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BULLETIN 2020-14 **MISSISSIPPI INSURANCE DEPARTMENT**

REBATING, INDUCEMENTS AND INSURANCE PRODUCER COMPENSATION

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I. PURPOSE

This Bulletin has been issued by the Mississippi Insurance Department (“MID”) to provide guidance and clarification regarding those activities and services that are considered unlawful rebates or inducements in Mississippi, and to notify insurance producers operating in Mississippi’s health insurance market of permissible compensation arrangements that may be utilized in addition to receiving commissions for the sale of health insurance products.

II. MISSISSIPPI ANTI-REBATING LAWS

In general, the Mississippi Insurance Code, in Miss. Code Ann. § 83-3-121 and § 83-7-3 (“Mississippi’s Anti-Rebating Laws”), provides that it is unlawful and an Unfair Trade Practice to rebate insurance premiums or to provide any valuable consideration as an inducement to making an insurance policy or contract. MID has interpreted Miss. Code Ann. § 83-3-121 as applying to property & casualty insurance and Miss. Code Ann. § 83-7-3 as applying to life insurance because they are respectively included under property and casualty and life insurance Chapters or Articles of the Mississippi Insurance Code. It is worth noting that Anti-Rebating language is not found in the health and accident Chapter or Article of the Mississippi Insurance Code. However, MID interprets Mississippi’s Unfair Trade Practice Laws, Miss. Code Ann. §§ 83-5-29 through 83-5-51, as prohibiting rebating and inducements in the health and accident insurance market as well.

III. REBATING TASK FORCE

MID has received many questions from insurance companies and producers as to whether certain marketing practices and services are considered unlawful rebates or inducements, and whether providing certain services or receiving compensation in addition to the commission for the sale of health insurance products violates Mississippi's Anti-Rebating and Unfair Trade Practice Laws. Further, with the increased use of social media, MID continually learns of related factual scenarios that are more innovative and complex and that generate even more questions.

MID felt it was necessary to release guidance that addressed these issues but only after considering comments and information from industry stakeholders who would be affected by such guidance. Therefore, MID formed a Rebating Task Force which was made up of eight (8) industry stakeholders, with MID staff members providing administrative support. The Task Force was generally charged with objectives that included, but were not limited to, the following:

- (1) Explore reasonable interpretations of applicable law which enable insurance producers to effectively market their products while still honoring the spirit and intent of Mississippi's Anti-Rebating Laws;
- (2) Review the status of insurance producer compensation arrangements in the health insurance market and consider whether there are permissible compensation structures/alternatives that would allow producers to be duly compensated for providing the level of client service necessary in today's complex healthcare marketplace; and
- (3) Help prepare written guidelines to be issued to producers and insurers addressing marketing practices that are acceptable versus those that are prohibited as rebating or unlawful inducements.

The Rebating Task Force held several meetings and received comments, information and formal testimony from numerous parties. After strongly considering all testimony, comments, information, and recommendations of the Task Force, and after providing a period for public comment from interested parties, MID has issued the official guidance below.

IV. GUIDANCE

A. Common, Ordinary Marketing Practices: Common, ordinary marketing practices are routine business practices seen in all areas of business, not just the business of

insurance. Some examples of common, ordinary marketing practices include, but are not limited to: the giving of promotional tangible goods (such as tee-shirts, caps, pens, calendars, etc.); the giving or purchase of consumables (such as food and beverages, etc.); the provision of continuing education course materials or instruction; the giving of tickets to sporting, cultural or other charitable events; or the making or giving of charitable donations.

It is the position of MID that common, ordinary marketing practices do not constitute unlawful rebates or inducements in the making of an insurance policy or contract. Therefore, insurers and insurance producers are hereby informed that they may engage in common, ordinary marketing practices as long as there is no *quid pro quo* arrangement present. Common, ordinary marketing practices do not violate Mississippi's Anti-Rebating and Unfair Trade Practice Laws.

The presence or use of *quid pro quo* constitutes an unlawful rebate or inducement, and does violate Mississippi's Anti-Rebating and Unfair Trade Practice Laws. *Quid pro quo* means giving something for something or giving one valuable thing for another. It's the mutual consideration that passes between the parties to a contract. In the business of insurance, *quid pro quo* would be the consideration associated with the sale and purchase of an insurance policy or contract.

