

### Anti-Rebating Regulations in North Carolina

As most of you know, the discussion and confusion surrounding North Carolina's anti-rebating regulations have been a "hot topic" in recent years, and I wanted to take this opportunity to reiterate these laws and the Department's interpretation of them. As with other industries that the Department regulates, I recognize the importance of insurance business to the state of North Carolina and its citizens. More importantly, I understand that it is essential that this insurance business is conducted in a fair and legal manner.

I encourage you to read the following explanation carefully and make sure that you are following the laws with regard to rebating:

Generally, the North Carolina Department of Insurance supports agents and brokers providing services and products to clients, but within the scope of the law. N.C. Gen. Stat. § 58-33-85 and N.C. Gen. Stat. § 58-63-15 are anti-rebating statutes that prohibit insurers, agents, brokers or limited representatives from paying, allowing or giving 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.

North Carolina's anti-rebating statutes are broadly written and contain identical language. There are two important public policy reasons for the anti-rebating statutes — to prevent the creation of a competitive disadvantage or unlevel playing field for other agents, brokers and agencies in the market and 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 Department's position is that the anti-rebating statute prohibitions apply to services or benefits, not referenced specifically or generally in the contract of insurance, that are provided by insurers, agents, brokers or limited representatives at no cost or below market value to insurance clients. There is an important compliance distinction where services or benefits provided to insurance clients at fair market value or referenced in the terms of the contract of insurance *are permissible* under the anti-rebating statutes.

The Department has been consistent in applying the prohibitions in the anti-rebating statutes. Over time, changes in the insurance industry have generated questions to the Department on how these prohibitions apply to agents, brokers and agencies in today's insurance climate.

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 agency's request for a declaratory ruling, in part, questioned the Department's position on the anti-rebating statutes and how they apply to providing value-added services to insurance clients at no cost or below market value that are not referenced in the terms of the contract of insurance.

The outcome of the hearing upheld the prohibitions in the anti-rebating statutes. Additionally it was found that the Department has been consistent in applying these prohibitions and that they provide 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.

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:

- taking a client out for a reasonably priced business meal
- calendars
- small inexpensive personal items such as pens and other marketing items
- inexpensive items celebrating holidays or other special events such as birthday, marriage, birth of a child or graduation and
- inexpensive snacks and food in conjunction with benefit presentations.

I realize that this information can be complex at times, and if you are unsure about its meaning or if you are concerned that you may be in violation of the anti-rebating statutes, please contact the Agent Services Division at (919) 807-6800, extension 76826 for further clarifications. You may also send written inquiries to the Agent Services Division at 1204 Mail Service Center, Raleigh, NC 27699-1204. The Department also has additional information regarding this matter online at [www.ncdoi.com](http://www.ncdoi.com).