

Deploying Beneficial Innovation in the Context of State Anti-Rebating Laws

A Proposal to NCOIL Regarding State Anti-Rebating Laws

The American Property Casualty Insurance Association (APCIA) represents more than 1200 insurers and reinsurers that provide critically important insurance protection throughout the U.S. and world. In combination, our members write 60% of the U.S. property casualty market. As insurers seek to provide more value-added services to their customers in the form of technology to reduce risk, there is some uncertainty and even hesitation over how state anti-rebating and inducement laws may apply.

The innovative programs/services at issue often leverage the use of IoT connected devices, e.g. monitors, sensors, communication, telematics, biometric wearables to assist policyholders to mitigate risk, and in the process prevent deaths, injuries and financial loss. It is therefore critically important that we find a way forward so as not to lose this historic opportunity to better serve the public by mitigating risk and preventing loss.

Background

From the beginning of insurance, insurers have partnered with their policyholders and the general public to better understand and reduce the risk of loss. Today, insurers provide loss control services to commercial insureds, catastrophe models enabling communities to be more resilient and public information and advocacy for measures resulting in safer roads, buildings and workplaces. Now, technology offers the opportunity to dramatically increase the scope and value of this partnership through the provision of technology to policyholders as part of the service insurers provide.

Anti-rebating laws, however, originally well intended are a cause of concern, a potential hindrance to socially beneficial innovation. We therefore much appreciate NCOIL's focus on the issue and extensive review of this subject. These laws were introduced more than 100 years ago, after the use of rebates threatened the solvency of life insurance companies and raised questions around unfair discriminatory practices. But they are now acting, as was extensively shown during NCOIL's Innovation Sessions, as a potential hurdle to beneficial innovation through technology.

While increasing attention is devoted to new coverages for cyber risk, flooding, cannabis and other emerging exposures, new technological advances and innovation are providing significant opportunity to enhance the insured consumer experience as it relates to standard homeowner, auto and business policies.

Property casualty insurers are operating in an era of unparalleled disruption and promise. Rapidly changing technology and consumer expectations will continue to present challenges and opportunities. Customer experience is even more than before the battleground for differentiation and competitive success. Consumers expect the ease, convenience and response of an Amazon and Uber in all facets of their life – “there must be an App for that” mentality. But delivering on that experience requires a wide variety of digital capabilities that aren't found in a typical application architecture.

IoT connected devices can benefit consumers. This developing technology holds the promise to more effectively collect and analyze data and inform consumer behavior and the ratemaking and claims process. But it may be unclear whether an insurer's offering comports with State anti-rebating laws.

The Challenge

The marketplace is demanding simpler and more innovation insurance solutions, including the combination of insurance products with non-insurance products and services in a single offering. These logical, complementary insurance/non-insurance product combinations allow insurers to better tailor products and to address emerging risks to the benefit of consumers. It is critically important to all that state laws and regulations keep pace with these innovative and consumer friendly innovations.

Way Forward—Key Issues and Potential Answers

- *What is the purpose of anti-rebating and inducement laws?*
 - These laws address concerns related to the giving or offering by the insurance producer, of any rebate or other valuable consideration to the prospective insured as an inducement to purchase insurance or any renewal of coverage. As a general matter, an insurer or insurance producer may not provide or offer to provide an insured or potential insured with any special benefit or discount, including any rebate from the premium, or any service or other incentive in conjunction with the sale of insurance, that is not specified in the policy or contract for insurance.
- *What screening criteria may ensure that value-added services or products still provide consumer protections and do not violate unfair discriminatory standards?*
 - States could most effectively and efficiently address the goals of legislators, regulators and industry by adding statutory or regulatory provisions that address the emergence of value-added and risk management services, products and devices that may be offered by, through, or in relationship with the insurance carrier. Principle-based criteria can support the innovations of today with the resilience to adapt to future innovations that continue to respond to the needs of consumers (policyholders). Qualified practices would be clarified as not considered to be an improper inducement for insurance, a rebate, or other impermissible consideration for purposes of the state anti-rebate law or regulation.
- *How should the offer of an IoT connected device comport with the state anti-rebating and inducement laws?*
 - The device (service or product) is intended to prevent or mitigate loss or provide loss control;
 - The device (service or product) can monitor or assess risk, identify sources of risk, or develop strategies for eliminating or reducing those risks; and
 - The device (service or product) may be offered or provided to an insured for free or at a discounted price.

- *Here is an APCA proposal for model language intended to be added to existing anti-rebating/trade practices statutes:*

An insurer, by or through its employees, affiliates, insurance producers or third-party representatives, may offer or provide products or services in conjunction with a policy of insurance for free or at a discounted price that are intended to educate about, assess, monitor, control or prevent risk of loss to persons or property. The offer or provision of products or services in this subsection are exempt from the prohibitions set forth in [insert applicable citation.]

Conclusion

APCIA appreciates the work of State legislators and the focus of NCOIL on its emerging innovation agenda. APCA believes NCOIL is well-positioned to be in the forefront of efforts to avoid anti-rebating laws from hindering insurers' offering innovative products and services that will assist their policyholders in reducing their risk of loss. We have suggested a way forward through a series of questions, potential answers and model language. This is a critically important issue for the public we serve, and we are committed to working with you deliver the best possible outcome.