While not exhaustive, attached to this Bulletin is Exhibit A which is a list of examples and answers meant to help insurers and insurance producers obtain a better understanding of what common, ordinary marketing practices are, what *quid pro quo* is, and what conduct does or does not violate Mississippi's Anti-Rebating and Unfair Trade Practice Laws.

B. Reducing Commissions to Obtain Insurance Business

A business practice more specific to the business of insurance is an insurance producer reducing commissions to obtain business. MID has recently received several inquiries regarding this practice in the property & casualty insurance market and whether it violates Mississippi's Anti-Rebating and Unfair Trade Practice Laws. The lawfulness of this practice depends solely on whether it has been previously approved by MID. Therefore, the *quid pro quo* analysis does not apply.

A commission reduction is permissible only if the reduction is in accordance with a commission structure filed with and approved by MID. Insurance companies generally include commission schedules in their rate filings which, as required by as required by applicable law, are approved by MID prior to use by the insurance company. If the company has provided a flexible commission structure that provides for an insurance producer to reduce commissions, and that

insurance producer reduces commissions in the manner set forth by the company and approved by MID, then such reduction is permissible and does not violate Mississippi's Anti-Rebating and Unfair Trade Practice Laws. However, if an insurance producer reduces commissions on a policy where the company has not filed and received approval for a reduction in commissions, or if the producer does not reduce commissions in the manner provided in the approved rate filing, then that producer is rebating in violation of Mississippi's Anti-Rebating and Unfair Trade Practice Laws, and specifically Miss. Code Ann. §§ 83-3-121 and 83-7-3.

Specific commission reduction examples are included in Exhibit A of this Bulletin to further clarify when reducing commissions to obtain insurance business violates Mississippi's Anti-Rebating and Unfair Trade Practice Laws.

C. Value Added Services: Value added services are add-ons to the core services of an insurance policy or contract which provide benefits to an insured that the core services do not. Value added services do not counteract the core services, but rather complement or add value to the core services of the underlying insurance policy or contract. If an insurer or insurance producer utilizes value added services, such services must be offered in a consistent, fair and nondiscriminatory manner to all like or similarly situated insureds or prospective insureds.

Value Added Services that are Incidental to an Insurance Policy or Contract

Insurance producers may offer and provide certain services not specified in an insurance policy or contract to an insured or prospective insured for free, without violating Mississippi's Anti-Rebating and Unfair Trade Practice Laws, if: the services are incidental to the insurance policy or contract and the services are provided in a fair and nondiscriminatory manner to all like or similarly situated insureds or potentials insureds. The services, known as value added services, may be offered for free, but they are not required to be. Though not exhaustive, included below is a list of value added services that are generally considered to be incidental to an insurance policy or contract and not unlawful rebates or inducements, even if offered for free:

- Risk assessments, including identifying sources of risk and developing strategies for eliminating or limiting those risks.
- Insurance consulting services such as examining, appraising, reviewing, or evaluating the insurance provided or other insurance-related advice.
- Insurance-related regulatory and legislative updates.

- Claims form preparation, but excluding claims adjustment.
- Preparation on behalf of an employer of Schedule A of the Internal Revenue Service Form 5500 Annual Return/Report of Employee Benefit Plan, which requests information regarding insurance contract coverage, fees and commissions, investment and annuity contracts, and welfare benefit contracts.
- Information to group policy or contract holders and members under group insurance policies, as well as forms needed for plan administration, enrollment forms, enrollment, including electronic enrollment services or software when those services or software pertain to insurance products but do not go beyond enrollment services or management of the insurance product, insurer-provided information or website links, and answers to frequently asked questions related to the insurance (including, for example, access through a website created by the producer to an employee benefit portal that contains such information.)
- Certain services performed pursuant to COBRA such as notifications to employees, billing former employees, collecting insurance premiums and forwarding aggregate premiums to the employer or contract holder or to the insurer when offered in connection with the provision of health and accident insurance.
- Certain services provided in accordance with the Health Insurance Portability and Accountability Act of 1996 such as those pertaining to health care access, portability, and renewability of insurance.
- The negotiation on behalf of insureds by health insurance issuers with nonparticipating providers in an effort to reduce or otherwise ameliorate billed charges by non-participating providers, commonly referred to as "balance billing".
- Premium only cafeteria plan services

