

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
OFFICE OF CONSUMER PROTECTION SERVICES

Insurance Producer Standards of Conduct: Marketing

Unfair Trade Practices
Rebates and Inducements; Prohibited Practices

Proposed Amendment: N.J.A.C. 11:17A-2.3

Authorized By: Steven M. Goldman, Commissioner, Department of Banking and Insurance

Authority: N.J.S.A. 17:1-8.1, 17:1-15e, 17:22A-26 et seq. and 17:29A-15

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2008-45

Submit written comments by May 2, 2008 to:

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The agency proposal follows:

Summary

N.J.A.C. 11:17A sets forth insurance producer standards of conduct related to marketing. N.J.A.C. 11:17A-2 sets forth requirements regarding unfair trade practices, including prohibitions and restrictions on rebates and inducements. The Department of Banking and Insurance (Department) has received inquiries as to whether contributions by insurers or producers to charities or to other nonprofit or governmental units would constitute an impermissible inducement or rebate. The Department has determined that it is reasonable and

appropriate to amend N.J.A.C. 11:17A-2.3 to provide a new subsection (f) to clarify the application of the rules restricting inducements and rebates where insurers or producers offer to make contributions to qualified charities, nonprofit corporations, the State of New Jersey or any political subdivision thereof, or any state government or subdivision thereof as an inducement for the purchase of insurance. The proposed amendment provides that offers to make contributions to those aforementioned entities shall not be considered an inducement or rebate provided: no pecuniary benefit is received by the licensee other than the tax benefit of such contribution; the consumer does not receive the contribution, and has no direct or indirect interest in the recipient of the contribution; no income tax benefits may be passed through to the consumer by the licensee making the contribution; the amount of premium or commission to be charged is not altered as a result of the contribution; and records of contributions are maintained for at least five years in a manner set forth in N.J.A.C. 11:17C-2.6 and are available to the Department for review and inspection upon request.

The proposed amendment thus eliminates any potential prohibition against offers to make contributions to worthy causes which insurers and producers may wish to support as part of legitimate marketing mechanisms, while ensuring that such contributions truly are with “no strings attached,” do not impose hidden costs on consumers and are not made in a manner to otherwise circumvent the current prohibitions and restrictions on inducements and rebates. Moreover, the proposed amendment requires that records of such contributions be maintained so that the Department can determine compliance with the rule.

A 60-day comment period has been provided for this notice of proposal, and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the proposal is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

As noted in the proposal Summary above, the purpose of the proposed amendment is to eliminate any perceived prohibition on insurers or producers offering to make contributions to qualified charities, nonprofit corporations, or state or local governmental units and political subdivisions thereof as an inducement to purchase insurance, provided the specified requirements are satisfied. This will provide additional flexibility for insurers and producers to market their products, will increase competition resulting from such marketing mechanisms, and ultimately will benefit charitable and nonprofit entities and their constituencies. Accordingly, the proposed amendments will have a positive social impact.

Economic Impact

The proposed amendment will impose little, if any, costs upon insurers and producers. The determination whether to provide contributions to charities and other entities is a marketing decision of the insurer or producer. The requirements that insurers and producers must satisfy in order for an offer to make such a contribution to not be deemed a prohibited inducement or rebate generally provide that no change in the cost of the insurance being sold can be applied to the consumer, no pecuniary benefit other than the tax benefit of such contribution can be received by the licensee or insurer and no tax benefits may be passed through to the consumer by the licensee or insurer actually making the contribution. These requirements impose no additional costs on licensees or insurers. Moreover, the requirement that records of contributions be maintained should impose minimal, if any, additional cost on insurers or producers. The Department notes that producers currently are required to maintain records pursuant to N.J.A.C. 11:17C-2, and insurers are required to maintain appropriate records for purposes of any periodic

financial or market conduct examination pursuant to N.J.S.A. 17:23-20 et seq. The Department does not believe that any additional professional services will be required in order to comply with the proposed amendment.

Federal Standard Statement

A Federal standards analysis is not required because the proposed amendment is not subject to any Federal requirements or standards.

Jobs Impact

The Department does not anticipate that any jobs will be generated or lost as a result of the proposed amendment.

The Department invites commenters to submit any data or studies concerning the jobs impact of the proposal together with their comments on other aspects of the proposal.

Agriculture Industry Impact

The proposed amendment will not have any impact on the agriculture industry in New Jersey.

Regulatory Flexibility Analysis

The proposed amendment will impose reporting, recordkeeping and other compliance requirements on “small businesses,” as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. To the extent the proposed amendment applies to small businesses, it will apply to New Jersey resident producers and New Jersey domiciled insurers that seek to offer

to provide contributions to charitable, nonprofit, and governmental entities as part of the marketing of insurance products. As set forth in the Economic Impact above, the cost of compliance should be minimal, and no additional professional services should be required in order to comply with the proposed amendment. No differentiation in compliance requirements (described in the Summary above) is provided based on business size. As noted above, the proposed requirements are intended to help ensure that contributions are not made at the expense of the consumer, are not designed to circumvent existing rebate and inducement prohibitions, and permit the Department to verify compliance with the proposed requirements. Varying the compliance requirements based on business size would be inconsistent with these policy objectives.

Smart Growth Impact

The proposed amendment will not have an impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Full text of the proposal follows (addition indicated in boldface **thus**):

11:17A-2.3 Rebates and inducements; prohibited practices

(a) – (e) (No change.)

(f) An offer by an insurer or insurance producer to make a contribution to a charity that is a qualified organization under the guidelines of the Internal Revenue Service, a non-profit corporation, or to the State of New Jersey or any political subdivision thereof, or to any state government or political subdivision thereof, upon a consumer, other than the charity, non-profit corporation, or governmental entity itself, agreeing to purchase an insurance product shall not be deemed to be an inducement or a rebate prohibited by this section, provided that:

1. No pecuniary benefit is obtained by the insurer or producer, other than the income tax benefit of such contribution;

2. No income tax benefits are passed through to the consumer by the insurer or producer making the contribution, and the consumer does not receive the contribution and has no direct or indirect interest in the recipient of the contribution;

3. The amount of premium or commission to be charged is not altered as a result of the contribution; and

4. Records of all such offers and contributions made are maintained for at least five years in a manner set forth in N.J.A.C. 11:17C-2.6, and are available to the Department for review and inspection upon request.