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Bulletin 06-06

TO: Insurance Producers
FROM: Merle Scheiber, Director
RE: Rebates/Fees/Commissions
DATE: May 18, 2006

In well-publicized cases nationally as well as specific issues that have come directly to the attention of the Division, the issue of what an agent can offer insureds and prospective insureds has arisen.

Rebates, whether in conjunction with life or health insurance (SDCL 58-33-14) or property/casualty insurance (SDCL 58-33-24), are prohibited. An agent may not give any portion of a commission to the insured as an inducement to purchase insurance.

Fees are by statute considered premiums (SDCL 58-11-1). An agent may not be both a consultant charging fees for insurance advice or service and an agent collecting a commission. For an individual insured or prospective insured, it is not permissible to act both as an agent and a consultant. An agent cannot sell a policy, waive commissions or a portion of commissions and charge a fee. An insured can only be charged the premium, nothing more and nothing less (SDCL 58-33-36). If the insurer does not pay sufficient commission to cover the services the agent provides, then the agent must make a business decision whether to sell the product. The agent may not charge a fee in addition to the premium.

An agent cannot negotiate commissions with an insured or prospective insured. Negotiating commissions is an inducement and therefore prohibited as a rebate. Certain types of insurance lend themselves to negotiating premiums with an insured or prospective insured because the products are not subject to approval by the Division. Those products would include large group health (over 50 employees) and on the property casualty side, exempt commercial policyholders pursuant to SDCL 58-24-68. An agent for such products if authorized by the insurer may negotiate premiums with an insured or prospective insured. Furthermore, nothing prohibits an agent from negotiating commissions with an insurer. Therefore on such accounts should the agent wish to cede part of the commission the agent would otherwise be entitled to as a way of reducing the premium and making a sale that is permissible provided the negotiation of the commissions is done with the insurer and only the premium is negotiated with the insured or prospective insured.

Persons with questions or concerns regarding this bulletin are encouraged to contact the Division of Insurance at 605-773-3563.