

BULLETIN

Number 99-B-2

TO: ALL NORTH CAROLINA LICENSED INSURERS

DATE: AUGUST 3, 1999

RE: REBATES/INDUCEMENTS

In recent months, the Department of Insurance (the Department) has become aware that insurance carriers are increasingly interested in arranging for non-insurance “benefits” for their insureds on an extra-contractual basis. In some cases, these “extras” may actually come from third parties which have entered into an agreement with the carrier. Examples of such arrangements include merchandise or services, discounts on retail prescription drug purchases when the insurance policy does not cover prescription drugs, coupons for money off the price of sport safety equipment, and discounts from local business. After close review of these arrangements and consideration of the variety of forms they may take, the Department has determined that the offering or arranging of extra-contractual benefits violates the North Carolina statutes prohibiting inducements and rebating when these are provided at no cost or below their fair market value.

These prohibitions are found in two identically worded statutes: N.C. Gen. Stat. §58-63-15(8) and G.S. §58-33-85.

G.S. §58-63-15(8) applies to insurers, as well as to Health Maintenance Organizations pursuant to G.S. §58-67-65(b). G.S. §58-33-85 applies to Insurers, Health Maintenance Organizations, Blue Cross and Blue Shield, and single service Health Maintenance Organizations.

G.S. §58-63-15(8) and G.S. §58-33-85 provide:

No insurer, agent, broker or limited representative shall pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, as an inducement to insurance, or after insurance has been effected, any rebate, discount, abatement or credit, or reduction of the premium named in a policy of insurance, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any valuable consideration or inducement whatever, not specified in the policy of insurance. [emphasis added]

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The language of the statutes is extremely broad. Their purpose is to ensure that promises made in the solicitation of a sale of insurance are enforceable, and to ensure that inappropriate consideration is not offered to obtain the sale.

Carriers should apply the following tests to determine whether an offer constitutes a rebate or inducement :

1. Is the carrier “paying”, “giving”, or “allowing” some “thing”?
 - Is the regulated person paying, allowing, or giving something to the applicant/insured?
 - But for the efforts or acquiescence of the carrier, would the applicant/insured receive something?
 - Would the applicant/insured be receiving something if the carrier were not involved in the situation?

2. Is the “thing” given of value, so as to be possibly considered an inducement or credit/rebate, etc?
 - Anything has some value to someone -- a regulated entity is not going to give away or allow something to an applicant/insured unless it believes that the thing will be of some value to the applicant/insured.
 - Note, however, that where the applicant/insured pays a fair market value for the thing, there is no inducement or rebate.

3. Is the thing of value specified in the policy?
 - It is acceptable under the statutes, to give something, including either an insurance related benefit or non-insurance related benefit, as long as it is specified in the policy.

In all cases where a thing of value will be conveyed by or through a carrier, the law requires that it be **referenced under the terms of the policy or contract** in order to avoid violating the inducement and rebate statutes. The Department recognizes the fluid nature of some of these arrangements and also does not wish to discourage their offering. While some carriers may be in a position to include very specific provisions in their contract, others may need to be more general in describing the non-insurance benefits offered. We offer the following sample contract language to illustrate the amount of flexibility that would be permissible while still complying with anti-inducement and rebating laws:

“From time to time (the Company) may offer or provide certain persons who apply for coverage with (the Company) or become insureds/enrollees with (the Company) with (specify the goods and/or services provided). In addition, (the Company) may arrange for third party service providers (specify type of

provider, i.e., pharmacies, optometrists, dentists and accountants), to provide discounted goods and services to those persons who apply for coverage with (the Company) or who become insureds/enrollees of (the Company). While (the Company) has arranged these goods, services and/or third party provider discounts, the third party service providers are liable to the applicants/insureds/enrollees for the provision of such goods and/or services. (The Company) is not responsible for the provision of such goods and/or services nor is it liable for the failure of the provision of the same. Further, (the Company) is not liable to the applicants/insureds/enrollees for the negligent provision of such goods and/or services by third party service providers.”

Policies and contracts issued after January 1, 2000, must comply with this bulletin. Effective January 1, 2000, licensed carriers must revise their policies and contracts to comply with this bulletin, at the time form revisions are submitted to the Department for review.

Questions regarding life and health insurance should be addressed to: Maston T. Jacks, Deputy Commissioner, Life and Health Division (919) 733-5060.

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