding and do not have the force or effect of law. As administrations change, so can interpretations and enforcement. We believe a model law, if developed and subsequently enacted in Missouri, would provide the industry operating in Missouri greater long-term regulatory certainty.

The revised Draft Bulletin contains a clarification that the products and services do not have to be incorporated within the insurance policy form. Missouri is fully supportive of this change. Our charge in Missouri is to enforce Missouri Insurance Law, but we also charged with ensuring insurers have met the terms and conditions of the policy of insurance they have sold. We have concerns about including non-insurance products within insurance policy forms and the resulting obligation to oversee the delivery or performance of such non-insurance products and services. To the extent that the products and services are related to the insurance product sold, we support those products and services being offered to Missouri consumers without being included in the policy forms.
In our review of rebating laws across the country, we identified two (2) provisions in Florida law (Section 626.572) that we thought were particularly noteworthy. The first provision states that producers cannot offer the products or services unless authorized by insurers in writing. As the insurers are ultimately responsible for the actions of producers, in addition to their desire to protect their brand and how their policies are marketed and sold, this appears to be a good provision to ensure insurers have a level of review and control over what is being offered - and perhaps more importantly, how and when such products and services may be offered.

The second provision from Florida law is a requirement that the product or service be available to all insureds purchasing insurance coverage with like terms and conditions and within the same actuarial class of insurance. To eliminate any future concerns about unfair discrimination, this provision would seem to be good consumer protection for the Task Force to consider. It seems like this requirement would still allow for the types of innovative products and services we are routinely discussing with Missouri insurers. We would also appreciate hearing Florida’s perspective on both of these provisions in terms of how they have been implemented and how they have been performing.

One additional observation or comment, particularly in terms of the development of a Model Law, is whether the Task Force should include a provision to allow an insurance commissioner to exempt additional products and services by rule or bulletin. As quickly as technology is advancing, it may be worthwhile to give Commissioners the ability to extend additional clarification administratively rather than necessitating subsequent statutory revisions. A provision like this might help future Commissioners and Departments better balance consumer protection, technology and our respective state laws.

Finally, I wanted to offer a few more general, open-ended questions for the Task Force to discuss, relating to the scope and applicability of the Bulletin/Model Law. Should we treat personal lines differently than commercial lines? Are there particular types of insurance that should not be included within this effort? Are there federal laws that would impede or pre-empt what we are contemplating? Again, I am not suggesting answers or approaches to these questions, but am suggesting that these might be good topics for the Task Force to discuss or receive information on. Missouri would be very interested in hearing other states’ perspectives on these questions.

Thank you again for this opportunity to offer comments. We look forward to working with our fellow Task Force members on this important and timely issue.

Sincerely,

Angela L. Nelson
Director, Insurance Market Regulation Division

cc: Director Chlora Lindley-Myers, Missouri Department of Commerce and Insurance
September 6, 2019

Via Electronic Delivery

Commissioner Jon Godfread
North Dakota Insurance Department
600 E. Boulevard Avenue
Bismarck, North Dakota 58505

Attention: Denise Matthews

Re: Value Added Services - Draft Bulletin

Commissioner Godfread:

We appreciate the opportunity to comment on the draft North Dakota bulletin on rebating presented to the Innovation and Technology Task Force. We agree that the bulletin’s guidance regarding ancillary “value added” benefits will help foster innovation in the insurance industry. While we support innovation that benefits our current and future policy owners, we also support the fundamental public policy that underpins anti-rebating laws. Anti-rebating laws help support insurer solvency, discourage unfair discrimination, and promote competition based on the value of insurers’ core products rather than unrelated sales inducements.

To preserve these public policy benefits, anti-rebating guidance should include four important safeguards. We were encouraged to see the majority of these safeguards in the draft North Dakota bulletin:

1. To promote solvency and ensure healthy competition, the value of ancillary benefits should be reasonable, and in any event should not be disproportionate to the premium or value of the insurance coverage.

