

INSURANCE

DEPARTMENT OF BANKING AND INSURANCE

DIVISION OF INSURANCE

OFFICE OF CONSUMER PROTECTION SERVICES

Insurance Producers Standards of Conduct; Marketing

Activities For Which a Person Must Be Licensed as an Insurance Producer

Unfair Trade Practices

Proposed Amendments: N.J.A.C. 11:17A-1.2 and 2.3

Authorized By: Richard J. Badolato, Commissioner, Department of Banking and Insurance.

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

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

Proposal Number: PRN 2017-100.

Submit comments by August 18, 2017, to:

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The agency proposal follows:

Summary

N.J.A.C. 11:17A sets forth requirements for insurance producers' standards of conduct. N.J.A.C. 11:17A-1.2 sets forth definitions of terms used in the chapter and N.J.A.C. 11:17A-2.3 sets forth prohibitions against rebates and inducements by insurance producers in connection with the sale of insurance.

The Department of Banking and Insurance (Department) is proposing to amend the definition of "inducement" in N.J.A.C. 11:17A-1.2. "Inducement" is defined as "money or any favor, advantage, object, valuable consideration or anything other than money which has a cost of or a redeemable value greater than \$25.00." The Department is proposing to amend the definition to raise the monetary threshold from \$25.00 to \$100.00, in order to be consistent with the Financial Industry Regulatory Authority (FINRA) inducement threshold in FINRA Rule 3220.

This proposed amendment also will modify the guidance from the Department in Bulletin No. 13-02 regarding payments by title insurance producers to real estate brokers for room rental fees. This guidance is modified insofar as any such payments are not in excess of the proposed \$100.00 monetary threshold.

The Department is also proposing to amend N.J.A.C. 11:17A-2.3 to codify the provisions of Bulletin No. 11-22, issued October 21, 2011, which provides guidance on activities not construed as prohibited rebates or inducements. Specifically, N.J.A.C. 11:17A-2.3 is proposed to be amended to include new subsection (g), which provides that the prohibitions against rebates and inducements set forth in N.J.A.C. 11:17A-2.3 shall not be deemed to prohibit the delivery by an insurance producer of services or other offerings for free or at a discounted price, and in a fair and non-discriminatory manner, provided that the service(s) or other offering(s) relate to, or enhance the value of, the insurance product being purchased. Services that would not be

prohibited include, but are not limited to: (1) discounts on gym memberships or wellness programs in connection with life, accident, health, or sickness insurance products; (2) claims filing assistance, including group health insurance assistance services; (3) COBRA, Health Reimbursement Arrangement (HRA), Health Savings Account (HSA), and Flexible Spending Account (FSA) administration; (3) risk management services, including loss control; and (4) product audits to assist policyholders to evaluate their current policies.

The Department is also proposing new subsection (h) to provide that services or monetary benefits provided for free or at a discounted price that inure to the personal benefit of the purchaser and that are largely extraneous to the coverage being purchased or the insurance services being provided by an insurance producer, or services offered in a discriminatory manner as an inducement to write or move business shall be deemed a prohibited rebate(s) or inducement(s). Examples of such services or benefits that the Department would consider prohibited rebates or inducements include: (1) payments of cash or cash equivalents of greater than \$100.00; (2) provision of tickets to a concert or event with a value greater than \$100.00; and (3) COBRA-, HRA-, HSA-, and FSA-administration services offered only to new customers who agree to change producers or insurers, which are not otherwise provided to in-force accounts.

A 60-day comment period is provided for this notice of proposal, and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, this notice is excepted from the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The proposed amendments increase the monetary threshold for the provision of a service or benefit to be considered an inducement consistent with FINRA Rule 3220, and codifies the guidance regarding rebates and inducements set forth in Bulletin No. 11-22. The proposed

amendments will allow producers greater flexibility in the provision of services and expand the ability of consumers to shop for insurance and receive benefits, while continuing to provide consumers protections against unscrupulous practices, consistent with existing Department guidance. The proposed amendments, thus, should have a positive social impact.

