
SUITABILITY IN ANNUITY TRANSACTIONS

Must be completed and accompany applications for annuities

Applicant's Name _____

Applicant's Address _____

I have made reasonable efforts to obtain the following information regarding the applicant's financial status and objectives prior to making the recommendation of this product.

- | | |
|--|---|
| <input type="checkbox"/> Tax Status | <input type="checkbox"/> Source of funds |
| <input type="checkbox"/> Investment Objectives | <input type="checkbox"/> Dependent information |
| <input type="checkbox"/> Liquidity needs | <input type="checkbox"/> Need for Income |
| <input type="checkbox"/> Investment experience | <input type="checkbox"/> Need for an annuity contract |

Other _____

I understand I must keep records of the information used in making this recommendation, and I agree that I will provide those records to the insurer upon request. The time period for record retention will be no less than that required by the Suitability in Annuity Transactions regulation as adopted by the state in which the contract is issued.

Agent's Signature

Date

If the annuity sold is not the product recommended, the applicant must read the following statement and sign below.

I have chosen to purchase an annuity other than the recommended product.

Applicant's Signature

Date

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ACLI Advance Regulation Service

COLORADO Regulation 4-1-11 Concerning Senior Protection in Annuity Transactions

Effective October 1, 2004

Summary: The new regulation provides standards and actions for insurance producers to follow when engaged in transactions involving annuity products sold to seniors, making certain that the insurance requirements and financial goals of senior clients at the time of the transaction are properly dealt with.

Keywords: annuity

This regulation updates the following Compliance Service(s): Annuity, Market Conduct

Source: The Colorado Register, September 10, 2004

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Text of regulation follows:

REGULATION 4-1-11

Concerning Senior Protection in Annuity Transactions

- Section 1. Authority
- Section 2. Purpose and Background
- Section 3. Applicability and Scope
- Section 4. Definitions
- Section 5. Duties of Insurers and Insurance Producers
- Section 6. Recordkeeping
- Section 7. Enforcement
- Section 8. Severability
- Section 9. Effective Date
- Section 10. History

Section 1. Authority

This regulation is issued under the authority of Sections 10-1-109 and 10-3-1110(1), Colorado Revised Statutes.

Section 2. Purpose and Background

The purpose of this regulation is to set forth standards and procedures for recommendations to senior consumers that result in a transaction involving annuity products so that the insurance needs and financial objectives of senior consumers at the time of the transaction are appropriately addressed.

Section 3. Applicability and Scope

A. This regulation shall apply to any recommendation to purchase or exchange an annuity made to a senior consumer by an insurance producer, or an insurer where no producer is involved, that results in the purchase or exchange recommended.

B. Unless otherwise specifically included, this regulation shall not apply to recommendations involving:

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1. Direct response solicitations where there is no recommendation based on information collected from the senior consumer pursuant to this regulation;
 2. Contracts used to fund:
 - (a) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);
 - (b) A plan described by Sections 401(a), 401(k), 403(b), 408(k) or 408(p) of the Internal Revenue Code (IRC), as amended, if established or maintained by an employer;
 - (c) A government or church plan defined in Section 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the IRC;
 - (d) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;
 - (e) Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or
 - (f) Formal prepaid funeral contracts.

C. Nothing herein shall be construed to create or imply a private cause of action for a violation of this regulation.

Section 4. Definitions

- A. "Annuity" means a fixed annuity or variable annuity that is individually solicited, whether the product is classified as an individual or group annuity.
 - B. "Insurer" means a company required to be licensed under the laws of this state to provide insurance products, including annuities.
 - C. "Insurance producer" means a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance, including annuities.
 - D. "Recommendation" means advice provided by an insurance producer, or an insurer where no producer is involved, to an individual senior consumer that results in a purchase or exchange of an annuity in accordance with that advice.
 - E. "Senior consumer" means a person sixty-five (65) years of age or older. In the event of a joint purchase by more than one party, the purchaser will be considered to be a senior consumer if any of the parties is age sixty-five (65) or older.
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Section 5. Duties of Insurers and of Insurance Producers

A. In recommending to a senior 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 that the recommendation is suitable for the senior consumer on the basis of the facts disclosed by the senior consumer as to his or her investments and other insurance products and as to his or her financial situation and needs.

B. Prior to the execution of a purchase or exchange of an annuity resulting from a recommendation, an insurance producer, or an insurer where no producer is involved, shall make reasonable efforts to obtain information concerning:

- (1) The senior consumer's financial status;
- (2) The senior consumer's tax status;
- (3) The senior consumer's investment objectives; and
- (4) Such other information used or considered to be reasonable by the insurance producer, or the insurer where no producer is involved, in making recommendations to the senior consumer.

C. (1) Except as provided under Paragraph (2) of this subsection, neither an insurance producer, nor an insurer where no producer is involved, shall have any obligation to a senior consumer under Subsection A related to any recommendation if a consumer:

- (a) Refuses to provide relevant information requested by the insurer or insurance producer;
- (b) Decides to enter into an insurance transaction that is not based on a recommendation of the insurer or insurance producer; or
- (c) Fails to provide complete or accurate information.

