Technological innovations along with innovative products and services are having a significant impact on the insurance industry to the benefit of policyholders and insurers. Consumers are demanding that insurers provide innovative products, services or programs that prevent or mitigate risk, which will be referred to as value-added service henceforth. In turn, questions have been raised whether providing these types of benefits are considered rebates or inducements in North Dakota. This bulletin sets forth the Department’s general position for insurers that choose to offer value-added services for loss control, loss mitigation, and rate reduction to policyholders. Value-added services may be offered or provided at no additional charge or at a discounted price and may allow for a rate reduction of the premium.

North Dakota law generally prohibits offering or providing anything of value not specified in the policy of insurance as an inducement to purchase insurance or rebate of premium. See N.D.C.C. §§ 26.1-04-03 (8) and 26.1-25-16.

It is the Department’s position, however, that an insurer, by or through its employees, affiliates, or third-parties, may offer or provide value added services in conjunction with a policy of insurance for free, at a discount, or at market value that are intended to educate about, assess, monitor, control or otherwise mitigate risk of loss to persons or property, and such offer or provision of products or services are not prohibited by N.D.C.C. §§ 26.1-04-03 (8) and 26.1-25-16 and are not required to be included in the form or rate filings.

Every insurer, by or through its employees, affiliates or third-parties, providing the value-added services shall provide a description of the service within thirty days after its first use in this state for review by the commissioner. The description must briefly describe what the service is; who the service is offered to; when the service will be offered; and how the service will reduce risk.

Each situation is fact specific, however, in general, when analyzing a value-added service, the Insurance Department will evaluate the service using the following parameters:

1. Does the provision of the value-added service, taken as a whole, protect the solvency of the applicable insurers and protect consumers?
2. Does the provision of the value-added service, taken as a whole, protect consumers against unfair discrimination?
3. Is the value-added service, taken as a whole, related to the insurance coverage being provided?
4. Does the service mitigate loss or provide loss control that aligns with the risks of the policy, or assess risk, identify sources of risk, or develop strategies for eliminating or reducing those risks?

As a result, value-added services must comply with all other provisions of North Dakota law. For example, value-added services must not translate to excessive or inadequate policy rates or result in unfair discrimination and must be proportional to the premium.

The Department retains its authority to request additional information regarding any value-added service as it deems necessary.

Please note that the purpose of this bulletin is to provide guidance to insurers desiring to provide products or services that add value related to the insurance policy and are intended to educate about, assess, monitor, control or otherwise mitigate risk of loss to persons or property. This bulletin does not modify or expand the exception permitting a $100 aggregate retail value gift, prize, promotional article, logo merchandise, meal or entertainment activity an insurance producer may provide to a person in connection with marketing, promotion, or advertising business under N.D.C.C. §§ 26.1-04-03 (8) and 26.1-25-16