72A.2032 DUTIES OF INSURERS AND INSURANCE PRODUCERS.

Subdivision 1. MS 2020 [Repealed, 2022 c 84 s 24]

Subd. 1a. **Best interest obligations.** An insurance producer, when recommending an annuity, shall act in the best interest of the consumer under the circumstances known at the time the recommendation is made. An insurance producer shall not place the insurance producer's or the insurer's financial interest ahead of the consumer's interest. An insurance producer has acted in the best interest of the consumer if the insurance producer has satisfied obligations regarding care, disclosure, conflict of interest, and documentation specified in subdivisions 1b, 1c, 1d, and 1e.

Subd. 1b. **Care obligation.** (a) The insurance producer, in making a recommendation, shall exercise reasonable diligence, care, and skill to:

(1) know the consumer's financial situation, insurance needs, and financial objectives;

(2) understand the available recommendation options after making a reasonable inquiry into the options available to the insurance producer;

(3) have a reasonable basis to believe the recommended option effectively addresses the consumer's financial situation, insurance needs, and financial objectives over the life of the product, as evaluated in light of the consumer profile information; and

(4) communicate the basis or rationale supporting the recommendation.

(b) The requirements under paragraph (a) include making reasonable efforts to obtain consumer profile information from the consumer prior to recommending an annuity.

(c) The requirements under paragraph (a) require an insurance producer to consider the types of products the insurance producer is authorized and licensed to recommend or sell that address the consumer's financial situation, insurance needs, and financial objectives. This paragraph does not require analysis or consideration of any products outside the insurance producer's authority and license, or other possible alternative products or strategies available in the market at the time of the recommendation. Insurance producers shall be held to standards applicable to insurance producers with similar authority and licensure.

(d) The requirements under this subdivision do not create a fiduciary obligation or relationship and only create a statutory obligation under sections 72A.203 to 72A.2036.

(e) The consumer profile information; characteristics of the insurer; and product costs, rates, benefits, and features are the factors generally relevant in determining whether an annuity effectively addresses the consumer's financial situation, insurance needs, and financial objectives. The level of importance of each factor under paragraph (a) may vary depending on the facts and circumstances of a particular case. Each factor must not be considered in isolation.

(f) The requirements under paragraph (a) include having a reasonable basis to believe the consumer benefits from certain features of the annuity, including but not limited to annuitization, death or living benefit, or other insurance-related features.

(g) The requirements under paragraph (a) apply to the particular annuity as a whole and the underlying subaccounts to which funds are allocated at the time of the purchase or exchange of an annuity, riders, and similar product enhancements, if any.

(h) The requirements under paragraph (a) do not require that the annuity with the lowest onetime or multiple-occurrence compensation structure must be recommended.

(i) The requirements under paragraph (a) do not require the insurance producer to assume ongoing monitoring obligations. An ongoing monitoring obligation may be separately owed under the terms of a fiduciary, consulting, investment advising, or financial planning agreement between the consumer and the insurance producer.

(j) In the case of an exchange or replacement of an annuity, the insurance producer shall consider the whole transaction, which includes considering whether:

(1) the consumer incurs a surrender charge; is subject to the commencement of a new surrender period; loses existing benefits such as death, living, or other contractual benefits; or is subject to increased fees, investment advisory fees, or charges for riders and similar product enhancements;

(2) the replacing product substantially benefits the consumer in comparison to the replaced product over the life of the product; and

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

(k) In the case of a person 65 years of age or older, neither an insurance producer nor an insurer shall recommend replacing or exchanging 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.

(l) Nothing in sections 72A.203 to 72A.2036 requires an insurance producer to obtain any license other than an insurance producer license with the appropriate line of authority to sell, solicit, or negotiate insurance in Minnesota, including but not limited to any securities license in order to fulfill the duties and obligations contained in sections 72A.203 to 72A.2036, provided that the insurance producer does not give advice or provide services that are subject to other securities law or engage in any other activity requiring other professional licenses.

