

Sec. 38a-432a-5. Duties of insurers, agencies and producers

(a) Best Interest Obligations. A 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, without placing the producer's or the insurer's financial interest ahead of the consumer's interest. A producer has acted in the best interest of the consumer if the producer has satisfied the requirements established in this subsection regarding care, disclosure, conflict of interest and documentation.

(1) Care Obligation.

(A) The producer, in making a recommendation, shall exercise reasonable diligence, care and skill to:

- (i) Know the consumer's financial situation, insurance needs and financial objectives;
- (ii) Understand the available recommendation options after making a reasonable inquiry into options available to the producer;
- (iii) 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
- (iv) Communicate the basis or bases of the recommendation.

(B) The requirements under subparagraph (A) of this subdivision include making reasonable efforts to obtain consumer profile information from the consumer prior to recommending an annuity.

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

(D) The requirements under this subsection do not create a fiduciary obligation or relationship and only create a regulatory obligation as established in sections 38a-432a-1 to 38a-432a-8, inclusive, of the Regulations of Connecticut State Agencies.

(E) The consumer profile information, characteristics of the insurer, and product costs, rates, benefits and features are the factors that are generally relevant in determining whether an annuity effectively addresses the consumer's financial situation, insurance needs and financial objectives, but the level of importance of each factor under the care obligation established in this subdivision may vary depending on the facts and circumstances of a particular case, provided no such factor may be considered in isolation.

(F) The requirements under subparagraph (A) of this subdivision include having a reasonable basis to believe the consumer would benefit from certain features of the annuity such as annuitization, death or living benefit or other insurance-related features.

(G) The requirements under subparagraph (A) of this subdivision apply to the particular annuity as a whole and the underlying subaccounts to which funds are allocated at the time of purchase or exchange of an annuity, and riders and similar producer enhancements, if any.

(H) The requirements under subparagraph (A) of this subdivision do not require the

producer to recommend the annuity with the lowest one-time or multiple occurrence compensation structure.

(I) The requirements under subparagraph (A) of this subdivision do not impose on the producer ongoing monitoring obligations under the care obligation established in this subdivision, although such an obligation may be separately owed under the terms of a fiduciary, consulting, investment advising or financial planning agreement between the consumer and the producer.

(J) In the case of an exchange or replacement of an annuity, the producer shall consider the whole transaction, which includes taking into consideration whether:

(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 replacing product would substantially benefit the consumer in comparison to the replaced product over the life of the product; and

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

(K) Nothing in sections 38a-432a-1 to 38a-432a-8, inclusive, of the Regulations of Connecticut State Agencies shall be construed to require a producer to obtain any license other than a producer license with the appropriate line of authority to sell, solicit or negotiate insurance in this state, including, but not limited to, any securities license, in order to fulfill the duties and obligations contained in sections 38a-432a-1 to 38a-432a-8, inclusive, of the Regulations of Connecticut State Agencies; provided the producer shall not give advice or provide services that are otherwise subject to securities laws or engage in any other activity requiring other professional licenses.

(2) Disclosure obligation.

(A) Prior to recommending or selling an annuity, the producer shall prominently disclose to the consumer on a form substantially similar to Appendix A:

(i) A description of the scope and terms of the relationship with the consumer and the role of the producer in the transaction;

(ii) An affirmative statement disclosing whether the 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;

(iii) An affirmative statement disclosing whether the producer is authorized, contracted (or appointed), or otherwise able to sell insurance products, using the following descriptions:

(I) From one insurer;

(II) From two (2) or more insurers; or

(III) From two (2) or more insurers although primarily contracted with one (1) insurer;

(iv) A description of the sources and types of cash compensation and non-cash compensation to be received by the producer, including whether the producer is to be compensated for the sale of a recommended annuity by commission as part of premium or other remuneration received from the insurer, intermediary or other producer or by fee as a result of a contract for advice or consulting services; and

(v) A notice disclosing the consumer's right to request additional information regarding cash compensation described in subparagraph (B) of this subdivision;

(B) Upon request by the consumer or the consumer's designated representative, the producer shall disclose:

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

(ii) Whether the cash compensation is a one-time 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; and

(C) Prior to or at the time that the producer recommends or sells an annuity, the producer shall have a reasonable basis to believe the consumer has been informed of various features of the annuity, such as the potential surrender period and surrender charge, potential tax penalty if the consumer sells, exchanges, replaces, surrenders or annuitizes the annuity, mortality and expense fees, investment advisory fees, any annual fees, potential charges for and features of riders or other options of the annuity, limitations on investment returns, potential changes in non-guaranteed elements of the annuity, insurance and investment components and market risk.