Economic Impact

The proposed amendments to N.J.A.C. 11:17A-1.2 will permit insurance producers to provide certain services or benefits to a prospective insured with a value up to \$100.00, instead of the current \$25.00, to be consistent with FINRA guidelines, without such benefit being deemed an inducement. No negative economic impact will result. Permitting insurance producers to provide benefits to prospective consumers that reflect current costs and FINRA guidelines offers more flexibility to insurance producers consistent with sound business practices, while continuing to protect consumers from undue inducement. Thus, the proposed amendments should provide a positive economic impact for both producers and consumers.

The proposed amendments to N.J.A.C. 11:17A-2.3 incorporate the existing guidance set forth in Bulletin No. 11-22 and should not impose any economic impact on producers or the public. Moreover, the Department does not believe that any additional professional services should be required to comply with the proposed amendments. The proposed amendments modify the dollar threshold for determining an inducement under the existing rules and codify existing guidance with respect to acceptable and prohibited activities in connection with rebates or inducements with which insurance producers have been complying since 2011.

Federal Standards Statement

A Federal standards analysis is not required because the proposed amendments are 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 amendments.

The Department invites interested parties to submit any data or studies concerning the jobs impact of the proposed amendments together with their written comments on other aspects of the notice of proposal.

Agriculture Industry Impact

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

Regulatory Flexibility Analysis

The proposed amendments will apply to “small businesses,” as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. To the extent that the proposed amendments apply to such small businesses, they will apply to insurance producers licensed and resident in this State. The economic impact and services required for compliance with the proposed amendments are set forth in the Economic Impact statement above. As noted therein, the Department does not believe any negative economic impact will be imposed. The proposed amendments provide no differentiation in compliance requirements based on business size. As set forth above, the proposed amendments increase the dollar threshold for determining whether the provision of a service or benefit constitutes an “inducement,” and codify the guidance with respect to prohibited and permitted activities concerning rebates and inducements, which are currently set forth in Bulletin No. 11-22. Prohibitions against unfair trade practices, such as providing rebates and inducements, should not vary based on business size.

Housing Affordability Impact Analysis

The proposed amendments will not have an impact on housing affordability, or on the average cost of housing in this State in that the proposed amendments relate to rebates and inducements by insurance producers.

Smart Growth Development Impact Analysis

The proposed amendments will not have an impact on smart growth in this State and there is an extreme unlikelihood that the proposed amendments would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey in that the proposed amendments relate to rebates and inducements by insurance producers.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. ACTIVITIES FOR WHICH A PERSON MUST BE LICENSED AS AN
INSURANCE PRODUCER

11:17A-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

...

“Inducement” means money or any favor, advantage, object, valuable consideration, or anything other than money, which has a cost of or a redeemable value greater than [\$25.00] **\$100.00.**

...

SUBCHAPTER 2. UNFAIR TRADE PRACTICES

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

(a)-(f) (No change.)

(g) The prohibitions against rebates and inducements set forth in (a) through (f) above shall not be deemed to prohibit the provision to a person by an insurance producer of services or other offerings for free or at a discounted price and in a fair and non-discriminatory manner, provided that the service(s) or other offering(s) relate to or enhance the value of the insurance product being purchased. Services and other offerings that would not be prohibited include, but are not limited to:

1. Discounts on gym memberships or wellness programs in connection with life, accident, health, or sickness insurance products;

2. Claims filing assistance, including group health insurance assistance services;

3. COBRA, Health Reimbursement Arrangement (HRA), Health Savings Account (HSA), and Flexible Spending Account (FSA) administration;

4. Risk management services, including loss control; and

5. Product audits to assist policyholders to evaluate their current policies.

(h) Services or monetary benefits provided for free or at a discounted price that inure to the personal benefit of the person and that are largely extraneous to the coverage being purchased or the insurance services being provided by an insurance producer, or services offered in a discriminatory manner as an inducement to write or move business shall be deemed a prohibited rebate(s) or inducement(s). Examples of such services or benefits that the Department would consider prohibited rebates or inducements include:

1. Payments of cash or cash equivalents of greater than \$100.00;

2. Provision of tickets to a concert or event with a value greater than \$100.00;

and

3. COBRA-, HRA-, HSA-, and FSA-administration services offered only to new customers who agree to change producers or insurers, which are not otherwise provided to in-force accounts.