2. The substance of ancillary benefits should bear a reasonable relationship to the underlying insurance purpose of the coverage offered by the insurance company.

3. Ancillary benefits should not be offered in a manner that is unfairly discriminatory to consumers.

4. Regulators should review proposed ancillary benefits in advance of use to ensure these safeguards are present and the interests of consumers are protected.

While we support these aspects of the draft bulletin, we also offer two suggestions:

- The bulletin requires that an ancillary benefit “mitigate loss or provide loss control” or “assess risk, identify sources of risk, or develop strategies for eliminating or reducing those
risks.” These features help ensure alignment between the ancillary benefit and the insurance coverage. However, as drafted, this restriction is too narrow. Consumers can benefit from ancillary benefits on a policy that bear a close relationship to the core benefit, but nonetheless do not satisfy this proposed requirement.

For example, a life insurer might offer will preparation services or legacy planning services that are closely related to the core insurance coverage. These benefits can be inexpensive and provide meaningful value to the consumer. They can also help the policy operate as intended. A service that encourages a life insurance policyholder to pay attention to the beneficiary designation can help protect consumers. Such a service can help promote prompt claims payments by discouraging outdated designations, or designations to minors or others who cannot receive the proceeds immediately.

- The bulletin creates a regulatory review process that occurs after ancillary benefits are offered in the state. In prior versions, the regulatory review of the ancillary benefit was tied to the review of the policy form. We understand the desire to find a way forward that addresses the uncertain and time-consuming nature of the policy form filing approval process. However, we would suggest the consideration of a middle ground, under which the benefits would still be specified in the policy, but that policy would be deemed approved after a specified period of time. This approach would appropriately balance regulatory review with innovation and regulatory certainty. In addition, we would support the development of a separate, centralized mechanism for regulatory review of these benefits either by the states or the Interstate Insurance Compact.

* * *

We are grateful for your time and attention to our comments. If you would like to discuss this letter with us, please let us know.

Sincerely,

Douglas A. Wheeler
Senior Vice President
Office of Governmental Affairs
New York Life Insurance Company
September 6, 2019

Via dmatthews@naic.org

Ms. Denise Matthews  
Director, Data Coordination and Statistical Analysis  
NAIC Innovation and Technology (EX) Task Force  
National Association of Insurance Commissioners  
1100 Walnut Street, Suite 1500  
Kansas City, MO 64106-2197

Re: NAIC Innovation and Technology (EX) Task Force’s Anti- Rebating Reform Effort: Exposure of North Dakota Guideline and Request for Comments

Comments of the Risk Insurance Management Society

Dear Ms. Matthews:

The Risk Insurance Management Society (“RIMS”) appreciates the opportunity to comment on the draft North Dakota Guideline on Anti-rebating and Anti-inducement (the “Draft Guideline”). As the preeminent organization dedicated to promoting the profession of risk management, RIMS, the risk management society®, is a global not-for-profit organization representing more than 3,500 industrial, service, nonprofit, charitable and government entities throughout the world – all of which are purchasers of commercial insurance. As such, RIMS’ members are concerned with the effect of existing anti-rebating and anti-inducement laws as they pertain to value added services offered in connection with the placement of property and casualty insurance and life and health insurance provided as employee benefits. We will refer collectively to both of these lines of insurance as “Commercial Insurance.”

Our comments focus on two topics:

1. The Draft Guideline reflects a good effort to recognize the impact of technology and innovation on the Commercial Insurance market by permitting insurers and insurance producers to provide commercial insureds and potential insureds with value-added services, products and programs for purposes of loss control, loss mitigation, and rate reduction (collectively, “value added services”). But the Draft Guideline contains some problematic language; moreover, it also should permit other types of services, products and programs that help commercial insureds assess and manage risk and take advantage of the expertise of insurers and producers.

