

Pennsylvania Insurer/Insurance Producer Responsibilities for Act 48

Life Locator:

- All insurers offering life and annuity products must be registered with the NAIC's life locator database. A valid email address must be provided and when search requests are made for life insurance policies or annuities covering a decedent, the insurer must respond

Annuity Suitability:

- The subsequent provisions relate to fixed and variable annuities and individual and group annuities
- **Key Definitions:**
 - o "Recommendation" – advice provided by producers or where no producer is involved to an individual that results in a purchase or exchange of an annuity
 - o "Replace" or "Replacement" – purchase of a new policy or contract where it is known or should have been known that by reason of the transaction, an existing policy or contract has been or will be:
 - Lapsed, forfeited, surrendered, or partially surrendered or assigned to the replacing insurer or otherwise terminated
 - Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values
 - Amended so as to effect a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid
 - Reissued with a reduction in cash value
 - Used in a financed purchase
 - o "Suitability information"
 - Age
 - Annual income
 - Financial situation and needs, including the financial resources used for the funding of the annuity
 - Financial experience
 - Financial objectives
 - Intended use of the annuity
 - Financial time horizon
 - Existing assets, including investment and life insurance holdings
 - Liquidity needs
 - Liquid net worth
 - Risk tolerance
 - Tax status

- **This legislation applies to:**
 - Any recommendation to purchase or replace an annuity made to a consumer by a producer or where no producer is involved that results in the replacement recommended
- **This legislation does not apply to:**
 - Direct response solicitations where there is no recommendation based on information collected from the consumer
 - Contracts used to fund:
 - employee pension or welfare benefit plan that is covered by the employee retirement income security act of 1974
 - a plan described by sections 401(A) or (K), 403 (B), 408 (K) or (P) of the internal revenue code of 1986, when the plan, for purposes of ERISA, is established or maintained by an employer
 - a governmental or church plan defined in section 414 of the internal revenue code of 1986 or a deferred compensation plan of a state or local government or tax-exempt organization under section 457 of the internal revenue code of 1986
 - a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor
 - settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process
 - formal prepaid funeral contracts
- **It is the responsibility of the producer or company to have reasonable grounds for believing that:**
 - The recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to the consumer's investments and other insurance products and as to the consumer's suitability information
 - 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, replaces, surrenders or annuitizes the annuity, morality and expense fees, investment advisory fees, potential charges for and features of riders, limitations on interest returns, insurance and investment components and market risk
 - The consumer would benefit from certain features of the annuity, including tax-deferred growth, annuitization or death or living benefit
 - The particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of purchase or replacement of the annuity, and riders and similar product enhancements, if any, are suitable and, in the case of a replacement, the transaction as a whole is suitable for the consumer based on the consumer's suitability information
 - In the case of a replacement of an annuity, the replacement is suitable and shall take into consideration whether:
 - The consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits, including death, living or other contractual benefits, or be subject to increased fees, investment advisory fees or charges for riders and similar product enhancements
 - The consumer would benefit from the product enhancements
 - The consumer has had another annuity replacement, including a replacement within the preceding 36 months

- The producer/company prior to the execution of a purchase or replacement of an annuity resulting from a recommendation shall make reasonable efforts to obtain the consumer's suitability information
- **Exemptions:**
 - A producer cannot 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 except when:
 - No recommendation is made
 - A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer
 - A consumer refuses to provide relevant suitability information and the annuity transaction is not recommended
 - A consumer decides to enter into an annuity transaction that is not based on a recommendation of the insurer or the insurance producer
- **Documentation:**
 - At the time of the sale of an annuity, the producer must:
 - Make a record of each recommendation
 - Obtain a customer-signed statement documenting a customer's refusal to provide suitability information, if any
 - Obtain a customer-signed statement acknowledging that an annuity transaction is not recommended if the customer decides to enter into an annuity transaction that is not based on the insurance producer's or insurer's recommendation
- **Supervision of recommendations:**
 - An insurer shall establish a supervision system that is reasonably designed to achieve the insurer's and its insurance producer's compliance with this article, including but not limited to the following:
 - Insurer shall maintain reasonable procedures to inform its insurance producers of the requirements of this article and shall incorporate the requirements of this article into relevant insurance producer training manuals
 - Insurer shall establish standards for insurance producer product training and maintain reasonable procedures to require its insurance producers to comply with the requirements of section 403.1-B
 - The insurer shall provide product-specific training and training materials that explain all material features of its annuity products to its insurance producers
 - 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 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. The electronic or other system may be designed to require additional review only for those transactions identified for additional review by the selected criteria
 - The insurer shall maintain reasonable procedures to detect recommendations that are not suitable, including, but not limited to, confirmation of consumer suitability information, systematic customer surveys, interviews, confirmation letters and programs of internal monitoring. Nothing in this shall prevent an

- insurer from complying with this by applying sampling procedures or by confirming suitability information after issuance or delivery of the annuity
- Insurer shall annually provide a report detailing its supervision system to senior management, including to the senior manager responsible for audit functions. The report shall include a description of the testing designed to determine the effectiveness of the supervision system, the exceptions found and corrective action taken or recommended
- Insurers may contract for performance of a function, including maintenance of procedures required. An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties under section 406-B
- An insurer's supervision system shall include supervision of contractual performance including:
 - Monitoring, conducting audits to assure that the contracted functions are performed properly
 - Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the senior manager has a reasonable basis to represent, and does represent, that the function is properly performed
- System of supervision only needs to include recommendations to consumers for annuity products
- **Producer may not dissuade a consumer from:**
 - Truthfully responding to an insurer's request for confirmation of suitability information
 - Filing a complaint
 - Cooperating with the investigation of a complaint
- **Producer training:**
 - Authority to sell shall complete at least four CE credits in an annuity training course or courses covering the following topics:
 - The types of annuities and various classifications of annuities
 - Identification of the parties to an annuity
 - How product specific annuity contract features affect consumers
 - The application of income taxation of qualified and nonqualified annuities
 - The primary uses of annuities
 - Appropriate sales practices, replacement and disclosure requirements
 - CE must be finished on or before the end of the producer's next complete license period occurring after the effective date
 - CE must be finished on or before the end of the producer's first complete license period if licensed after the effective date
 - Reciprocity with other states with regard to training
 - Substantially similar
- **Recordkeeping:**
 - Must be able to make available to commissioner records of information collected from the consumer and other information used in making the recommendations that were the basis for the transaction for five years after the insurance transaction is completed by the insurer
 - These records can be kept in any form