

Agent Services Division (ASD) has received an increasing number of inquiries regarding policy service fees and or consulting fees. Attached are some documents which should answer your questions. Any service fee(s) or consultant fee(s) must have prior consent and a signed copy must be kept on file. When providing a client with an itemized statement, the consulting fee(s) and or service fee(s) must be shown separate and apart from the policy premium. Any time a fee is charged, whether at inception or renewal, you must receive prior consent in writing. Please keep in mind that any service or consultant fees must be compliant with anti-rebating, anti-discriminatory statutes and administrative codes which are also attached. ASD does not give legal advice and suggests that you review all documents in order to answer your questions and concerns. Should you need additional guidance after reviewing the attached documents, ASD suggests that you consult with your own legal counsel. You may also refer to the website containing the North Carolina General Statutes which ASD regulates under Chapter 58 which will certainly be useful. The URL to access this information is:

<http://www.ncga.state.nc.us/gascripts/Statutes/StatutesTOC.pl?Chapter=0058>. Another valuable resource is the North Carolina Administrative Code which can be found at:

<http://reports.oah.state.nc.us/ncac.asp?folderName=/Title%201%20-%20Insurance>

I hope this information will be useful to you. Please visit our website for additional NCDOI news at: www.ncdoi.com.

POLICY SERVICE FEES FAQ

Q. Can an agent charge a policy service fee such as application fee, reinstatement fee, endorsement fee, etc?

A. An agent may charge policy service fees as long as the agent complies with the following statutes and rules. Please note that agency examiners employed by the Department observe many agents violate the statutes and rules relative to policy service fees.

NCGS 58-33-85(b) states " No insurer, agent, broker or limited representative shall knowingly charge to or demand or receive from an applicant for insurance any money or other consideration in return for the processing of applications or other forms or for the rendering of services associated with a contract of insurance, which money or other consideration is in addition to the premium for such contract unless the applicant consents in writing before any services are rendered. This subsection does not apply to the charging of collection of any fees otherwise provided for by the law."

NCAC 4.0120 (1) (2) (3) states: "An agent, broker, or limited representative who deals directly with an applicant and who intends to charge a policy or service fee in accordance with G.S. 58-33-85(b) shall not do so unless he complies with the following: (1) A sign that informs the applicant in large bold print that a policy or service fee of (amount) will be charged, shall be displayed in a prominent place so as to be seen and read from any part of the office lobby. (2) The applicant's consent in writing is obtained on a separate form each time a policy or service fee is charged. The form shall be entitled, "Policy or Service Fee Consent" and shall include the date and amount of each fee charged. (3) A dated receipt for the payment of a policy or service fee shall be issued either separately from the policy premium receipt or stated separately on the receipt issued for the policy premium."

NCGS 58-3-120 (a)(b)states "(a) No agent or representative of any company doing business of insurance as defined in G.S. 58-7-15 shall make any discrimination in favor of any person." (b) Discrimination between individuals of the same class in the amount of premiums or rates charged for any policy of insurance covered by Articles 50 through 55 of this chapter, or in the benefits payable thereon, or in any of the terms or conditions of such policy, or in other manner whatsoever, is prohibited."

NCGS 58-33-80 states "No agent or representative of any company doing business of insurance as defined in G.S. 58-7-15 shall make any discrimination in favor of any person."

Policy or Service Fee Consent

Named of Insured: _____

Name of Agency: _____

Name of Insurance Company: _____ **Policy #:** _____

<u>Description of Fee</u>	<u>Amount Due</u>
Type of Fee _____	\$ _____
Type of Fee _____	\$ _____
Type of Fee _____	\$ _____

In accordance with North Carolina insurance law, prior to _____ (name of agency) or its authorized representatives providing any services, the insured hereby freely and voluntarily consents to the payment to such agency of each policy or service fee set out above. The insured understands that each fee is in addition to the filed and approved premiums for such insurance policy or policies.

Insured's Signature: _____ **Date:** _____

I have explained the above fees to the insured.