Value Added Services that are NOT Incidental to an Insurance Policy or Contract

Some value added services cannot reasonably be considered incidental to an insurance policy or contract, as they are too attenuated to the provision of insurance. Value added services not incidental to an insurance policy or contract violate Mississippi's Anti-Rebating and Unfair Trade Practice Laws when they are offered or provided to an insured or a prospective insured for free or for an unreasonably reduced fee. When this occurs, a *quid pro quo* arrangement is considered to be present. These services generally include, but are not limited to:

- COBRA administration that goes beyond notification, and billing and collecting the insurance premiums for former employees that are to be forwarded to the group contract holder or insurer.
- Payroll processing and/or services such as providing employers with check creation and distribution services for their employees.
- Development of employee handbooks and training materials that are unrelated to risk assessments/mitigation or to the insurance.
- Human resource software or any services related to employee compensation, discipline, job functionality, employee leave, organizational development, business policies or practices, staffing, and recruiting that is unrelated to the insurance.
- Risk management or loss control services that are not routinely available to all like or similarly situated agency clients or prospective insureds, or that exceed the insurance related risk evaluation and underwriting of an account.
- Advice regarding compliance with federal and state laws concerning human resource issues that are not related to the insurance.
- Legal services.
- Cafeteria plan services that include health savings accounts and flexible spending plans for dependent care assistance and medical care reimbursements.

While not exhaustive, attached to this Bulletin is Exhibit B which contains examples and answers meant to help insurers and insurance producers gain a better understanding of those value added services that are permissible, and those that would violate Mississippi Anti-Rebating and Unfair Trade Practice Laws.

D. Health Insurance Producer Compensation In Addition to Commission

Several changes have occurred or are occurring in Mississippi's health insurance market that are impacting and/or reducing the way insurance producers are compensated. These changes include, but are not limited to, declining revenues in the individual and small group health insurance markets; insurance producers no longer being able to write individual policies for certain insurers; customer service and administrative duties such as member enrollment being shifted from insurers to insurance producers; and Federal health care law changing to the point that employers are continually seeking guidance on how to comply. To remain competitive in this market, many

insurers have shifted compensation models from commission on a percentage basis to per contract per month, and insurance producers have been forced to become health law experts in order to properly service group policies and effectively communicate with insureds.

It is the position of MID that it is not a violation of Mississippi's Anti-Rebating and Unfair Trade Practice Laws for health insurance producers to receive reasonable fees for providing enhanced services in addition to receiving a commission for the sale of a health insurance product. However, if these enhanced services are provided for a fee, the provision of such services should be formalized into a written agreement between the insured and the insurance producer where the fees and services being provided are clearly detailed. The agreement should inform the insured that, if the insured fails to continue paying the enhanced service fees, the core services of the underlying insurance policy or contract will continue and will not be affected as long as the corresponding insurance premium payment is made.

V. CONCLUSION

MID recognizes that there may be issues not considered by this Bulletin. MID may address those issues moving forward with further guidance and/or clarification.

It is important to note that MID reserves the right to specifically and independently evaluate related factual scenarios and circumstances on a case by case basis to determine whether something constitutes an unlawful rebate and/or inducement under Mississippi's Anti-Rebating and Unfair Trade Practice Laws.

You may direct any questions regarding this Bulletin to MID's Legal Division at 601-359-3577, or via electronic mail to rebating@mid.ms.gov.

Issued this the 23rd day of October, 2020.



**MIKE CHANEY
COMMISSIONER OF INSURANCE**

EXHIBIT A

Common, Ordinary Marketing Practices

Included below is a list of examples meant to help insurers and insurance producers obtain a better understanding of what common, ordinary marketing practices are, what *quid pro quo* is, and what conduct does or does not violate Mississippi's Anti-Rebating and Unfair Trade Practice Laws.

Example 1

An insurance producer tells John, a prospective insured, that he will give John a \$100 gift card if John purchases an insurance policy through the producer.

MID's Response

This is a clear case of an inducement to purchase insurance and is in violation of Mississippi's Anti-Rebating and Unfair Trade Practice Laws. *Quid Pro Quo* is clearly present here because the prospective insured has been told that he will receive a gift card in exchange for purchasing an insurance policy.

Example 1A

An insurance producer tells John, a prospective insured, that he will give John a \$10 gift card if John purchases an insurance policy through the producer.