1 We do not here address the anti-rebating/anti-inducement issue with respect to personal lines.
2. A comparison of North Dakota’s anti-rebating statutes against the Draft Guideline reveals why it was prudent for the Innovation and Technology (EX) Task Force to decide to address this issue by proceeding with a Request for NAIC Model Law Development related to the NAIC’s *Unfair Trade Practices Act* (#880).

**Analysis**

1. *The Draft Guideline Should Be Revised To Eliminate Two Parameters And To Expand The Scope Of Value-added Services Permitted.*

   We believe the time is ripe for the NAIC and its member states to revisit the application of anti-rebating laws and make appropriate reforms to empower the commercial insurance buyer to more effectively manage its insurance programs, improve its management of risk, and control its costs of insurance procurement and management. Toward that end, the Draft Guideline is a good start, but it could be improved. In defining the scope of permitted value added services, the Draft Guideline states that the Department’s position is (1) that insurers, producers and others may “offer or provide value added services in conjunction with a policy of insurance for free, at a discount, or at market value that are intended to educate about, assess, monitor, control or otherwise mitigate risk of loss to persons or property”; (2) that offering the value added services would not violate North Dakota’s anti-rebating statutes\(^2\); and (3) that the services would not have to be included in form or rate filings. But the Draft Guideline contains other language regarding the Commissioner’s review of value added services that is problematic and needs to be revised.

   The Draft Guideline states that a description of a value added service – what it is, who its offered to, when it will be offered, and how it will reduce risk – must be provided to the Commissioner of Insurance within 30 days after its first use to be reviewed. This limited request for information is reasonable.

   The Commissioner, however, then is to evaluate the value added service against four parameters: (1) Would the value added service protect insurer solvency and protect consumers, (2) would it protect consumers against unfair discrimination, (3) does it relate to the underlying insurance coverage, and (4) does it “mitigate loss or provide loss control that aligns with the risks of the policy, or assess risk, identify sources of risk, or develop strategies for eliminating or reducing those risks?”

   The first set of parameters to be used to evaluate the information submitted – protection of insurance solvency and protection of consumers – raises some concerns. Regarding insurer solvency, how could any value added service be assessed based on the protection of insurer solvency? How would the Commissioner go about evaluating that? If anything, a value added service should only enhance insurer solvency, because a value added service is designed to help an insured or a potential insured mitigate risk or enhance loss control; and both of these goals are commensurate with reducing claims. Moreover, in the commercial context, the provision of value added services normally must be memorialized in an agreement between the insurer or insurance producer and the insured – sophisticated parties – following negotiation about the value of the value added services. Therefore, we recommend eliminating the insurer solvency parameter, at least for Commercial Insurance purposes. *Also, protection of “consumers” is not relevant to Commercial Insurance; so there should be a carveout from that parameter for commercial purposes.*

   The Draft Guideline does not address what is to happen if the Commissioner determines that a value added service does not satisfy one or more of the parameters. Is there a grace period? Would the insurer or insurance producer that has provided the value added service be subject to penalties? And is there an appeal process?

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The requirement that the value added service be filed with the Department for review does not recognize marketplace needs or realities. It would be far better for the Draft Guideline to permit flexibility, or even prescribe an acceptable list of services. A service-by-service filing with the Commissioner also runs the risk of creating precepts based on the individual contours of particular filings, that is, creating rules from the ground up, as opposed to promulgating general principles of permissibility. That is certainly something about which Insurtechs and other startups would have concerns – which is important, given the charges of the Task Force regarding innovation and technology.

Therefore, we recommend that if the Task Force is going to recommend adoption of a model guideline, it should look to other guidelines states have issued. For example, the New York Department of Financial Services in March 2009 issued Circular Letter No. 9. It simply states the following to define the scope of permitted value added services:

[A]n insurer or insurance producer may provide a service not specified in the insurance policy or contract to an insured or potential insured without violating the anti-rebating and inducement provisions of the Insurance Law if:

“a) the service directly relates to the sale or servicing of the policy or provides general information about insurance or risk reduction; and

“b) the insurer or insurance producer provides the service in a fair and nondiscriminatory manner to like insureds or potential insureds.

