The Bureau of Insurance provides the following guidance related to § 38.2-509 of the Code of Virginia (“Virginia’s rebating law”), which provides, in part, that no person may offer any valuable consideration or inducement to a purchaser or prospective purchaser of insurance unless it is specified in the policy, or a part of a filed rating plan.

Whether a given arrangement violates Virginia’s rebating law is fact-specific and will depend upon the relationship between the parties and the insurance product offered.

In general, Virginia’s rebating law does not prevent the offer or provision of value-added risk mitigation products or services at no or a reduced cost when such products or services are not specified in the policy of insurance and if the product or service:

1. Is designed primarily to provide risk mitigation and is based on documented objective criteria;
2. Relates to the specific insurance coverage provided by the insurer or producer; and
3. Is offered in a manner that is not unfairly discriminatory:
   * For property and casualty insurance, such product or service must be offered to all insureds within the same line of insurance or program within a line of insurance.
   * For life and health insurance, such product or service must be offered to all similarly situated insureds within the same risk class who have purchased the same policy or product.

A value-added product or service providing risk mitigation must achieve one or more of the following:

* Provide loss mitigation or loss control;
* Reduce claim costs or claim settlement costs;
* Provide education about liability risks or risk of loss to persons or property;
* Monitor or assess risk, identify sources of risk, or develop strategies for eliminating or reducing risk;
* Provide education about financial planning or financial wellness;
* Encourage behavioral changes to improve the health or reduce the risk of death or disability of an insured; or,
* Assist in the administration of the employee or retiree benefit insurance coverage.

The documented criteria must be maintained by the insurer or producer and produced when requested by the Bureau of Insurance.

The insurer or producer providing the value-added risk mitigation product or service offered must ensure that the customer is provided with contact information to assist the customer with questions regarding the product or service.

Any advertisement that refers to value-added risk mitigation products or services not specified in the policy of insurance must clearly state that these products and services are not insurance and are not contractually guaranteed.

Insurers seeking to offer wellness programs[[1]](#footnote-1) or wellness benefits[[2]](#footnote-2) are subject to additional requirements and restrictions under applicable state and federal law.

1. *See* § 38.2-3454 of the Code. [↑](#footnote-ref-1)
2. *See* [Wellness Benefits in Excepted Benefits Policies Guidance](https://protect.checkpoint.com/v2/___https://www.scc.virginia.gov/media/sccvirginiagov-home/regulated-industries/insurance/insurance-companies/life-health-companies/naic-product-checklists/wellness-benefits-guidance.pdf___.YzJ1OmlpYXY6YzpvOmQzMjU3NmY4N2U2NWQ4YmRkOTcwYzFiMGZjOWJlOGZhOjY6YWNhYjo0M2ZjMWYyYTQ4YjcxM2Q0NTZkODA2ODhhM2VlMmE4ZmUzZDQ2NzRhOGI3NWEwNmIzYjQ2YjI0MDc2MWY0MWE4OnA6RjpO). [↑](#footnote-ref-2)