MID's Response

This is also a clear case of an inducement to purchase insurance and is in violation of Mississippi's Anti-Rebating and Unfair Trade Practice Laws. *Quid Pro Quo* is clearly present here even though the amount of the inducement is less.

Example 1B

An insurance producer tells John that he will give John a \$25 gift card if John merely allows the producer to give him a quote on an insurance policy and that the \$25 gift card is not contingent upon John actually purchasing the insurance policy from the producer.

MID's Response

This is not a violation of Mississippi's Anti-Rebating and Unfair Trade Practice Laws. As you can see, *quid pro quo* does not exist in this example as nothing is

provided or promised in exchange for the writing or buying of insurance. The prospective insured is only provided an item as an incentive to be quoted insurance.

Example 1C

An insurance producer tells John that he will give John a \$100 gift card if John merely allows the producer to give him a quote on an insurance policy and that the \$100 gift card is not contingent upon John actually purchasing the insurance policy from the producer.

MID's Response

This is not a violation of Mississippi's Anti-Rebating and Unfair Trade Practice Laws. *Quid Pro Quo* is not present here even though the amount of the incentive is more. However, it is worth noting that as the amount of the incentive increases, it can become relevant in determining whether an unlawful inducement is occurring.

Example 1D

An insurance producer, on his social media page, announces to his friends/followers that he will give any person a \$10 gift card that comes to his agency for an insurance quote, regardless of whether they actually purchase a policy from him.

MID's Response

This is not a violation of Mississippi's Anti-Rebating and Unfair Trade Practice Laws. *Quid Pro Quo* is not present. This is similar to Examples 1B and 1C other than the fact that it is occurring in a different setting, being social media rather than in person. Therefore, the answer should not change.

Example 2

An insurance company, while at a convention, passes out company logoed coffee mugs, pens and calendars to various convention attendees.

MID's Response

This is not a violation of Mississippi's Anti-Rebating and Unfair Trade Practice Laws. *Quid Pro Quo* is not present.

Example 2A

An insurance company, while at a convention, has a raffle where any person can enter to win a new set of golf clubs.

MID's Response

Similar to Example 2, this is not a violation of Mississippi's Anti-Rebating and Unfair Trade Practice Laws. *Quid pro quo* is not present.

Example 2B

An insurance company, while at a convention, tells prospective insureds that if they purchase an insurance product from the company they would be entered into a drawing exclusive to the company's new insureds where one of the new insureds would win two Saturday Round tickets to the PGA Masters Golf Tournament.

MID's Response

This is in violation of Mississippi's Anti-Rebating and Unfair Trade Practice Laws. *Quid Pro Quo* is present. While the inducement is not a guaranteed amount of money or some other tangible item, consideration (i.e. chance to win a prize valued in the thousands of dollars) is directly given in exchange for purchasing insurance and the exchange of the consideration is exclusive to individuals purchasing the insurance.

Example 3

An independent insurance agency has a quarterly newsletter that it sends to all current insureds with the agency. The newsletter states that for each person an insured refers to the agency for a quote, and who actually comes in to receive a quote, the agency will donate \$10 to a charity that the agency selected for that quarter. For example, on January 1 the quarterly newsletter is sent out notifying all current insureds that the agency has chosen the Salvation Army to receive referral donations (if any) in the first quarter of the year. Also, current insureds understand that if they refer 10 prospective insureds to the agency for an actual quote during that quarter, then the agency will donate \$100 to the Salvation Army (10 prospective insureds x \$10 = \$100).

Further, when the prospective insured discusses quotes with the agency, the prospective insured is notified of the referral program and is also informed that a \$10 donation will be made to the Salvation Army regardless of whether the person purchases insurance through the agency. At no point is a current or prospective insured directly provided \$10 nor are they able to determine which charity the \$10 goes to.

MID's Response

This does not violate Mississippi's Anti-Rebating and Unfair Trade Practice Laws. There is no *quid pro quo* present. No real tangible or intangible item is directly

given to either insureds or prospective insureds in exchange for buying or renewing insurance coverage. Money is only donated to a third party charity independently selected by the agency. To construe the giving to charity to be an inducement would mean that any and every motivation a person may have for purchasing insurance would be an inducement. And doing that would defeat the purpose of outlining common, ordinary marketing practices as all would be prohibited.

