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**Douglas A. Ducey, Governor**  
**Keith Schraad, Director**

REGULATORY BULLETIN 2019-01

To: Life and Disability Insurers, Health Care Services Organizations, Hospital, Medical, Dental and Optometric Service Corporations, Life and Health Insurance Administrators, Producers, and Interested Parties

From: Keith Schraad *KS*  
Director

Date: February 7, 2019

Re: **Use of Credits and Premium Rebates in the Health Insurance Market**

**Background**

The purpose of this Regulatory Bulletin is to remind regulated entities and other stakeholders of requirements prohibiting premium rebates and unfair discrimination in the transaction of life or disability insurance in the state of Arizona.

The Arizona Department of Insurance ("the Department") has become aware of the use of certain credits in the transaction of group major medical health insurance. These credits may be referred to as "implementation credits," "administrative credits," "partnership credits," or "wellness credits," or by some other name. These credits function as a rebate by the insurer to the employer group of a portion of the annual premium for major medical health insurance. This Bulletin describes the relevant portions of the Arizona Revised Statutes ("A.R.S.") and the Department's interpretation of those statutes and explains why the use of such credits is prohibited.

**Statutory Requirements**

Pursuant to A.R.S. § 20-448(B), a person shall not make or permit any unfair discrimination . . . between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees or rates charged for any policy or contract of disability insurance or in the benefits payable or in any of the terms or conditions of the contract, or in any other manner whatever.

Pursuant to A.R.S. § 20-449(A), except as otherwise expressly provided by law, no person shall knowingly permit or offer to make or make any contract of life insurance, life annuity or disability insurance, or agreement as to such contract other than as plainly expressed in the contract issued thereon, or pay or allow, or give or offer to pay, allow or give, directly or indirectly, as an 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.

Furthermore, pursuant to A.R.S. § 20-442, no person shall engage in any trade practice which is prohibited by this article or determined to be an unfair method of competition or unfair or deceptive act or practice.

**Use of Credits Constitutes a Discriminatory Rebate of Premium and an Unfair Trade Practice**

Regardless of how a credit is labeled, it effectively reduces the amount of premium paid. Any credit which has the effect of offsetting the amount of total premium due by an insured is a rebate of premium. Such a rebate must meet the requirements of both A.R.S. §§ 20-448(B) and 449(A). Although A.R.S. § 20-449(A) includes language that suggests that a rebate of premiums may be permissible if such rebate is “plainly expressed” or “specified in the contract,” when read in conjunction with the prohibition on unfair discrimination in A.R.S. § 20-448(B), the potential for including a permissible rebate of premiums in an insurance contract becomes extremely limited. An insurer that offered a rebate of premium would be in violation of A.R.S. § 20-448(B) if such rebate was not offered equitably to all individuals, including all employer groups, of the same class and essentially the same hazard.

A.R.S. 20-448(B) makes clear that an insurer cannot unfairly discriminate between individuals in regard to the premium, policy fees, rates, benefits payable or any other manner whatever. The Department reads this to include the individuals covered by the group policy and contributing payment to the group policy premium. Absent a clear demonstration that a rebate, and therefore the amount of premium, are being applied equitably to all covered individuals of the same class and essentially the same hazard, an insurer may not offer such a rebate even if the rebate is described in the contract of insurance.

Unfair discrimination is a prohibited trade practice pursuant to A.R.S. § 20-442.

Insurers may develop a rating methodology that includes rate discounts that are uniformly applied to all groups in a like manner and on a nondiscriminatory basis, for example, to all employer groups with like risk whether for new or renewal business. To comply with A.R.S. § 20-448(B), such a methodology would be reflected in the actual rate of premium charged, and not applied as a separate rebate of premium. No such adjustment would be acceptable for community-rated products because of federal rating requirements.

Producers are also prohibited from rebating any portion of a policyholder’s premium (A.R.S. §§ 20-448(B) and 20-449(A)).

Any life or disability insurer or producer that offers, allows, gives, or pays a rebate in Arizona will be subject to enforcement action, which may include an order to cease and desist, a fine, or suspension or revocation of a license (A.R.S. §§ 20-220, 20-295).

Please direct questions regarding this Regulatory Bulletin to Erin Klug, Assistant Director, Market Oversight Division, [eklug@azinsurance.gov](mailto:eklug@azinsurance.gov).