Agent's Signature: _____ **Date:** _____

North Carolina Insurance Regulation 11 NCAC 04.0120:

POLICY OR SERVICE FEES

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- (1) A sign that informs the applicant in large bold print that a policy or service fee of [amount] will be charged, shall be displayed in a prominent place so as to be seen and read from any part of the office lobby.
- (2) The applicant's consent in writing is obtained on a separate form each time a policy or service fee is charged. The form shall be entitled, "Policy or Service Fee Consent" and shall include the date and amount of each fee charged.
- (3) A dated receipt for the payment of a policy or service fee shall be issued either separately from the policy premium receipt or stated separately on the receipt issued for the policy premium.

Anti-Rebating Statutes Information

N.C. Gen. Stat. § 58-33-85 and N.C. Gen. Stat. § 58-63-15 provide that 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, 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. N.C. Gen. Stat. § 58-33-85 and N.C. Gen. Stat. § 58-63-15 apply to insurers, agents, brokers and their limited representatives.

These two anti-rebating statutes are broadly written and contain identical language. The important public policy reason for N.C. Gen. Stat. § 58-33-85 and N.C. Gen. Stat. § 58-63-15 is (a) to prevent the creation of a competitive disadvantage or unlevel playing field for other agents, brokers and agencies in the market and (b) to protect consumers and others from unfair and deceptive trade practices, discriminatory rates, etc. These statutes ensure that a policy's written terms are applied consistently to all policy holders who have been issued similar or identical policies. The prohibition against discrimination in rates provided by these anti-rebating statutes is directed to insurers, agents, brokers, and other representatives of insurers.

On August 3, 1999, the Department issued Insurance Bulletin 99-B-2. This bulletin gives examples of matters the Department has determined as being prohibited by the anti-rebating statute. Bulletin 99-B-2 states that the offering of "extra-contractual benefits" to insureds by insurers, agents and brokers violates North Carolina statutes prohibiting inducements and rebating when these benefits are provided at no cost or below their fair market value. The statutory prohibition applies not only to COBRA compliance services but to all services at no cost or below fair market value that are not specified in the contract of insurance. Services provided at fair market value are permissible under the anti-rebating statutes.

On July 1, 2005, the Department held a hearing for a declaratory ruling pursuant to N.C. Gen. Stat. § 150B-4 and 11 N.C.A.C. 01.0301 – 01.0303 at the request of a North Carolina licensed insurance agency. The licensed insurance agency's request for a declaratory ruling, in part, questioned the Department's position on the anti-rebating statutes and whether Bulletin 99-B-2 applied to insurance agents.

On August 24, 2005, Hearing Officer Wayne Goodwin ordered that in this matter, the language of the statutes is clear: an agent who provides services not found in the contract of insurance at no cost or below fair market value is in violation of the anti-rebating statutes. He found that the Department has been consistent in applying this interpretation of the anti-rebating statutes and that N.C. Gen. Stat. § 58-33-85 provides an absolute bar to any service or any thing of

value wherein those services or goods are neither (a) referenced specifically or generally in the contract of insurance, nor (b) are advertising in nature.

The Department has consistently applied the anti-rebating statutes in matters where non-insurance related services are provided to clients. Generally, the Department supports agents and brokers providing services and products to clients but within the scope of the law. Whether a service or product fits within the category of advertising will depend on the facts of each specific situation. Therefore, an agent will always have a duty to assess whether a product or service can be properly considered advertising based on the facts of his or her particular situation.

As a general matter, the Department views the following goods to be advertising in nature, does not require the following advertising items to be referenced in the insurance policy and does not view these advertising items to be rebating:

- (1) taking a client out for a reasonably priced business meal;
- (2) calendars;
- (3) small inexpensive personal items such as pens and other marketing items;
- (4) inexpensive items celebrating holidays or other special events such as birthday, marriage, birth of a child or graduation; and
- (5) inexpensive snacks and food in conjunction with benefit presentations. The bulletin and the declaratory ruling which are referenced in this document are posted on NCDOT's website. Please direct all inquiries regarding this communication to Agent Services Division at 1204 Mail Service Center, Raleigh, NC 27699-1204.

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]

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.

Maston T. Jacks
Deputy Commissioner
Life and Health Division
North Carolina Department of Insurance