Example 4

An insurance producer invites numerous prospective insureds to a free luncheon so that the producer can speak to the prospective insureds about the insurance products he can write and how he might be able to meet their insurance needs.

MID's Response

This is not in violation of Mississippi's Anti-Rebating and Unfair Trade Practice Laws. As you can see, *quid pro quo* does not exist in this example as nothing is provided or promised in exchange for the writing or buying of insurance. Prospective insureds are only provided consumables as an incentive to attend the luncheon so that the producer can pitch his products and possibly provide insurance quotes.

Example 5 (Business Consumables)

Producers at an Insurance Agency ("Agency") take the CEO of a prospective commercial insured out to a steakhouse to pitch their insurance products and to discuss how the Agency could meet or better meet the prospective commercial insured's insurance needs.

MID's Response

First, it is worth noting that the "Business Dinner", the "Business Trip" and the exchange of other various consumables, are common practices when interacting with clients, especially commercial clients. MID understands that these can be key to building and maintaining relationships with clients. However, like in the individual market context, actions may rise to the level of *quid pro quo* and violate Mississippi's Anti-Rebating and Unfair Trade Practice Laws.

With that being said, the scenario in this example is not in violation of Mississippi's Anti-Rebating and Unfair Trade Practice Laws. As you can see, *quid pro quo* does not exist in this example as nothing is provided or promised in exchange for the writing or buying of insurance. The prospective commercial insured is only

provided a consumable as an incentive to attend a dinner so that the Agency can pitch products and have related conversations.

Example 5A

The CEO commits to moving his business to the Agency, so the Agency's producers order a \$300 bottle of Dom Perignon for the table to celebrate.

MID's Response

Without additional information, one cannot clearly say whether *quid pro quo* existed. One would need to know whether the champagne was mentioned prior to the CEO moving business to the Agency as being an inducement for doing so. Without clear evidence that the provision of champagne was conditioned on the purchase of insurance, there would be no violation of MID's Anti-Rebating and Unfair Trade Practice Laws.

Example 5B

At the end of the policy year, around renewal time, the same commercial insured appears unsure about renewing the policy. The Agency takes the CEO out for dinner again where the CEO commits to a renewal. The Agency then takes the CEO on a local turkey hunting trip to celebrate.

MID's Response

Without additional information, one cannot clearly say whether *quid pro quo* existed. One would need to know whether the hunting trip was mentioned prior to the CEO renewing business with the Agency on a *quid pro quo* basis as an inducement to renew the business. However, it is arguable that a pattern is beginning to build that if the CEO purchases or renews insurance coverage through the Agency a gift will follow. It would appear that the insured is being induced to purchase more or renew insurance coverage through the Agency to receive valuable consideration.

Example 6

The Agency meets with a large prospective commercial insured at the Agency's offices. The Agency has been given the opportunity to pitch its insurance products and to discuss how the Agency could meet or better meet the prospective commercial insured's insurance needs, which include a need for health insurance, life insurance and various other supplemental products. During the Agency's pitch, one of the producers mentions the following to the prospective commercial insured:

“In our experience, insured’s that also pay for gym memberships for their employees tend to see higher productivity at work from their employees and the employees tend to have lower out of pocket costs for healthcare. It is worth mentioning that I am a majority shareholder in the gym next door. If you give us your business by the end of this month, I will give you an exclusive deal and will make sure that you get 50% off of the normal yearly gym membership fee for each employee.”

Based on this information, the prospective commercial insured switched its insurance business to be written through the Agency.

MID’s Response

This appears to be a clear case of *quid pro quo* and a direct inducement to purchase insurance. This is in violation of Mississippi’s Anti-Rebating and Unfair Trade Practice Laws. While the prospective commercial insured did or will pay something for the gym memberships, the insured received a 50% discount which would constitute valuable consideration not likely mentioned in the contract of insurance. This valuable consideration was given on a *quid pro quo* basis and it appears to be what induced the prospective insured to do business with the Agency.