In other words, there are two requirements: The value added service must provide either general insurance information or information about risk reduction, and it must be offered in a manner that does not discriminate against similar insureds or potential insureds.

The Circular then provides a nonexclusive list of services that may be provided, and a nonexclusive list of services for which “careful consideration should be given. . . .”

The basis for New York’s issuance of Circular Letter No. 9 was reliance on the purpose of New York’s anti-rebating and anti-inducement laws. The Circular Letter states:

The purpose of New York’s rebating and inducement provisions is to require an insurer or licensed insurance producer to provide insurance in a nondiscriminatory manner to like insureds or potential insureds, and to prohibit such an insurer or insurance producer from providing an insured or potential insured with any special benefit not afforded to other insureds or potential insureds. . . .

Indeed, the legislative history . . . shows that the . . . statutes are intended to reach discrimination, through rebating of any special favor or advantage, between insureds who are equal risks, without specifying the favor or advantage in the policy or contract.3

The Circular Letter lists the following permitted value added services, and these may or may not be permitted by the Draft Guidance, given its scope: insurance consulting services, insurance-related regulatory and legislative updates, claims assistance services, tax preparation for an employer of an IRS report concerning an employee benefit plan, enrollment and administration of a group insurance policy, certain Consolidated Omnibus Budget Reconciliation Act (COBRA) services, and certain services related to the Health Insurance Portability and Accountability Act (HIPAA).

Similarly, on July 24, 2019, the Ohio Department of Insurance released an insurance bulletin that states that the Department does not consider it a violation of Ohio’s anti-rebating statutes to offer value added services for rate reduction, loss control or loss mitigation, even if the services are not specified in the insurance policy, as long as the service is directly related to the insurance offered or purchased, is intended to mitigate risks or reduce rates or claims to benefit policyholders, and is offered in a fair and nondiscriminatory manner.

Because the focus should be on non-discrimination, we recommend that the Task Force adopt a guideline that is based on the broad principles set forth in the New York Circular Letter and the Ohio Bulletin. In neither case is there a requirement for the Commissioner of Insurance to review a value added service.

2. *A Model Guideline May Be Acceptable In The Short Term, But To Provide Regulatory Comfort To Insurers And Insurance Producers, Revision To The Unfair Trade Practices Act Is Required.*

Because it interprets one or more statutes, any guideline has its limitations; a more favorable and lasting approach would involve an update of, and amendments to, the Unfair Trade Practices Act.

The most significant problem with the Draft Guideline is that the statutes upon which it is based contain provisions that appear to prohibit what the Draft Guideline permits.

North Dakota’s two anti-rebating and anti-inducement statutes read basically the same as the anti-rebating and anti-inducement language contained in Section 4(H) of the NAIC’s Unfair Trade Practices Act – language that has been adopted by many states. Generally speaking, the NAIC’s model act and the North Dakota statutes prohibit the offering of insurance policies that have terms that are not “plainly expressed” in the insurance contract. They also prohibit rebating any premiums or providing any “special favor or advantage in the dividends or other benefits” or providing “valuable consideration or inducement whatsoever not specified in the policy.” In other words, they require everything to be included in the insurance contract, and they prohibit giving anything of value as an inducement to buy insurance if it is not contained in the insurance contract.

On the other hand, the Draft Guideline permits the offering of value added services. That is contrary to the statutory prohibition on giving anything of value as an inducement to buy insurance. This is a conflict between the statutory language and the Draft Guideline. And any conflict would normally be resolved in favor of the statute.

Second, different anti-rebating and anti-inducement statutes may dictate differences in state guidelines. And even if the statutory language of several states is the same, different state insurance regulators could interpret the language differently, resulting in different interpretations. The best solution, therefore, is to amend the Unfair Trade Practices Act for adoption by the states.