(3) Conflict of interest obligation. A producer shall identify and avoid or reasonably manage and disclose material conflicts of interest, including material conflicts of interest related to an ownership interest.

(4) Documentation obligation. A producer shall, at the time that the producer recommends or sells an annuity to a consumer:

(A) Make a written record of any recommendation and the basis for the recommendation subject to this regulation;

(B) Obtain a consumer-signed statement on a form substantially similar to Appendix B documenting:

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

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

(C) Obtain a consumer-signed statement on a form substantially similar to Appendix C acknowledging the annuity transaction is not recommended if the consumer decides to enter into an annuity transaction that is not based on the producer's recommendation.

(5) Application of the best interest obligation. Any requirement applicable to a producer under this subsection shall apply to every producer who exercises material control or influence in making a recommendation or sale and receives direct compensation as a result of the recommendation or sale, regardless of whether the producer has any direct contact with the consumer. Activities such as providing or delivering marketing or educational materials, product wholesaling or other back office product support, and general supervision

of a producer do not, in and of themselves, constitute material control or influence.

(b) Transactions not based on a recommendation.

(1) Except as provided under subdivision (2) of this subsection, a producer shall have no obligation to a consumer under subdivision (1) of subsection (a) of this section related to any annuity transaction if:

(A) No recommendation is made;

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

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

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

(2) An insurer's issuance of an annuity subject to subdivision (1) of this subsection shall be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.

(c) Supervision system.

(1) Except as permitted under subsection (b) of this section, an insurer may not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity would effectively address the particular consumer's financial situation, insurance needs and financial objectives based on the consumer's consumer profile information.

(2) An insurer shall establish and maintain a system of supervision that is reasonably designed to achieve the insurer's and its producers' compliance with sections 38a-432a-1 to 38a-432-8, inclusive, of the Regulations of Connecticut State Agencies, including, but not limited to the following:

(A) The insurer shall establish and maintain reasonable procedures to inform its producers of the requirements of sections 38a-432a-1 to 38a-432a-8, inclusive, of the Regulations of Connecticut State Agencies and shall incorporate the requirements of this regulation into relevant producer training manuals;

(B) The insurer shall establish and maintain standards for producer product training and shall establish and maintain reasonable procedures to require its producers to comply with the requirements of section 38a-432a-8 of the Regulations of Connecticut State Agencies;

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

(D) The insurer shall establish and maintain procedures for the review of each recommendation prior to issuance of an annuity that are designed to ensure there is a reasonable basis to determine that the recommended annuity would effectively address the particular consumer's financial situation, insurance needs and financial objectives. Such review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means including, but not limited to, physical review. Such an electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria;

(E) The insurer shall establish and maintain reasonable procedures to detect recommendations that are not in compliance with subsections (a), (b), (d) and (e) of this

section. This may include, but is not limited to, confirmation of the consumer's consumer profile information, systematic customer surveys, producer and consumer interviews, confirmation letters, producer statements or attestations and programs of internal monitoring. Nothing in this subparagraph prevents an insurer from complying with this subparagraph by applying sampling procedures, or by confirming the consumer profile information or other required information under this section after issuance or delivery of the annuity;

(F) The insurer shall establish and maintain reasonable procedures to assess, prior to or upon issuance or delivery of an annuity, whether a producer has provided to the consumer the information required to be provided under this section;

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

(H) The insurer shall establish and maintain reasonable procedures to identify and eliminate any sales contests, sales quotas, bonuses, and non-cash compensation that are based on the sales of specific annuities within a limited period of time. The requirements of this subparagraph are not intended to prohibit the receipt of health insurance, office rent, office support, retirement benefits or other employee benefits by employees as long as those benefits are not based upon the volume of sales of a specific annuity within a limited period of time; and

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

(3) (A) Nothing in this subsection restricts an insurer from contracting for performance of a function (including maintenance of procedures) required under this subsection. An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to the Connecticut General Statutes regardless of whether the insurer contracts for performance of a function, and regardless of the insurer's compliance with subparagraph (B) of this subdivision.

