

Title 3. Commerce, Community, and Economic Development.

Part 2. Division of Insurance.

Chapter 26. Trade Practices.

Article 1. Unfair Claims Settlement Acts or Practices.

3 AAC 26.110 is amended by adding new subsections to read:

(d) A health care insurer shall give written notice to a health care provider or health care facility at least 30 calendar days before the insurer seeks recovery of an overpayment. The notice must include adequate information for the health care provider or health care facility to identify the specific claim and the specific reason for the recovery. A health care insurer may not initiate recovery of an overpayment more than 365 days after the date the original payment was made to a health care provider or health care facility or its agents, unless the health care insurer has clear and documented reason to believe that the health care provider or the health care facility or its agents has committed fraud or other intentional misconduct.

(e) A health care insurer shall provide a health care provider or health care facility with an opportunity to challenge the recovery of an overpayment, including sharing of claims information, and shall establish written policies and procedures for a health care provider or health care facility to follow in order to challenge the recovery of an overpayment. (Eff. 5/6/89, Register 110; am 4/20/97, Register 142; am 1/2/98, Register 145; am 9/15/2004, Register 171; am 10 / 16 / 2011 , Register 200)

Authority: AS 21.06.090 AS 21.36.125 AS 21.42.205

Article 7. Suitability in Annuity Contract Transactions.

The lead-in language of 3 AAC 26.770(b) is amended to read:

(b) Unless a provision of 3 AAC 26.770 - 3 AAC 26.789 specifically includes that recommendation, 3 AAC 26.770 - 3 AAC 26.789 do not apply to a transaction [RECOMMENDATION] involving a

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3 AAC 26.770 is amended by adding a new subsection to read:

(c) Nothing in 3 AAC 26.770 - 3 AAC 26.789 means that an officer, director, or employee of an insurer that transacts insurance, including making a recommendation to a consumer regarding the suitability of an annuity contract, does not need to be licensed under AS 21.27. (Eff. 7/25/2008, Register 187; am 10 / 16 / 2011, Register 200)

Authority: AS 21.06.090 AS 21.36.030 AS 21.36.050
AS 21.36.020 AS 21.36.040 AS 21.36.900

3 AAC 26.775 is repealed and readopted to read:

3 AAC 26.775. Duties of an insurance producer and an insurer. (a) In recommending to a consumer the purchase or exchange of an annuity contract that results in an insurance transaction or series of insurance transactions, an insurance producer or an insurer, if no insurance producer is involved, must have reasonable grounds for believing that the recommendation is suitable for the consumer, based on the facts disclosed by the consumer as to

the consumer's financial situation, needs, investments, and other insurance products, including the consumer's suitability information, and must have a reasonable basis to believe that

(1) the consumer has been reasonably informed of the features of the annuity; the requirements of this paragraph supplement, and do not replace, requirements for the receipt of the disclosure document and buyer's guide, in compliance with 3 AAC 26.755; features of the annuity of which a consumer must be reasonably informed include, if applicable,

(A) the potential surrender period and surrender charge;

(B) the potential tax penalty if the consumer sells, exchanges, surrenders,

or annuitizes the annuity;

(C) the mortality and expense fees;

(D) the investment advisory fees;

(E) the potential charges for and features of riders;

(F) the limitations on interest returns;

(G) the insurance and investment components; and

(H) the market risk;

(2) the consumer would benefit from features of the annuity, including, as applicable,

(A) tax-deferred growth;

(B) annuitization; and

(C) death or living benefit;

(3) the particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of purchase or exchange of the annuity, and riders and similar product

enhancements are suitable, or that, in the case of an exchange or replacement, the transaction as a whole is suitable;

(4) in the case of an exchange or replacement of an annuity, the exchange or replacement is suitable, taking into consideration whether

(A) the consumer will

(i) incur a surrender charge;

(ii) be subject to the commencement of a new surrender period;

(iii) lose existing benefits; or

(iv) be subject to increased fees, investment advisory fees, or

charges for riders or product enhancements;

(B) the consumer will benefit from product enhancements and improvements; and

(C) the consumer has had another exchange or replacement, particularly within the previous 36 months.

(b) Before the execution of a purchase, exchange, or replacement of an annuity contract resulting from a recommendation, an insurance producer or an insurer, if no insurance producer is involved, must make an effort to obtain and evaluate the accuracy and completeness of the consumer's suitability information.

(c) Except as provided under (d) of this section, an insurer may not issue an annuity recommended to a consumer unless the insurer has a reasonable basis to believe that the annuity is suitable for the consumer based on the consumer's suitability information.

(d) Except as provided under (e) of this section, an insurance producer or an insurer is considered to have met the requirements of (a) and (c) of this section relating to an annuity transaction, if

(1) no recommendation is made to the consumer;

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

(3) the consumer refuses to provide relevant suitability information and the insurance producer or insurer does not recommend an annuity transaction; or

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

(e) The circumstances actually known to the insurer at the time the annuity is issued shall be applied to determine if an insurer's issuance of an annuity subject to (d) of this section was reasonable.