Subd. 1c. **Disclosure obligation.** (a) Prior to recommending and selling an annuity, the insurance producer shall prominently disclose to the consumer the information required under this paragraph on a form prescribed by the commissioner. The form prescribed by the commissioner must contain:

(1) a description of (i) the scope and terms of the relationship with the consumer, and (ii) the role of the insurance producer in the transaction;

(2) an affirmative statement on whether the insurance producer is licensed and authorized to sell the following products:

(i) fixed annuities;

(ii) fixed indexed annuities;

(iii) variable annuities;

(iv) life insurance;

(v) mutual funds;

(vi) stocks and bonds; and

(vii) certificates of deposit;

(3) an affirmative statement describing the insurers that the insurance producer is authorized, contracted, appointed, or otherwise able to sell insurance products for, using the following descriptions:

(i) from one insurer;

(ii) from two or more insurers; or

(iii) from two or more insurers, although primarily contracted with one insurer;

(4) a description of the sources and types of cash and noncash compensation received by the insurance producer, including whether the insurance producer is (i) compensated for the sale of a recommended annuity by commission as part of a premium, or (ii) receives other remuneration from the insurer, intermediary, or other insurance producer or by fee as a result of a contract for advice or consulting service; and

(5) a notice of the consumer's right to request additional information regarding cash compensation.

(b) Upon request of the consumer or the consumer's designated representative, the insurance producer shall disclose:

(1) a reasonable estimate of the amount of cash compensation to be received by the insurance producer, which may be stated as a range of amounts or percentages; and

(2) whether the cash compensation is a onetime or multiple-occurrence amount and, if a multiple-occurrence amount, the frequency and amount of the occurrence, which may be stated as a range of amounts or percentages.

(c) Prior to or at the time an annuity is recommended or sold, the insurance producer shall have a reasonable basis to believe the consumer has been reasonably informed of various features of the annuity, including 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; annual fees; potential charges for and features of riders or other options of the annuity; limitations on interest returns; potential changes in nonguaranteed elements of the annuity; insurance and investment components; and market risk.

Subd. 1d. **Conflict of interest obligation.** An insurance producer shall identify and avoid or reasonably manage and disclose material conflicts of interest, including a material conflict of interest related to an ownership interest.

Subd. 1e. **Documentation obligation.** An insurance producer shall, at the time of recommendation or sale:

(1) make a written record of any recommendation and the basis for the recommendation, subject to sections 72A.203 to 72A.2036;

(2) obtain a signed statement, on a form prescribed by the commissioner, that includes:

(i) a customer's refusal to provide the consumer profile information, if any; and

(ii) a customer's understanding of the ramifications of not providing the customer's consumer profile information or providing insufficient consumer profile information; and

(3) a consumer-signed statement, on a form prescribed by the commissioner, that acknowledges the annuity transaction is not recommended if the customer decides to enter into an annuity transaction that is not based on the insurance producer's recommendation.

Subd. 1f. **Application of best interest obligation.** Any requirement applicable to an insurance producer under this section applies to every insurance producer who exercises control or influence in making a recommendation and has received direct compensation as a result of the recommendation or sale, regardless of whether the insurance producer had any direct contact with the consumer. Providing or delivering marketing or educational materials, product wholesaling or other back office product support, and general supervision of an insurance producer do not, in and of themselves, constitute material control or influence.

Subd. 2. MS 2020 [Repealed, 2022 c 84 s 24]

Subd. 3. MS 2020 [Repealed, 2022 c 84 s 24]

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

(1) no recommendation is made;

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

(3) a consumer refuses to provide relevant consumer profile information and the annuity transaction is not recommended; or

(4) a consumer decides to enter into an annuity transaction that is not based on a recommendation of the insurance producer.

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

Subd. 5. MS 2020 [Repealed, 2022 c 84 s 24]

Subd. 6. **Insurer duties.** (a) 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 effectively addresses the particular consumer's financial situation, insurance needs, and financial objectives based on the consumer's consumer profile information.

