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NAIC Advances Amendment to Relax Restrictions on Rebates That May Be Offered by Insurance Providers

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On December 9, the National Association of Insurance Commissioners' executive committee unanimously adopted an amendment to the NAIC Unfair Trade Practices Act, referred to herein as the Model Act, which, if adopted by the states, would represent a significant change in course in how insurance companies and producers may offer rebates in connection with their product offerings. For insurtechs specifically, which are continuously contemplating innovative and efficacious ways to offer insurance products, the revised Model Act opens the door to new possibilities. The amendment still needs to be adopted at NAIC's plenary, which may occur at the Spring 2021 national meeting of the NAIC.

The amendment to the Model Act, a multiyear effort by the NAIC's Innovation and Technology Task Force, would relax current restrictions on offering rebates in connection with the solicitation and sale of insurance. The amendment would allow companies to offer non-insurance products and services to policyholders that engage in risk-mitigating behavior without the need to receive regulatory approval to include such rebates under the terms of their policy. This NAIC reform should speed up the ability of insurtechs and others in the insurance industry to bring these innovative products to the market.

As currently constituted, most states prohibit insurance companies or producers from providing policyholders or prospective policyholders with anything of value (above certain de minimis thresholds) that is not specifically included in the terms of the policy. The anti-rebating laws were primarily intended to prevent unfair discrimination between policyholders. In practice, however, the anti-rebating laws, some of which are more than 100 years old, effectively proscribe a wide swath of innovative services that insurers and producers hope to provide to their customers.

The revised Model Act would permit insurers and producers to include value-added products or services at no or reduced cost even if not specified in the policy so long as the product or service "[r]elates to the insurance coverage" and is "primarily designed to satisfy one or more of" certain specified goals, including, among others expressly stipulated, providing loss mitigation or loss control, reducing claim costs or claim settlement costs, enhancing health and enhancing financial wellness through items such as education or financial planning services. The value-added product or service must also meet certain other requirements – namely, the cost of the product or service "must be reasonable in comparison to that customer's premiums or insurance coverage for the policy class."

By way of example, in connection with the sale of life insurance, a producer or insurer would be able to offer free or discounted exercise classes or a consultation with a wellness professional. Similarly, a provider of renters or homeowners insurance would be permitted to bundle its insurance offerings with a home security system. A provider of automobile insurance could provide vehicle sensors as a way the mitigating risk of accidents. These are just a few examples of the myriad ways that insurance providers would, under this new regime, be able to creatively structure product offerings as well as develop or expand their relationships with non-insurance partners.

The amended Model Act also permits insurers or producers to "offer or give non-cash gifts, items or services, including meals to or charitable donations on behalf of a customer, in connection with the marketing, sale, purchase or retention of contracts of insurance."

Moreover, the amendment allows insurers or producers to "conduct raffles or drawings to the extent permitted by state law, as long as there is no financial cost to entrants to participate, the drawing or raffle does not obligate participants to purchase insurance, the prizes are not valued in excess of a reasonable amount."

The newly added provisions contemplate that a state may impose a cap on the costs of allowable rebates. A drafting note provides that "the lesser of 5% of the current or projected policyholder premium or $250 would be an appropriate limit," subject to other applicable laws.

Since the NAIC's Innovation and Technology Task Force began efforts to revise the Model Act in 2018, many states have proposed or promulgated new legislation, rules or bulletins providing insurance companies with more flexibility in offering innovative products under their respective anti-rebating statutes. However, since the rules now vary so much state to state, companies must review the laws of each state to determine if they may offer their proposed value-added product or service under such state's insurance laws without the need for prior regulatory approval. As a result, many insurance providers have not been able to adopt a one-size-fits-all approach to the state anti-rebating laws, significantly increasing their regulatory compliance costs. Until these revisions to the Model Act are adopted by the states, careful consideration must be made to the current iteration of the rebating laws of the applicable state in which the product is being offered.

When adopted by the states, the newly revised Model Act will offer insurtechs and other industry participants a roadmap in how to offer insurance products in new and creative ways.

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