

REBATING AND REFERRAL FEES

This Bulletin is directed to all insurance producers, insurance companies, health maintenance organizations and other persons as defined by IC 27-4-1-2(a). This Bulletin is intended to clarify Indiana's insurance laws on rebating, commission splitting, and referral fees, which are found at IC 27-1-15.6-13, IC 27-1-20-30, IC 27-1-22-18 and IC 27-4-1-4(a)(8).

Title insurance producers, while subject to Indiana law, are also subject to the provisions of the federal Real Estate Settlement Procedures Act (RESPA). In cases where RESPA is more restrictive, the more restrictive law applies. Title insurance producers should also refer to IDOI Bulletin 158.

Rebating

IC 27-1-20-30, IC 27-1-22-18, and IC 27-4-1-4(a)(8) prohibit any person engaged in the business of insurance from paying, allowing, or giving any rebate, credit, reduction, discount, or abatement of any premium or commission to a consumer that is not specifically stated in the insurance policy or to the extent provided for in applicable filings. Gifts to a consumer of any value are prohibited if the gift is an inducement to, or conditioned upon, the purchase or renewal of insurance. If it is unrelated to the purchase or renewal of insurance, a small item with a fair market value of \$25 or less – such as a promotional handout, advertising product, or meal – may be given. For purposes of this Bulletin, the Department considers a small item provided with every quote to be unrelated to the purchase or renewal of insurance.

Contests or raffles in which a consumer receives a free chance to win a prize are acceptable as long as they are open to the public and there is no obligation for the consumer to purchase or renew insurance to enter, win, or claim the prize. Prizes are not limited to a value of twenty-five dollars (\$25); however, the value of the prize divided by the reasonably expected number of entrants must not exceed \$25 per entrant.

Insurance producers may donate earned commissions to charities as long as clients or prospective clients have no influence over which charity receives the donation, the donation is not in the client's name, and no client or prospective client becomes eligible for a tax benefit from the donation.

Reduced loan interest rates or fees, higher deposit interest rates, or other inducements offered to consumers by a financial institution to purchase insurance from an agency or company owned by or affiliated with the financial institution are prohibited.

Questions concerning the provision of certain services by producers, agencies, and insurance companies have arisen. The following non-exclusive list of services, if appropriate in scope, directly related to the insurance product being sold, or intended to reduce claims, and provided in

a fair and nondiscriminatory way, would generally not be prohibited by Indiana's anti-rebating statutes:

- Loss control; including wellness programs
- Claim filing assistance
- COBRA administration
- HIPAA compliance
- Risk management or analysis
- Regulatory and legislative updates
- Group policy administration
- Establishment and administration of employer-sponsored 125 plans, flexible spending accounts (FSAs), and health reimbursement accounts (HRAs)

The following non-exclusive list of services, if provided free or at a reduced cost, could be viewed by the Department as violations of Indiana's anti-rebating statutes provided the service is not specifically stated in the insurance policy or provided for in applicable filings:

- Human resource (personnel)
- Legal
- Payroll
- Referrals to third-party service providers that offer discounted rates contingent upon the purchase or renewal of insurance
- Tax preparation
- Accounting

Complaints concerning inducements and rebates are fact sensitive, and the Department will consider such cases on an individual basis. Furthermore, the Department reserves the right to disapprove policy filings containing services that are unrelated to the insurance product or are not intended to reduce claims.

Any producer, agency, company, or other person engaging in the aforementioned prohibited activities is subject to enforcement action under IC 27-1-15.6-12 and/or IC 27-4-1-6.

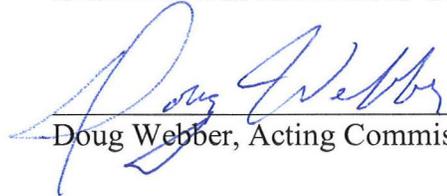
Referral Fees

Under IC 27-1-15.6-13, a licensed producer may share commissions with another licensed producer for selling, soliciting, or negotiating insurance. In the event only one of the producers has the proper qualification, a commission or referral fee can still be shared as long as the non-qualified producer did not sell, solicit, or negotiate the insurance being sold. In addition, a producer may pay a referral fee to a non-licensed person as long as that person does not sell,

solicit, or negotiate insurance. The terms “sell”, “solicit”, and “negotiate” are defined by IC 27-1-15.6-2. If a producer chooses to pay a referral fee to a non-licensed person, the payment may not be conditioned on the purchase of insurance nor may the purchase of insurance be a factor used in determining the amount of the referral fee.

Questions concerning this Bulletin should be directed to attorney Robert Hummel at (317) 232-5063 or rhummel@idoi.IN.gov.

INDIANA DEPARTMENT OF INSURANCE



Doug Webber, Acting Commissioner