**Section 3120.50 Duties of Insurers and Insurance Producers**

a) Best Interest Obligations. An insurance producer, when making a recommendation of 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 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 the following obligations regarding care, disclosure, conflict of interest, and documentation:

1) Care obligation

A) The insurance 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 insurance 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 to the consumer the basis or bases of the recommendation.

B) The requirements under subsection (a)(1)(A) include making reasonable efforts to obtain consumer profile information from the consumer before recommending an annuity.

C) The requirements under subsection (a)(1)(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 does not require analysis or consideration of any products outside the authority and license of the insurance producer or other possible alternative products or strategies available in the market at the time of the recommendation. An insurance producer shall not be held to standards other than those that apply to the individual professional licenses held by the insurance producer.

D) The requirements under this subsection (a) do not create a fiduciary obligation or relationship and only create a regulatory obligation as established in this Part.

E) The consumer profile information, characteristics of the insurer, and product costs, rates, benefits, and features are those factors 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 of this subsection (a)(1) may vary depending on the facts and circumstances of a particular case. However, each factor may not be considered in isolation.

F) The requirements under subsection (a)(1)(A) 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 subsection (a)(1)(A) 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 product enhancements, if any.

H) The requirements under subsection (a)(1)(A) do not mean the annuity with the lowest one-time or multiple occurrence compensation structure must necessarily be recommended.

I) The requirements under subsection (a)(1)(A) do not mean the insurance producer has ongoing monitoring obligations under the care obligation under this subsection (a)(1), 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 insurance producer.

J) In the case of an exchange or replacement of an annuity, the insurance 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 had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 60 months.

K) Nothing in this Part should be construed to require an insurance producer to obtain any license other than an insurance producer license that authorizes the sale, solicitation, or negotiation of insurance in Illinois, including but not limited to any securities license, in order to fulfill the duties and obligations contained in this Part, provided the insurance producer does 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) Before recommending or selling an annuity, the insurance producer shall prominently disclose to the consumer on a form substantially similar to the form that appears in Appendix A:

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

ii) An affirmative statement on whether the insurance producer is licensed and authorized to sell the following products:

• Fixed annuities;

• Fixed indexed annuities;

• Variable annuities;

• Life insurance;

• Mutual funds;

• Stocks and bonds; and

• Certificates of deposit

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

• From one insurer;

• From two or more insurers; or

• From two or more insurers although primarily contracted with one insurer.

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

v) A notice of the consumer’s right to request additional information regarding cash compensation described in subsection (a)(2)(B);

B) Upon request of the consumer or the consumer’s designated representative, the insurance producer shall disclose:

i) 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

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) Before or at the time of the recommendation or sale of an annuity, the insurance 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, 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 interest returns, potential changes in non-guaranteed elements of the annuity, insurance and investment components and market risk.

3) Conflict of Interest Obligation. An insurance producer shall identify and avoid or reasonably manage and disclose to the consumer material conflicts of interest, including material conflicts of interest related to an ownership interest.

4) Documentation Obligation. An insurance producer shall at the time of recommendation or sale:

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

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

i) A customer’s refusal to provide the consumer profile information, if any;

ii) A customer’s understanding of the ramifications of not providing 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 a customer decides to enter into an annuity transaction that is not based on the insurance producer’s recommendation.

5) Application of Best Interest Obligation. Any requirement applicable to an insurance producer under this subsection (a) shall apply to every insurance producer who has exercised material control or influence in the making of 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. Activities such as 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.

b) Transactions Not Based on a Recommendation

1) Except as provided under subsection (b)(2), an insurance producer shall have no obligation to a consumer under subsection (a)(1) 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 refused to provide relevant consumer profile information and the annuity transaction is not recommended; or

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

2) An insurer’s issuance of an annuity subject to subsection (b)(1) 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), 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 supervision system that is reasonably designed to achieve the insurer's and its insurance producers' compliance with this Part, including, but not limited to, the following:

A) The insurer shall establish and maintain reasonable procedures to inform its insurance producers of the requirements of this Part and shall incorporate the requirements of this Part into relevant insurance producer training manuals;

B) The insurer shall establish and maintain standards for insurance producer product training and shall establish and maintain reasonable procedures to require its insurance producers to comply with the requirements of Section 3120.60;

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

D) The insurer shall establish and maintain procedures for the review of each recommendation prior to issuance of an annuity that 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. The review procedures may apply a screening system to identify selected transactions for additional review and may be accomplished electronically or through other means, including, but not limited to, physical review. Such a system may be designed to require additional review only of those transactions identified for additional review by the selection criteria;

E) The insurer shall maintain reasonable procedures to detect recommendations that are not in compliance with subsections (a), (b), (d), and (e). 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 statements or attestations, and programs of internal monitoring. Nothing in this subsection (c)(2)(E) prevents an insurer from complying with this subsection 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 the issuance or delivery of an annuity, whether an insurance 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 subsection (c)(2)(H) 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 the senior manager responsible for audit functions, that 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.

3) Nothing in this subsection (c) restricts an insurer from contracting for the 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 Section 3120.90 regardless of whether the insurer contracts for the performance of a function and regardless of the insurer's compliance with subsection (c)(4).

4) An insurer's supervision system under this subsection (c) shall include supervision of contractual performance under this subsection (c)(4). This includes, but is not limited to, the following:

A) Monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed; and

B) 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.

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

A) An insurance 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 insurance producer or compensation relating to those options other than annuities or other products offered by the insurer.

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

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

2) Filing a complaint with the Department; or

3) Cooperating with the investigation of a complaint.

e) Safe Harbor

1) Recommendations and sales made in compliance with comparable standards shall satisfy the requirements of this Part. This subsection applies to all recommendations and sales of annuities made by financial professionals in compliance with business rules, controls, and procedures that satisfy a comparable standard even if that standard would not otherwise apply to the product or recommendation at issue. However, nothing in this subsection limits the Director's ability to investigate and enforce the provisions of this Part.

2) Nothing in subsection (e)(1) shall limit the insurer’s obligation to comply with Section 3120.50(c)(1), although the insurer may base its analysis on information received from either the financial professional or the entity supervising the financial professional.

3) For subsection (e)(1) to apply, an insurer shall:

A) Monitor the relevant conduct of the financial professional seeking to rely on subsection (e)(1) 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 subsection (e)(1), 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 that entity in maintaining its supervision system.

4) For purposes of this subsection (e), “financial professional” means an insurance 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 (ERISA) (29 U.S.C. 1002(21)) or fiduciary under Section 4975(e)(3) of the Internal Revenue Code (IRC) (26 U.S.C. 4975(e)(3)) or any amendments or successor statutes.

5) For purposes of this subsection (e), “comparable standards” means:

A) With respect to broker-dealers and registered representatives of broker-dealers, applicable U.S. Securities and Exchange Commission (SEC) and Financial Industry Regulatory Authority (FINRA) rules pertaining to best interest obligations and supervision of annuity recommendations and sales, including, but not limited to, Regulation Best Interest (17 CFR 240 (2022; this incorporation does not include any later amendments or editions));

B) With respect to investment advisers 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 applicable contract or under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.), including, but not limited to, the SEC's Form ADV (see https://www.sec.gov/about/forms/formadv.pdf); and

C) With respect to plan fiduciaries or fiduciaries, means the duties, obligations, prohibitions, and all other requirements attendant to such status under ERISA or the IRC and any amendments or successor statutes.

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