(f) At the time of sale, an insurance producer or insurer, if no insurance producer is involved, shall

(1) prepare a record of a recommendation made under the requirements of (a) of this section;

(2) obtain a statement signed by the consumer that documents the consumer's refusal to provide suitability information, if applicable; and

(3) obtain a statement signed by the consumer that acknowledges that the annuity transaction is not recommended if the consumer decides to enter into an annuity transaction that is not based on the insurance producer's or insurer's recommendation.

(g) An insurer shall establish and maintain a supervision system that is designed to achieve the insurer's and its insurance producers' compliance with 3 AAC 26.770 - 3 AAC 26.789 that includes the insurer

(1) maintaining procedures to inform its insurance producers of the requirements of 3 AAC 26.770 - 3 AAC 26.789;

(2) incorporating the requirements of 3 AAC 26.770 - 3 AAC 26.789 into relevant insurance producer training manuals;

(3) establishing standards for insurance producer product training and maintaining reasonable procedures that require insurance producers to comply with 3 AAC 26.778;

(4) providing product-specific training and training materials that explain the material features of the insurer's annuity products to its insurance producers;

(5) maintaining procedures for review of each recommendation before the issuance of an annuity that are designed to ensure that there is a reasonable basis to determine that a recommendation is suitable; for purposes of this paragraph, review procedures designed to ensure a reasonable basis include review procedures that apply a screening system for identifying selected transactions for additional review and that are designed to require additional review of only those transactions identified by

- (A) electronic means;
- (B) physical means; or
- (C) other means;

(6) maintaining procedures to detect recommendations that are not suitable; for purposes of this paragraph, procedures to detect recommendations that are not suitable include any of the following:

- (A) confirmation of consumer suitability information;
- (B) systematic customer surveys;
- (C) interviews;
- (D) confirmation letters;
- (E) programs of internal monitoring; and

(7) annually providing a report to its senior management, including the senior manager responsible for audit functions, with the report detailing a review with appropriate testing designed to assist in determining

- (A) the effectiveness of the supervision system;
- (B) the exceptions found; and
- (C) the corrective action taken or recommended, if any.

(h) An insurer may comply with the requirements of (g)(6) of this section by using sampling procedures or by confirming suitability information after the issuance or delivery of the annuity.

(i) An insurer may contract with a third party to perform any of the functions, including maintenance of procedures, required under (g) of this section. An insurer is responsible for taking appropriate corrective action to ensure that the supervision system under (g) of this section is maintained and properly performed.

(j) An insurer's supervision system required under (g) of this section must include supervision of the performance of a third party under (i) of this section by

(1) monitoring and conducting audits as appropriate to assure that the contracted function is properly performed; and

(2) annually obtaining written certification from a senior manager with responsibility for the contracted function that represents that the contracted function is properly performed.

(k) An insurer is not required to include in its supervision system an insurance producer's recommendation to a consumer of products other than the annuity products offered by the insurer.

(l) An insurance producer may not dissuade, or attempt to dissuade, a consumer from

(1) truthfully responding to an insurer's request for confirmation of suitability information;

(2) filing a complaint; or

(3) cooperating with the investigation of a complaint.

(m) If the director determines that a sale is made in compliance with Financial Industry Regulatory Authority (FINRA) requirements pertaining to suitability and supervision of annuity transactions, the sale satisfies the requirements of 3 AAC 26.770 - 3 AAC 26.789. This subsection applies to a Financial Industry Regulatory Authority broker-dealer sale of a variable annuity and a fixed annuity if the requirements pertaining to suitability and supervision of a fixed annuity are similar to those applied to a variable annuity sale. Nothing in this subsection limits

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the director's ability to investigate or enforce the provisions of 3 AAC 26.770 - 3 AAC.26.789.

For this subsection to apply, an insurer must

(1) monitor the Financial Industry Regulatory Authority broker-dealer using information collected in the normal course of the insurer's business; and

(2) provide to the Financial Industry Regulatory Authority broker-dealer information and reports that are appropriate to assist the Financial Industry Regulatory Authority broker-dealer to maintain its supervision system. (Eff. 7/25/2008, Register 187; am

10 / 16 / 2011, Register 200)

Authority:	AS 21.06.090	AS 21.36.030	AS 21.36.050
	AS 21.36.020	AS 21.36.040	AS 21.36.900

3 AAC 26 is amended by adding a new section to read:

3 AAC 26.778. Insurance producer annuity training requirement. (a) An insurance producer may not solicit the sale of an annuity product unless the insurance producer has adequate knowledge of the product to recommend the annuity and the insurance producer is in compliance with the insurer's standards for product training. An insurance producer may rely on insurer-provided product-specific training standards and materials to comply with this subsection. An insurance producer who desires to sell an annuity meets the requirements of this subsection if

(1) the insurance producer holds a life insurance line of authority on (the effective date of this regulation) and completes the training requirements of this subsection after January 1, 2011 and before (three months after the effective date of this regulation); or

(2) the insurance producer obtains a life insurance line of authority after (the effective date of this regulation) and completes the training requirements of this subsection before selling an annuity product.