(B) An insurer's system of supervision under this subsection shall include supervision of the contractual performance under this subsection. This includes, but is not limited to, the following:

(i) Monitoring and, as appropriate, conducting audits to ensure 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.

(4) An insurer is not required to include in its system of supervision:

(A) A producer's recommendations to consumers of products other than the annuities offered by the insurer; or

(B) Consideration of or comparison to options available to the producer or compensation relating to those options other than annuities or other products offered by the insurer.

(d) Prohibited practices. Neither a producer nor an insurer shall dissuade, or attempt to dissuade, a consumer from:

(1) Truthfully responding to an insurer's request for confirmation of the consumer's consumer profile information;

(2) Filing a complaint; or

(3) Cooperating with the investigation of a complaint.

(e) Safe harbor.

(1) Recommendations and sales of annuities made in compliance with comparable standards and the provisions of subdivision (3) of this subsection shall satisfy the requirements under sections 38a-432a-1 to 38a-432a-8, inclusive, of the Regulations of Connecticut State Agencies. This subsection applies to all recommendations and sales of variable annuities and fixed annuities made by financial professionals in compliance with business rules, controls and procedures that satisfy a comparable standard even if such standard would not otherwise apply to the product or recommendation at issue. However, nothing in this subsection shall limit the commissioner's ability to investigate and enforce the provisions of sections 38a-432a-1 to 38a-432a-8, inclusive, of the Regulations of Connecticut State Agencies.

(2) Nothing in subdivision (1) of this subsection shall limit the insurer's obligation to comply with subdivision (1) of subsection (c) of this section, although the insurer may base its analysis on information received from either the financial professional or the entity supervising the financial professional.

(3) For subdivision (1) of this subsection to apply, an insurer shall:

(A) Monitor the relevant conduct of the financial professional seeking to rely on subdivision (1) of this subsection or the entity responsible for supervising the financial professional, such as the financial professional's broker-dealer or an investment adviser registered under federal or state securities laws, using information collected in the normal course of an insurer's business; and

(B) Provide to the entity responsible for supervising the financial professional seeking to rely on subdivision (1) of this subsection, such as the financial professional's broker-dealer or investment adviser registered under federal or state securities laws, information and reports that are reasonably appropriate to assist such entity to maintain its supervision system.

(4) For purposes of this subsection, "financial professional" means a producer that is regulated and acting as:

(A) A broker-dealer registered under federal or state securities laws or a registered representative of a broker-dealer;

(B) An investment adviser registered under federal or state securities laws or an investment adviser representative associated with the federal or state registered investment adviser; or

(C) A plan fiduciary under Section 3(21) of the Employee Retirement Income Security Act of 1974 or fiduciary under Section 4975(e)(3) of the federal Internal Revenue Code or any amendments or successor statutes thereto.

(5) For purposes of this subsection, "comparable standards" means:

(A) With respect to broker-dealers and registered representatives of broker-dealers, applicable SEC and FINRA rules pertaining to best interest obligations and supervision of annuity recommendations and sales, including, but not limited to, Regulation Best Interest

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and any amendments or successor regulations thereto;

(B) With respect to investment advisers registered under federal or state securities laws or investment adviser representatives, the fiduciary duties and all other requirements imposed on such 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, the Form ADV and interpretations; and

(C) With respect to plan fiduciaries or fiduciaries, the duties, obligations, prohibitions and all other requirements attendant to such status under the Employee Retirement Income Security Act of 1974 or the federal Internal Revenue Code and any amendments or successor statutes thereto.

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