(b) An insurer shall establish and maintain 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 establish and 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 and maintain standards for insurance producer product training and shall, by July 1, 2023, establish and 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 establish and maintain procedures for the review of each recommendation before issuance of an annuity that are designed to ensure there is a reasonable basis to determine the recommended annuity effectively addresses the particular consumer's financial situation, insurance needs, and financial objectives. 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 establish and maintain reasonable procedures to detect recommendations that are not in compliance with subdivisions 1a to 1f, 4, 7, and 8. This may include, but is not limited to, confirmation of the consumer's profile information, systematic customer surveys, insurance producer and consumer interviews, confirmation letters, insurance producer attestations, and programs of internal monitoring. Nothing in this clause prevents an insurer from complying with this clause by applying sampling procedures, or by confirming consumer profile information or other required information under this subdivision after issuance or delivery of the annuity;

(6) the insurer shall establish and maintain reasonable procedures to assess, prior to or upon issuance or delivery of an annuity, whether an insurance producer has provided to the consumer the information required under this subdivision;

(7) the insurer shall establish and maintain reasonable procedures to identify and address suspicious consumer refusals to provide consumer profile information;

(8) the insurer shall establish and maintain reasonable procedures to identify and eliminate any sales contests, sales quotas, bonuses, and noncash compensation that are based on the sales of specific annuities within a limited period of time. The requirements of this clause do not prohibit the receipt of health insurance, office rent, office support, retirement benefits, or other employee benefits, as long as the benefits are not based on the volume of sales of a specific annuity within a limited period of time; and

(9) the insurer shall annually provide a written 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.

(c)(1) Nothing in this subdivision restricts an insurer from contracting for performance of a function, including maintenance of procedures, required under paragraph (b). 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 clause (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 (b) 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.

(d) 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, or consideration of or comparison to options available to the insurance producer or compensation relating to the options other than annuities or other products offered by the insurer.

Subd. 7. **Prohibited practices.** An insurance producer or insurer shall not dissuade, or attempt to dissuade, a consumer from:

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

(2) filing a complaint; or

(3) cooperating with the investigation of a complaint.

Subd. 8. **Comparable standards; compliance.** (a) Recommendations and sales of annuities made in compliance with comparable standards satisfy the requirements under sections 72A.203 to 72A.2036. This subdivision applies to recommendations and sales of annuities made by financial professionals in compliance with business rules, controls, and procedures that satisfy a comparable standard even if the standard would not otherwise apply to the product or recommendation at issue. Nothing in this subdivision limits the commissioner's ability to investigate and enforce sections 72A.203 to 72A.2036.

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

(1) monitor the relevant conduct of the financial professional seeking to rely on paragraph (a) or the entity responsible for supervising the financial professional, including the financial professional's broker-dealer or an investment adviser registered under federal or state securities law using information collected in the normal course of the insurer's business; and

(2) provide to the entity responsible for supervising the financial professional seeking to rely on paragraph (a), including the financial professional's broker-dealer or investment adviser registered under federal or state securities law, information and reports that are reasonably appropriate to assist the entity to maintain its supervision system.

(c) For purposes of this subdivision, "financial professional" means an insurance producer that is regulated and acting as:

(1) a broker-dealer registered under federal or state securities law or a registered representative of a broker-dealer;

(2) an investment adviser registered under federal or state securities law, or an investment adviser representative associated with the federal or state registered investment adviser; or

(3) a plan fiduciary under the Employee Retirement Income Security Act of 1974 (ERISA), United States Code, title 29, section 1001; Code of Federal Regulations, title 29, part 2510.3-21; fiduciary under the Internal Revenue Code, section 4975(e)(3); or any amendments or successor statutes.

(d) For purposes of this subdivision, "comparable standards" means:

(1) with respect to broker-dealers and registered representatives of broker-dealers, applicable United States Securities and Exchange Commission and FINRA rules pertaining to best interest obligations and supervision of annuity recommendations and sales, including but not limited to regulation best interest and any amendments or successor regulations;

(2) with respect to investment advisers registered under federal or state securities law or investment adviser representatives, the fiduciary duties and all other requirements imposed on the investment advisers or investment adviser representatives by contract or under the Investment Advisers Act of 1940 or applicable state securities law, including but not limited to Form ADV and interpretations; and

(3) with respect to plan fiduciaries or fiduciaries, the duties, obligations, prohibitions, and all other requirements attendant to status under ERISA or the Internal Revenue Code and any amendments or successor statutes.

History: *2013 c 54 s 3; 2014 c 275 art 1 s 12; 2022 c 84 s 10-19*