Example 6A (slightly different from Example 6)

The Agency meets with a large prospective commercial insured at the Agency’s offices. The Agency has been given the opportunity to pitch their insurance products and to discuss how the Agency could meet or better meet the prospective commercial insured’s insurance needs, which include a need for health insurance, life insurance and various other supplemental products. During the Agency’s pitch, one of the producers mentions the following to the prospective commercial insured:

“In our experience, insured’s that also pay for gym memberships for their employees tend to see higher productivity at work from their employees and the employees tend to have lower out of pocket costs for healthcare. It is worth mentioning that I am a majority shareholder in the gym next door. We are currently advertising to the general public a 50% discount to the normal yearly gym membership fee if individuals sign up by the end of the month. If you have any interest we can get your employees signed up today.”

Based on this information, the prospective commercial insured switched its insurance business to be written through the Agency.

MID's Response

This is not a violation of Mississippi's Anti-Rebating and Unfair Trade Practice Laws as *quid pro quo* is not present. Because the thing of value given or received is available to the general public, the recipient of the thing of value has received no special favor or advantage through the contract of insurance. In situations like this, it cannot be reasonably asserted that the thing of value served as valuable consideration or an inducement to the contract because its recipient could obtain the thing of value irrespective of any contractual relationship regarding insurance.

Example 7

In making a pitch to a prospective commercial insured, a producer mentions that she will cut her commissions by 15% in order to get the prospective insured's business. The prospective insured places her business with the producer based on this information. The insurance product being sold has an associated rate filing that was filed with and approved by MID. The rate filing included a flexible commission schedule that would allow insurance producers the ability to reduce commissions up to 25%.

MID's Response

This is not a violation of Mississippi's Anti-Rebating and Unfair Trade Practice Laws. The commission reduction was made in accordance with the rate filing approved by MID and did not exceed the approved flexible commission schedule limits.

Example 7A (slightly different from Example 7)

In making a pitch to a prospective commercial insured, a producer mentions that he will cut his commissions by 10% in order to get the prospective insured's business. The prospective insured places her business with the producer based on this information. The insurance product being sold has an associated rate filing that was filed with and approved by MID. The rate filing did not include a flexible commission schedule.

MID's Response

This is in violation of Mississippi's Anti-Rebating and Unfair Trade Practice Laws. The rate filing approved by MID did not include a flexible commission schedule; therefore, the insurance producer cannot reduce his commission. This is a clear case of rebating or discounting of premiums as an inducement to insurance.

It is important to note that MID reserves the right to specifically and independently evaluate related factual scenarios and circumstances on a case by case basis to determine whether something constitutes an unlawful rebate and/or inducement under Mississippi's Anti-Rebating and Unfair Trade Practices Laws.

EXHIBIT B

Value Added Services

Value added services are allowed if they directly relate or are incidental to the insurance policy and are provided in a fair and nondiscriminatory manner to all like or similarly situated insureds or prospective insureds. Included below is a list of examples relating to value added services, including those services incidental to the policy and those not incidental, and how these value added services should be treated.

Example 1

An insurance producer tells Mom & Pop Shop, a small business, that as part of his services to all customers, he can conduct a risk assessment of their business and provide them with certain strategies to limit that risk at no additional charge.

MID's Response

This is not a violation. This type of service is incidental to the offering of insurance as it complements the core services of the insurance policy. The producer may offer this service to all his clients at no additional charge. This would not be considered rebating.

Example 1A

An insurance producer tells Mom & Pop Shop, a small business, that since they are members of the same church and know each other socially, as part of his services to them he will conduct a risk assessment of their business and provide them with certain strategies to limit that risk at no additional charge. The producer does not normally offer the risk assessment as part of his producer services to all his clients.

MID's Response

This is in violation of Mississippi's Anti-Rebating and Unfair Trade Practice Laws. Value added services must be offered in a consistent, fair and nondiscriminatory manner. While the service itself is incidental to the contract and complements the core service of the insurance contract, as the producer is only offering this service to certain clients, the producer is not acting in a consistent manner and the offering of the risk assessment services at no charge would constitute an unlawful inducement.

Example 1B

An insurance producer tells Mom & Pop Shop, a small business, he can conduct a risk assessment of their business and provide them with certain strategies to limit that risk at no additional charge, and that as part of these additional services provided to all customers, he also provides clients with a no cost human resources software program that addresses employee compensation and discipline.

MID's Response

This is in violation of Mississippi's Anti-Rebating and Unfair Trade Practice Laws. The software is a service that exceeds the insurance related risk evaluation and underwriting of the account and is not incidental to the insurance policy at issue. The offering of this software for free would be considered rebating.

