



PUBLIC PROTECTION CABINET

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ADVISORY OPINION
2020-003

The following Advisory Opinion is to advise the reader of the current position of the Kentucky Department of Insurance on the specified issue. The Advisory Opinion is not legally binding on either the Department or the reader.

TO: ALL INSURERS LICENSED BY THE KENTUCKY DEPARTMENT OF INSURANCE

FROM: SHARON P. CLARK, COMMISSIONER
KENTUCKY DEPARTMENT OF INSURANCE

RE: CRITERIA FOR RATE REDUCTION, LOSS CONTROL AND LOSS MITIGATION VALUE-ADDED PRODUCTS AND SERVICES TO QUALIFY AS AN EXCEPTION TO REBATING AND ILLEGAL INDUCEMENTS WHEN OFFERED OR PROVIDED

DATE: APRIL 2, 2020

The Kentucky Department of Insurance will allow rate reduction, loss control, and loss mitigating value-added products and services that prevent or mitigate risk at no or reduced cost to policyholders to the extent allowable under KRS 304.12-080, KRS 304.12-090, KRS 304.12-100, and KRS 304.12-110. This bulletin sets forth the Department's general position on the permissibility of these products and services.

KRS 304.12-090 prohibits rebating with the following mandate:

No such insurer, employee, or representative shall pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, as an inducement to insurance or after insurance has been effected, any rebate, discount, abatement, credit or reduction of the premium named in a policy, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any valuable

consideration or inducements whatever, or give, sell, or purchase, or offer to give, sell, or purchase anything of value whatsoever not specified in the policy, except to the extent provided for in such applicable filing.

Furthermore, KRS 304.12-110 prohibits inducements to insurance that provide “any prizes, goods, wares, merchandise, or property of an aggregate value in excess of twenty-five dollars (\$25).” Lastly, products and services must be offered in a way that is not unfairly discriminatory to those “having substantially like insuring risk, and exposure factors, or expense elements” in accordance with KRS 304.12-080. The Department generally does not interpret these statutes to prevent the offer or provision by an insurance company to a policyholder of a rate reduction, loss control, and/or loss mitigation value-added product or service at no or reduced cost if:

- 1) The product or service’s use is directly related to the type of insurance offered or purchased;
- 2) The product or service is intended to mitigate risks or reduce rates or claims to the benefit of policyholders; and
- 3) The product or service is offered or provided in a fair and nondiscriminatory manner to like policyholders.

This criteria for evaluating these products and services is based on the exceptions provided in KRS 304.12-100 and the guidance of KRS 304.12-080, KRS 304.12-090, and KRS 304.12-110. Some products or services may meet the above criteria more easily than others. For example, leak prevention systems, telematics devices, home sensors, and other connected devices generally follow the intent of this exception closer than gift cards, cash back incentives, and donations to charity because all of these examples must be related to the underlying insurance and managing the insurance’s associated risks. Any product or service that does not meet the above criteria is subject to the twenty-five-dollar (\$25) limit as described in KRS 304.12-110. The Department declines to preemptively sanction any particular product or service due to the need for fact-specific analysis applied to the above criteria.

Companies are advised to review their filings to ensure that any such products and services currently offered meet the above criteria and avoid violations of the referenced statutes. Companies that do not correct noncompliant filings and practices within six (6) months from the date of this bulletin will be subject to penalties as deemed appropriate by the Commissioner.

For further information, contact Amy Folker at (502) 782-5341 or amy.folker@ky.gov.



Sharon P. Clark, Commissioner
Kentucky Department of Insurance
On this 2 day of April 2020