



STATE OF WEST VIRGINIA

Offices of the Insurance Commissioner

James A. Dodrill
Insurance Commissioner

WEST VIRGINIA INSURANCE BULLETIN

No. 20 – 02

Insurance Bulletins are issued when the Commissioner renders formal opinions, guidance or expectations on matters or issues, explains how new statutes or rules will be implemented or applied, or advises of interpretation or application of existing statutes or rules.

To: All Insurance Companies, Insurance Trade Associations, Insurance Producers and Other Interested Persons

From: James A. Dodrill, Insurance Commissioner

Re: Rebating; Value-Added Products and Services

Date: March 12, 2020

The purpose of this Bulletin is to clarify prior guidance (Informational Letter No. 205) to insurance producers, insurance companies and other related entities regarding the provision of products, services and/or programs to policyholders to identify, prevent, mitigate, or educate about risk. Insurers desiring to provide innovative products, programs and/or services to their insureds have questioned whether providing these types of benefits is considered rebating in West Virginia. Of special interest are value-added services or products offered or provided at no or reduced costs. Examples may include, but are not limited to, connected technology devices or wearables, telematics, mobile apps, smart technology devices such as smart fire detectors, discounted wellness programs or gym memberships, or other items that relate to loss control or loss mitigation with respect to the risk covered under the policy, or risk assessments, risk control tools or claims assistance.

West Virginia law generally prohibits insurers from paying or giving, directly or indirectly, as an inducement to insurance or after insurance has been purchased, any rebate or other form of valuable consideration or inducement not specified in the policy. See, W. Va. Code § 33-11-4(8). This is commonly referred to as West Virginia's "anti-rebating" law. Generally, rebates are thought of as "side deals" that are not included within the policy terms or the premium price and are not offered or available to all policyholders. The purpose of "anti-rebating" laws is to protect both insurance consumers and the insurance industry. A consumer's choice to purchase insurance should not be influenced by inducements that could result in a consumer purchasing an unsuitable policy. Furthermore, anti-rebating laws protect insurer solvency and prevent predatory pricing.

However, value-added products, services or programs provided at no or reduced costs to policyholders are not rebates or other forms of valuable consideration or inducements not specified in the policy that are prohibited by W. Va. Code § 33-11-4(8), and they may be offered to



policyholders so long as they have a nexus to or enhance the value of the insurance coverage, *and* are intended to do at least one of the following:

- Prevent or mitigate loss to persons or property;
- Provide loss control;
- Reduce claims costs or claim settlement costs;
- Educate about risk of loss to persons or property;
- Monitor or assess risk, identify sources of risk, or develop strategies for eliminating or reducing risks;
- Enhance the health or financial wellness of the policyholder; or
- Provide post-loss services.

Value-added products or services must comply with all other provisions of West Virginia law. The offering of these products or services must not threaten an insurer's solvency or unfairly discriminate. The primary focus of the insurer should be on the quality of the product, not the inducement.

Innovative products and services are ever changing and evolving. Accordingly, the application of West Virginia's anti-rebating law to each situation will necessarily be fact specific and the WVOIC does not and will not sanction any specific value-added product, service or program. Providing a good product or service that adds value to the type of insurance offered or that educates the insured about risk management or loss control is distinct from providing a policyholder with unrelated benefits or merchandise such as, but not limited to, tickets to a concert or sporting event, televisions, coolers, BBQ grills or restaurant gift cards. This Bulletin does not expand or otherwise modify the definition of "nominal value" set forth in W.Va. Code R. § 114-70-3, which applies to such unrelated products or services that are not value-added as outlined above. An insurer or producer must still comply with two (2) requirements when giving or gifting benefits, products or services that do not add value to a policy, are not included in a policy, do not align with or relate to the type of insurance offered, and do not mitigate, control, assess or educate about risk. First, if the item gifted or given away is not a value-added product, service or program as outlined above, it must cost \$25.00 or less. This cost limitation applies on a per person, per year basis. Second, the item gifted or given away cannot be tied or conditioned in any way to the purchase of insurance or acquisition of the recipient as an insurance customer or client. For further guidance on this issue, please see W.Va. Code R. § 114-70-1, et seq.

Informational Letter No. 205 is hereby rescinded in its entirety.

This guidance applies to insurance companies in the property and casualty, life, and health lines of insurance. Please e-mail any questions concerning this Informational Letter to: OICBulletins@wv.gov or call (304) 558-0401.



James A. Dodrill
Insurance Commissioner