

72A.2032 DUTIES OF INSURERS AND INSURANCE PRODUCERS.

Subdivision 1. **Suitability standard.** In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer where no producer is involved, shall have reasonable grounds for believing, after a reasonable inquiry, that the recommendation is suitable for the consumer, under the totality of the circumstances based on the facts disclosed by the consumer as to the consumer's investments and other insurance products and as to the consumer's financial situation and needs, including the consumer's suitability information, and that there is a reasonable basis to believe all of the following:

(1) the consumer has been reasonably informed of various features of the annuity, such as the potential surrender period and surrender charge, potential tax penalty if the consumer sells, exchanges, surrenders, redeems, or annuitizes the annuity, mortality and expense fees, investment advisory fees, potential charges for and features of riders, limitations on interest returns, insurance and investment components, and market risk;

(2) the consumer would receive a tangible net benefit from the transaction;

(3) for the particular consumer based on the consumer's suitability information:

(i) the particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of purchase or exchange of the annuity, and riders and similar product enhancements, if any, are suitable; and

(ii) in the case of an exchange or replacement, the transaction as a whole is suitable taking into account, among other things, the age of the consumer; and

(4) in the case of an exchange or replacement of an annuity, the exchange or replacement is suitable including taking into consideration all of the following:

(i) the consumer will incur a surrender charge; be subject to the commencement of a new surrender period; lose existing benefits, such as death, living, or other contractual benefits; or be subject to increased fees, investment advisory fees, or charges for riders and similar product enhancements;

(ii) the consumer would receive a tangible net benefit from the transaction, and in the case of a person 65 years of age or older, neither a producer nor an insurer shall recommend a replacement or exchange of an annuity that requires the insured to pay a surrender charge for the annuity being replaced or exchanged if the replacement or exchange does not confer a substantial financial benefit over the life of the annuity to the consumer so that a reasonable person would believe the purchase is unnecessary; and

(iii) the consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 60 months.

Subd. 2. **Obtaining suitability information.** Before the execution of a purchase, exchange, or replacement of an annuity resulting from a recommendation, an insurance producer, or an insurer where no producer is involved, shall make reasonable efforts to obtain the consumer's suitability information, and record this information on a form, inventory, or similar record. The producer, upon request, shall provide to the consumer or the consumer's legal representative a copy of the information used in the making of the suitability determination.

Subd. 3. **Restriction on issuance of annuity.** Except as permitted under subdivision 4, an insurer shall not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable based on the consumer's suitability information.

Subd. 4. **Exception.** (a) Except as provided under paragraph (b), an insurance producer, or an insurer, does not have any obligation to a consumer under subdivision 1 or 3 related to an annuity transaction if:

(1) a recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer; or

(2) a consumer refuses to provide relevant suitability information and the annuity transaction is not recommended.

(b) An insurer's issuance of an annuity subject to paragraph (a) shall be reasonable under all the circumstances actually known, or which after reasonable inquiry should be known to the insurer or the insurance producer, at the time the annuity is issued.

Subd. 5. **Documentation.** An insurance producer or, where no insurance producer is involved, the responsible insurer representative shall at the time of sale:

(1) make a record of any recommendation subject to subdivision 1;

(2) obtain a consumer signed statement documenting a consumer's refusal to provide suitability information, if any; and

(3) obtain a customer signed statement acknowledging that an annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the insurance producer's or insurer's recommendation.

Subd. 6. **Supervision system.** (a) An insurer shall establish a supervision system that is reasonably designed to achieve the insurer's and its insurance producers' compliance with sections 72A.203 to 72A.2036, including, but not limited to, all of the following:

(1) the insurer shall maintain reasonable procedures to inform its insurance producers of the requirements of sections 72A.203 to 72A.2036 and shall incorporate the requirements of sections 72A.203 to 72A.2036 into relevant insurance producer training programs and manuals;

(2) the insurer shall establish standards for insurance producer product training and shall maintain reasonable procedures to require its insurance producers to comply with the requirements of section 72A.2033;

(3) the insurer shall provide product-specific training and training materials which explain all material features of its annuity products to its insurance producers;

(4) the insurer shall maintain procedures for review of each recommendation before issuance of an annuity that are designed to ensure that there is a reasonable basis to determine that a recommendation is suitable. The review procedures shall apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other reasonable means including, but not limited to, physical review. The electronic or other system shall be designed to require an elevated individual review for those transactions involving consumers 65 years of age or older on the basis of the review procedure's thresholds for liquidity, liquid net worth, income, and anticipated material changes in their financial situation and needs and the elevated review shall be conducted by a natural person or persons;

(5) the insurer shall maintain reasonable procedures to detect recommendations that are not suitable. This may include, but is not limited to, confirmation of consumer suitability information, systematic customer surveys, interviews, confirmation letters, and programs of internal monitoring. Nothing in this clause prevents an insurer from complying with this clause by applying sampling procedures, or by confirming suitability information after issuance or delivery of the annuity; and

(6) the insurer shall annually provide a report to senior management, including to the senior manager responsible for audit functions, which details a review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.

(b)(1) Nothing in this subdivision restricts an insurer from contracting for performance of a function, including maintenance of procedures, required under paragraph (a). An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to section 72A.2034 regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with subdivision 2, and an insurer is responsible for the compliance of an insurance producer with the provisions of sections 72A.203 to 72A.2036 regardless of whether the insurer contracts for performance of a function required under this paragraph; and

(2) an insurer's supervision system under paragraph (a) must include supervision of contractual performance under this clause. This includes, but is not limited to, the following:

(i) monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed; and

(ii) annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager has a reasonable basis to represent, and does represent, that the function is properly performed.

(c) An insurer is not required to include in its system of supervision an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer.

Subd. 7. Undue influence. An insurance producer or insurer shall not dissuade, or attempt to dissuade, a consumer from:

(1) providing suitability information to the insurance producer or insurer and truthfully responding to an insurer's request for confirmation of suitability information;

(2) filing a complaint; or

(3) cooperating with the investigation of a complaint.

Subd. 8. FINRA compliance. (a) Sales of annuities made by broker-dealers satisfy the requirements under sections 72A.203 to 72A.2036, so long as:

(1) those sales comply with FINRA requirements pertaining to suitability and supervision of annuity transactions; and

(2) a registered principal reviews and approves the transaction based on review criteria that include consideration of the customer's age, income, liquidity needs, and financial situation.

(b) The insurer remains responsible for the suitability of every transaction and must take reasonably appropriate corrective action for any consumer harmed by violation of law and is subject to the penalty provisions described in section 72A.2034, subdivision 1.

(c) For paragraph (a) to apply, an insurer shall:

(1) monitor the FINRA member broker-dealer using information collected in the normal course of the insurer's business; and

(2) provide to the FINRA member broker-dealer information and reports that are reasonably appropriate to assist the FINRA member broker-dealer to maintain its supervision system.

(d) Nothing in this subdivision limits:

(1) the responsibilities of the insurer to monitor the broker-dealer as provided in this subdivision; and

(2) the commissioner of commerce's ability to enforce the provisions of sections 72A.203 to 72A.2036 with respect to sales made in compliance with FINRA requirements and federal law.

History: 2013 c 54 s 3