

# A CASE FOR FEE-BASED SERVICES

Loss Co.  
HR Counseli.  
Wellness Program.

DISCOUNT

SUB TOTAL

TAX

TOTAL

\$\$\$\$  
\$\$\$\$  
\$\$\$\$

*State departments of insurance are starting to weigh in on "value-added services"*

By Frank Pennachio

In recent months, several departments of insurance have issued warnings to insurance agents regarding the potential for violating rebating statutes by offering value-added services. It is likely this latest surge of department bulletins was precipitated by agents who have lost business to agents who offer value-added services. The loss of a key account in these tough economic times may be prompting agents to file complaints that would not have been filed a couple of years ago.

Forty-eight states and the District of Columbia prohibit insurance companies and agents from giving a client or prospect anything of value not specified in the policy as an inducement to the purchase of insurance. Agents have no difficulty understanding the prohibition of sharing commissions with a client, but they struggle to understand whether their service offerings violate

the statutes. Where is the line and how do agents know when they have inadvertently stepped over the line?

Here is an example. An August 9, 2010 Bulletin published by the Louisiana Department of Insurance includes the following:

"...the following services should not be performed by a producer or broker unless the service is included in the contract and the full cost of the service is charged in a separate invoice. Those services include but are not limited to:

- Development of employee handbooks and training which are unrelated to the insurance purchased.
- Human resource or any services related to employee compensation, discipline, job descriptions, leaves of absence, organizational development, business policies and practices, safety, staffing and recruiting that are unrelated to the insurance purchased."

Agents would be prudent to inquire about the interpretation of

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"unrelated to the insurance purchased." Does this mean that if you write an employment practices liability policy, then you can offer the above services free of charge? If so, would the same hold true if you provide the workers compensation policy?

The Bulletin also addresses loss control services. This item would be of

particular interest to agencies that have employed loss control specialists as an added value to their clients. It reads as follows:

- “Risk management or loss control services (1) that are not routinely available to all agency clients or (2) that exceed the insurance related risk evaluation and underwriting of an account or (3) that are typically provided on a fee for service basis.”

Does this mean that if you offer loss control services to one client, then you must offer the same level of service to all clients, regardless of size or complexity of the account? Or, if a loss control consultant is offering the same services for a fee, then you would be precluded from offering them to your clients at no cost?

Although these items are specific to Louisiana, it is possible, if not likely, that your state’s insurance department has similar guidelines and its anti-rebating statute would be interpreted similarly.

On another front, Missouri’s Department of Insurance issued a Bulletin on January 27, 2010, which specifically addressed the offering of wellness programs. The Bulletin says:

“Because the wellness programs offered by the producers or agencies are not provided in the insurance contract, they would constitute valuable consideration and an unlawful inducement or rebate, in violation of the prohibitions set out in §375.936(9), RSMo. For essentially the same reasons, an insurance producer or agency hiring an outside third party to provide the wellness services on a no-additional-fee basis that the insurance producer or agency may not directly or per-

sonally provide, also would constitute a prohibited practice.”

In addition, the Missouri Bulletin defines rebating as:

“...knowingly permitting or offering to make or making any contract of...accident and health insurance or other insurance, or agreement as to such contract other than as plainly expressed in the insurance contract issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract;...or anything of value whatsoever not specified in the contract.”

Agents would be wise to pay attention to these Bulletins. The risks to agents include fines, penalties, and license suspensions. In addition, agents may also be exposed to civil litigation from other agents through an Unfair and Deceptive Trade Practices lawsuit. If an agent loses his or her largest client and believes that rebating practices were a part of the sale, then the agent may decide to attempt to recoup that loss through the courts.

However, on a brighter note, these warnings may also serve as an opportunity for agents to re-evaluate their business model and reconsider the “value-added” approach. Unlawful or not, should agents be “giving away” valuable and costly services to clients for free when they place insurance policies?

Perhaps it is time to consider a consultative and fee-based approach with clients. Placing and managing the policies is just one thing agents do for their clients for which they are typically remunerated with commissions. Additional services, including but not limited to loss control, human resource consulting, and wellness programs would be fee-based. If the employer finds value and realizes a return on its investment, why would it not be willing to pay a fee?

Times have changed. The economic recession and protracted soft insurance market have created new challenges for insurance agencies. It is not surprising that these issues have arisen during this time of crisis. Desperate people do desperate things.

Yet, in any crisis there is an opportunity. Warnings from departments of insurance may be just the wake-up call you need to re-assess and revamp your business model. Giving away services for free may not only be unlawful, but may also be eroding the sustainability of your agency. Fee-based consulting combined with commissions from placing insurance is a powerful combination in these tough times. ■

### The author

*Frank Pennachio is co-founder of The WorkComp Advisory Group, a sales training and consulting organization that works with agencies to leverage technical knowledge and sales strategy into successful new business development. He brings nearly 20 years of agency ownership / management, sales training and workers compensation expertise to his topics. Contact him at [frank@mywcadvisor.com](mailto:frank@mywcadvisor.com).*