Example 1C

An insurance producer tells Mom & Pop Shop, a small business, that as part of his services to all customers, he can conduct a risk assessment of their business and provide them with certain strategies to limit that risk at no additional charge, and he can provide them with software that addresses employee compensation and discipline under a separate contract and for a fee separate and in addition to the policy premium.

MID's Response

This is not a violation of Mississippi's Anti-Rebating and Unfair Trade Practice Laws. Although the service offered is not incidental to the insurance policy at issue, the producer offered this service under a separate contract and for a fee separate and in addition to the policy premium.

Example 2

A state agency issues a Request for Proposal (RFP) for dental, vision and cancer supplemental insurance products. An insurance producer submits a bid which includes the supplemental products requested in the RFP, and which also includes additional products such as a pre-paid legal plan. While the producer offers additional supplemental products, the fee he will collect will be commissions that are on file and approved by the Department.

MID's Response

This is not a violation of Mississippi's Anti-Rebating and Unfair Trade Practice Laws. The offering of additional products is not rebating as long as the approved commissions are received.

Example 2A

A state agency issues a Request for Proposal (RFP) for dental, vision and cancer supplemental insurance products. An insurance producer submits a bid which includes the supplemental products requested in the RFP, and which also includes additional products such as a pre-paid legal plan for which he will receive commissions. He also states he can provide the agency with Premium Only Cafeteria Plan services, and will provide these services for free, only collecting the commissions charged on the insurance products.

MID's Response

Similar to Example 2, this is not a violation of Mississippi's Anti-Rebating and Unfair Trade Practice Laws. The Premium Only Cafeteria Plan software is incidental to the insurance policy as it assists the employer in collecting the premiums on the supplemental insurance policies. As this is considered incidental to the policy, offering of this software is not considered rebating.

Example 2B

A state agency issues a Request for Proposal (RFP) for dental, vision and cancer supplemental insurance products. An insurance producer submits a bid which includes the supplemental products requested in the RFP, and which also includes additional products such as a pre-paid legal plan. He also states he can provide the agency with Premium Only Cafeteria Plan services and human resources software that can assist the agency with its time and leave recording for employees, and will provide these services for free, only collecting the commissions charged on the products.

MID's Response

This is in violation of Mississippi's Anti-Rebating and Unfair Trade Practice Laws. While the additional products offered and the Premium Only Cafeteria Plan services are services incidental to the policy, the human resources software is not incidental to the policy and cannot be offered at no cost to the client. The offering of this service for free would be considered rebating.

Example 2C

A state agency issues a Request for Proposal (RFP) for dental, vision and cancer supplemental insurance products. An insurance producer submits a bid which includes the supplemental products requested in the RFP, and which also includes additional products such as a pre-paid legal plan. He also states he can provide the agency with Premium Only Cafeteria Plan services for free, only collecting the commissions charged on the products. As part of his bid proposal, he states he can also offer the agency human resources software that can assist the agency with its time and leave recording for employees under a separate contract and for a fee separate and in addition to the policy premium.

MID's Response

This is not a violation of Mississippi's Anti-Rebating and Unfair Trade Practice Laws. While the human resources software offered is not incidental to the insurance policy at issue, the producer offered this service under a separate contract and for a fee separate and in addition to the policy premium.

Example 2D

A state agency issues a Request for Proposal (RFP) for dental, vision and cancer supplemental insurance products. An insurance producer submits a bid which includes the supplemental products requested in the RFP, and which also includes additional products such as a pre-paid legal plan. He also states he can provide the agency with Cafeteria Plan services that include Health Savings Accounts and Flexible Spending Plans for dependent care assistance and medical care reimbursements for free, only collecting the commissions charged on the products.

MID's Response

This is a violation of Mississippi's Anti-Rebating and Unfair Trade Practice Laws. The type of Cafeteria Plan services offered are not incidental to the insurance policy at issue, therefore the offering of these services for free and not under a separate contract and for a fee separate and in addition to the policy premium would be rebating.

It is important to note that MID reserves the right to specifically and independently evaluate related factual scenarios and circumstances on a case by case basis to determine whether something constitutes an unlawful rebate and/or inducement under Mississippi's Anti-Rebating and Unfair Trade Practices Laws.