(2) An insurer or insurance producer's recommendation subject to Paragraph (1) shall be reasonable under all the circumstances actually known to the insurer or insurance producer at the time of the recommendation.

D. (1) An insurer either shall assure that a system to supervise recommendations that is reasonably designed to achieve compliance with this regulation is established and maintained by complying with Paragraphs (3) to (5) of this subsection, or shall establish and maintain such a system, including, but not limited to:

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- (a) Maintaining written procedures; and
 - (b) Conducting periodic reviews of its records that are reasonably designed to assist in detecting and preventing violations of this regulation.
- (2) A general agent and independent agency either shall adopt a system established by an insurer to supervise recommendations of its insurance producers that is reasonably designed to achieve compliance with this regulation, or shall establish and maintain such a system, including, but not limited to:
- (a) Maintaining written procedures; and
 - (b) Conducting periodic reviews of records that are reasonably designed to assist in detecting and preventing violations of this regulation.
- (3) An insurer may contract with a third party, including a general agent or independent agency, to establish and maintain a system of supervision as required by Paragraph (1) with respect to insurance producers under contract with or employed by the third party.
- (4) An insurer shall make reasonable inquiry to assure that the third party contracting under Paragraph (3) of this subsection is performing the functions required under Paragraph (1) of this subsection and shall take such action as is reasonable under the circumstances to enforce the contractual obligation to perform the functions. An insurer may comply with its obligation to make reasonable inquiry by doing all of the following:
- (a) The insurer annually obtains a certification from a third party senior manager who has responsibility for the delegated functions that the manager has a reasonable basis to represent, and does represent, that the third party is performing the required functions; and
 - (b) The insurer, based on reasonable selection criteria, periodically selects third parties contracting under Paragraph (3) of this subsection for a review to determine whether the third parties are performing the required functions. The insurer shall perform those procedures to conduct the review that are reasonable under the circumstances.
- (5) An insurer that contracts with a third party pursuant to Paragraph (3) of this subsection and that complies with the requirements to supervise in Paragraph (4) of this subsection shall have fulfilled its responsibilities under Paragraph (1) of this subsection.
- (6) An insurer, general agent or independent agency is not required by Paragraph (1) or (2) of this subsection to:
- (a) Review, or provide for review of, all insurance producer solicited transactions; or
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(b) Include in its system of supervision an insurance producer's recommendations to senior consumers of products other than the annuities offered by the insurer, general agent or independent agency.

(7) A general agent or independent agency contracting with an insurer pursuant to Paragraph (3) of this subsection shall promptly, when requested by the insurer pursuant to Paragraph (4) of this subsection, give a certification as described in Paragraph (4) of this subsection or give a clear statement that it is unable to meet the certification criteria.

(8) No person may provide a certification under Paragraph (4)(a) of this subsection unless:

(a) The person is a senior manager with responsibility for the delegated functions; and

(b) The person has a reasonable basis for making the certification.

E. Compliance with the National Association of Securities Dealers Conduct Rules pertaining to suitability shall satisfy the requirements under this section for the recommendation of variable annuities. However, nothing in this subsection shall limit the insurance commissioner's ability to enforce the provisions of this regulation.

Section 6. Recordkeeping

A. Insurers, general agents, independent agencies and insurance producers shall maintain or be able to make available to the commissioner records of the information collected from the senior consumer and other information used in making the recommendations that were the basis for insurance transactions for five years after the insurance transaction is completed by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of an insurance producer.

B. Records that are required to be maintained by this regulation may be maintained in paper, photographic, microprocess, magnetic, mechanical or electronic media or by any process that accurately reproduces the actual document.

Section 7. Enforcement

A. Mitigation of Responsibility

1. The Commissioner may order:

(a) An insurer to take reasonable appropriate corrective action for any senior consumer harmed by the insurer's, or by its insurance producer's violation of this regulation;

(b) An insurance producer to take reasonably appropriate corrective action for any senior consumer harmed by the insurance producer's violation of this regulation; and

(c) A general agency or independent agency that employs or contracts with an insurance producer to sell, or solicit the sale, of annuities to senior consumers, to take reasonably

appropriate corrective action for any senior consumer harmed by the insurance producer's violation of this regulation

2. Any applicable penalty under Sections 7. Enforcement for a violation of Section 5 of this Regulation may be reduced or eliminated if corrective action for the senior consumer was taken promptly after a violation was discovered.

B. Noncompliance with this regulation may result, after proper notice, in the imposition of any of the sanctions made available in the Colorado statutes pertaining to the business of insurance or other laws, which include the imposition of fines, issuance of Cease & Desist Orders, and/or suspensions or revocations of license.

Section 8. Severability

If any provision of this regulation or the application thereof to any person or circumstances is for any reason held to be invalid, the remainder of the regulation and the application for such provision to other persons or circumstances shall not be affected thereby.

Section 9. Effective Date

This regulation shall be effective for policies issued or renewed on or after October 1, 2004.

Section 10 History

Original regulation effective October 1, 2004.