(b) An insurance producer who engages in the sale of an annuity product shall complete a one-time minimum four credit-hour annuity training course approved by the director and provided in accordance with AS 21.27.020 and 3 AAC 23.100 – 3 AAC 23.170 covering the course material listed in (c) of this section. An insurance producer who desires to sell an annuity meets the requirements of this section if

(1) the insurance producer holds a life insurance line of authority on (the effective date of this regulation) and completes the training requirements of this subsection after January 1, 2011 and before (six months after the effective date of this regulation); or

(2) the insurance producer obtains a life insurance line of authority after (the effective date of this regulation) and completes the training requirements of this subsection before selling an annuity product.

(c) The annuity training required under (b) of this section must include at a minimum the following topics:

- (1) the types of and various classifications of annuities;
- (2) identification of the parties to an annuity;
- (3) how fixed, variable, and indexed annuity contract provisions affect the consumer;
- (4) the application of income taxation of qualified and non-qualified annuities;
- (5) the primary uses of an annuity;

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(6) the appropriate sales practices, replacement, and disclosure requirements that are consistent with 3 AAC 26.750 – 3 AAC 26.825.

(d) The annuity training required under (b) of this section may not include the following topics:

- (1) marketing information;
- (2) sales techniques;
- (3) specific information about a particular insurer's products.

(e) The annuity training required under (b) of this section must comply with the applicable requirements under AS 21.27.020 and 3 AAC 23.100 – 3 AAC 23.170 and include a certificate of completion to an insurance producer who successfully completes the annuity training.

(f) The annuity training required under (b) of this section may be conducted and completed by classroom or self-study that meets the applicable requirements under AS 21.27.020 and 3 AAC 23.100 – 3 AAC 23.170.

(g) An insurance producer meets the training requirements in (b) of this section, if the insurance producer has satisfied substantially similar training requirements of another state.

(h) The annuity training required under (b) of this section may be used to fulfill the continuing education credit hour requirements under AS 21.27.020 and 3 AAC 23.100 – 3 AAC 23.170.

(i) An insurer shall verify that an insurance producer has completed the annuity training required under this section before allowing the insurance producer to sell an annuity product for the insurer. (Eff. 10 / 16 / 2011, Register 200)

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Authority: AS 21.06.090 AS 21.36.030 AS 21.36.050
AS 21.36.020 AS 21.36.040 AS 21.36.900

3 AAC 26.780 is repealed and readopted to read:

3 AAC 26.780. Records. (a) An insurance producer or insurer shall comply with the requirements of AS 21.09.320 and AS 21.27.350 with respect to all information collected from a consumer and other information used in making a recommendation that was the basis for an annuity contract transaction.

(b) An insurance producer or insurer, if no insurance producer is involved, shall include in its records related to an annuity contract transaction the following:

(1) detailed documentation of the insurance producer's or insurer's analysis and grounds for believing that the recommendation is suitable, including documentation of the consumer's objectives and analysis of how the recommended annuity contract meets those objectives;

(2) detailed documentation that demonstrates that the insurance producer or insurer has made a reasonable effort

(A) to obtain the information necessary to make a suitable recommendation; and

(B) to evaluate the accuracy and completeness of the information necessary to make a suitable recommendation. (Eff. 7/25/2008, Register 187; am

10 / 16 / 2011, Register 200)

Authority: AS 21.06.090 AS 21.36.020 AS 21.36.050

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AS 21.09.320

AS 21.36.030

AS 21.36.900

AS 21.27.350

AS 21.36.040

3 AAC 26.789 is amended by adding new paragraphs to read:

(3) "continuing education credit hour" has the meaning given in 3 AAC 23.170;

(4) "replacement" has the meaning given in 3 AAC 26.819;

(5) "suitability information" means information that is appropriate to determine

the suitability of a recommendation, including

(A) age;

(B) current and expected changes in annual income;

(C) current and expected changes in financial situation and needs,

including the financial resources used for the funding of the annuity;

(D) financial experience;

(E) financial objectives;

(F) intended use of the annuity;

(G) financial time horizon;

(H) existing assets, including investment and life insurance holdings;

(I) current and expected changes in liquidity needs;

(J) liquid net worth;

(K) risk tolerance; and

(L) current and expected changes in tax status. (Eff. 7/25/2008, Register

187; am 10 / 16 / 2011, Register 200)

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Authority: AS 21.06.090 AS 21.36.030 AS 21.36.050
AS 21.27.350 AS 21.36.040 AS 21.36.900
AS 21.36.020