

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.