**Conclusion**

Regarding the Draft Guideline, we ask the Task Force to revise it so that it does not include insurer solvency and consumer protection as parameters, and so that it is more in line with the language contained in the New York Circular Letter and the Ohio Bulletin. Additionally, we urge the Task Force to put most of its energy in revising the Unfair Trade Practices Act.

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RIMS appreciates the opportunity to comment on the Draft Guideline. If you have any further questions, please feel free to contact Whitney Craig. RIMS Director of Government Relations at wcraig@rims.org.

Sincerely,

Gloria Brosius, RIMS-CRMP
President, RIMS Board of Directors
September 6, 2019

Denise Matthews  
Director, Data Coordination and Statistical Analysis  
National Association of Insurance Commissioners  
1100 Walnut Street, Suite 1500  
Kansas City, Missouri 64106-2197

RE: Comments on North Dakota Rebating Bulletin v 5.1

Dear Ms. Matthews:

The comments below are in response to the request for comments from the National Association of Insurance Commissioners’ (NAIC) Innovation and Technology (EX) Task Force concerning the North Dakota Rebating Bulletin v 5.1 (ND Bulletin).

Washington State has concerns similar to those outlined in the ND Bulletin. We are seeing the introduction of more products being marketed through the use of third-party technology vendors. These products are marketed to consumers through insurers, but require purchasers to sign-up through a third-party entity. The products are growing in complexity, and oversight of third-party vendors by licensed insurers may pose a challenge.

This raises the following questions:

1. How should these non-insurance benefits be documented and where? Washington State law (Section 48.18.190 RCW) requires the policy to contain the entire contract.
2. What is the standard that a non-insurance benefit must meet, such as “beneficial to the consumer,” and how will such a benefit be evaluated? If these non-insurance benefits are marketed, can consumers still use the actual insurance product without the additional purchase of these non-insurance benefits?
3. Does the introduction of these non-insurance benefits weaken or negate existing insurance contract law?
4. How will these non-insurance benefits be administered? And, if consumers are harmed, where will they go for assistance? State insurance departments regulate insurers. Where non-insurance benefits are being marketed in tandem with insurance contracts, it may be harder for insurance departments to oversee the various provisions. Non-insurance benefits may contain arbitration provisions that may not be allowed in insurance contracts. This may make it more difficult for consumers to challenge denials of coverage.
5. How do we ensure that some groups are not unfairly discriminated against?

6. Will we require that the non-insurance benefit have some direct nexus to the underlying policy? If so, will we have separate high-level standards for different product lines? For example, gym membership discounts have a direct nexus to a life or health policy, but not necessarily to a homeowner's policy. We have concerns that some insurers may include the proverbial "kitchen sink" of non-insurance benefits that may have no reasonable relation to the underlying insurance coverage.

7. Will we develop formal disclosure standards for these non-insurance benefits? Consumers need to clearly understand the terms and conditions of these benefits, including, but not limited to, discontinuance of the benefit, addition of new benefits, opt-out, etc.

8. Will insurers be required to identify and disclose which goods or services are non-insurance products? There is a risk that policyholders will confuse the non-insurance product with the coverage provided under their policy.

9. Will we require companies to submit a full and complete list of non-insurance benefits to be offered as part of their rate and form filing? We have very serious concerns, based on actual experience, that a company may file a general rider stating it will offer non-insurance benefits without actually listing those benefits.

10. Will we develop a formal approval process for adding new non-insurance benefits to an existing program? It appears that these benefits may change on a regular basis – how does the company submit new benefits for our review and approval?

11. If the product does not meet the standard for "non-insurance product," what remedies do insurance departments have? Do they treat the product as a rebate or inducement or is the good or service treated as an unfiled insurance benefit?

12. Will use of non-insurance products intended to mitigate risk affect premium rates?

The Washington State Office of Insurance Commissioner believes the above questions should be discussed as they apply to a draft model law.

