

North Dakota Guidance on Rebating

Technological innovations along with innovative services and programs are having a significant impact on the insurance industry to the benefit of policyholders and insurers. Insurers wanting to provide innovative products, services and/or programs that prevent or mitigate risk have questioned whether providing these types of benefits are considered rebating in North Dakota. This bulletin sets forth the Department's general position for insurers that choose to offer value added services and programs for loss control, loss mitigation, and rate reduction to policyholders. Value-added products, services and programs 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.

Value-added products, services or programs may be offered so long as these products, services or programs:

- a. are specified in the insurance policy, and
- b. align with the type of insurance offered, and either
- c. mitigate loss or provide loss control that aligns with the risks of the policy,

–OR–

- d. assess risk, identify sources of risk, or develop strategies for eliminating or reducing those risks that aligns with the risks of the policy

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

The application of North Dakota's laws to each situation is fact specific. When analyzing a value-added product, service or program, the Insurance Department will evaluate the product/service/program using the following parameters:

1. Does the provision of the value-added product, service or program, taken as a whole, protect the solvency of the applicable insurers and protect consumers?
2. Does the provision of the value-added product, service or program, taken as a whole, protect consumers against unfair discrimination?
3. Is the value-added product, service or program, taken as a whole, related to the insurance coverage being provided?
4. Does the product or 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?

If the answers to all of the above questions are "yes", then the product/service/program would not be considered detrimental and could be allowed under North Dakota law. However, this is not an exhaustive list and the Department retains its authority to request additional information regarding any value-added product, service or program as it deems necessary.

Please note that the purpose of this bulletin is to provide guidance to insurers desiring to provide products, services or programs that add value related to the insurance policy and also prevent or mitigate risk. 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.

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