Sincerely,

[Signature]

AnnaLisa Gellermann
Chief Deputy

cc: Molly Nollette, Deputy Commissioner, Rates and Forms Division
Technological innovations along with innovative products and services are having a significant impact on the insurance industry to the benefit of policyholders and insurers. Consumers are demanding that insurers provide innovative products, services or programs that prevent or mitigate risk, which will be referred to as value-added service henceforth. In turn, questions have been raised whether providing these types of benefits are considered rebates or inducements in North Dakota. This bulletin sets forth the Department’s general position for insurers that choose to offer value-added services for loss control, loss mitigation, and rate reduction to policyholders. Value-added services may be offered or provided at no additional charge or at a discounted price and may allow for a rate reduction of the premium.

North Dakota law generally prohibits offering or providing anything of value not specified in the policy of insurance as an inducement to purchase insurance or rebate of premium. See N.D.C.C. §§ 26.1-04-03 (8) and 26.1-25-16.

It is the Department’s position, however, that an insurer, by or through its employees, affiliates, or third-parties, may offer or provide value added services in conjunction with a policy of insurance for free, at a discount, or at market value that are intended to educate about, assess, monitor, control or otherwise mitigate risk of loss to persons or property, and such offer or provision of products or services are not prohibited by N.D.C.C. §§ 26.1-04-03 (8) and 26.1-25-16 and are not required to be included in the form or rate filings.

Every insurer, by or through its employees, affiliates or third-parties, providing the value-added services shall provide a description of the service within thirty days after its first use in this state for review by the commissioner. The description must briefly describe what the service is; who the service is offered to; when the service will be offered; and how the service is designed to reduce risk.

Wisconsin Comments:
- “within thirty days after its first use” — Wisconsin would prefer notice 30 days prior to first use.
- “who the service is offered to;” — Include the form number so Market Reg has an easier time tying it back.
- “reduce risk” — Also include an estimated value of the product, service or program.

Each situation is fact specific, however, in general, when analyzing a value-added service, the Insurance Department will evaluate the service using the following parameters:

1. Does the provision of the value-added service, taken as a whole, protect the solvency of the applicable insurers and protect consumers?
2. Does the provision of the value-added service, taken as a whole, protect consumers against unfair discrimination?

Wisconsin Comments:
- “protect the solvency of the applicable insurers and protect consumers” — Reference to solvency seems out of place. Financial will flag if there are concerns with solvency.
- “protect consumers against unfair discrimination” — Require that the value-added service be available to all consumers.

3. Is the value-added service, taken as a whole, related to the insurance coverage being provided?
4. Does the service mitigate loss or provide loss control that aligns with the risks of the policy, or assess risk, identify sources of risk, or develop strategies for eliminating or reducing those risks?
As a result, value-added services must comply with all other provisions of North Dakota law. For example, value-added services must not translate to excessive or inadequate policy rates or result in unfair discrimination and must be proportional to the premium.

**Wisconsin Comments:**
- “must be proportional to the premium” — As stated, this is too broad to regulate. Additional clarification is needed.

The Department retains its authority to request additional information regarding any value-added service as it deems necessary.

Please note that the purpose of this bulletin is to provide guidance to insurers desiring to provide products or services that add value related to the insurance policy and are intended to educate about, assess, monitor, control or otherwise mitigate risk of loss to persons or property. This bulletin does not modify or expand the exception permitting a $100 aggregate retail value gift, prize, promotional article, logo merchandise, meal or entertainment activity an insurance producer may provide to a person in connection with marketing, promotion, or advertising business under N.D.C.C. §§ 26.1-04-03 (8) and 26.1-25-16.

**Wisconsin Comments:**
- While it doesn’t make sense to list specific examples of what constitutes a ‘value-added service’, it may be worth referencing examples of products or services that would not be considered value-added services, such as airlines miles or gift cards.