

RCW 48.23.015 Purchase or exchange of annuities—Definitions—Standards—Requirements—Conduct—Records—Penalties—Rules. (1) For the purposes of this section:

(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) "Recommendation" means advice provided by an insurance producer, or an insurer when no producer is involved, to an individual consumer that results in a purchase or exchange of an annuity in accordance with that advice.

(2) Insurers and insurance producers must comply with the following requirements in recommending and executing a purchase or exchange of an annuity:

(a) In recommending the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions to a consumer, the insurance producer, or the insurer when no producer is involved, must have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer about their investments and other insurance products and as to their 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 when no producer is involved, shall make reasonable efforts to obtain information concerning:

(i) The consumer's financial status;

(ii) The consumer's tax status;

(iii) The consumer's investment objectives; and

(iv) Other information used or considered to be reasonable by the insurance producer, or the insurer when no producer is involved, in making recommendations to the consumer.

(3) An insurer or insurance producer's recommendation must be reasonable under all circumstances actually known to the insurer or insurance producer at the time of the recommendation. Neither an insurance producer nor an insurer when no producer is involved, has any obligation to a consumer under subsection (2) of this section 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.

(4) An insurer must assure that a system to supervise recommendations, reasonably designed to achieve compliance with this section, is established and maintained. The system must include, but is not limited to, written procedures and conducting periodic review of its records that are reasonably designed to assist in detecting and preventing violations of this section.

(a) An insurer may contract with a third party, including insurance producers, a general agent, or independent agency, to establish and maintain a system of supervision as required in this subsection with respect to insurance producers under contract with or employed by the third party. An insurer must make reasonable inquiry to assure that the third party is performing the functions required in this subsection and must take 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:

(i) Annually obtaining a certification from a third party senior manager with 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

(ii) Based on reasonable selection criteria, periodically selecting third parties contracting under 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.

(b) An insurer, or the contracted third party if a general agent or independent agency, is not required to:

(i) Review, or provide for review of, all insurance producer solicited transactions; or

(ii) Include in its system of supervision an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer, general agent, or independent agency.

(c) A general agent or independent agency contracting with an insurer to supervise compliance with this section shall promptly, when requested by the insurer, give a certification of compliance or give a clear statement that it is unable to meet the certification criteria. A person may not provide a certification unless the person:

(i) Is a senior manager with responsibility for the delegated functions; and

(ii) Has a reasonable basis for making the certification.

(5) Compliance with the financial industry regulatory authority conduct rules pertaining to suitability satisfies the requirements under this section for the recommendation of annuities registered under the securities act of 1933 (15 U.S.C. Sec. 77(a) et seq. or as hereafter amended). The insurance commissioner must notify the appropriate committees of the house of representatives and senate if there are changes regarding the registration of annuities under the securities act of 1933 that affect the application of this subsection. This subsection does not limit the insurance commissioner's ability to enforce this section.

(6) The commissioner may order an insurer, an insurance producer, or both, to take reasonably appropriate corrective action for any consumer harmed by the insurer's or insurance producer's violation of this section.

(a) Any applicable penalty under this or other sections of Title 48 RCW may be reduced or eliminated by the commissioner if corrective action for the consumer was taken promptly after a violation was discovered.

(b) This subsection does not limit the commissioner's ability to enforce this section or other applicable sections of Title 48 RCW.

(7) Insurers and insurance producers must maintain or be able to make available to the commissioner records of the information collected from the consumer and other information used in making the recommendations that were the basis for the insurance transaction for five years after the insurance transaction is completed by the insurer, or for five years after the annuity begins paying benefits, whichever is longer. An insurer is permitted, but is not required, to maintain documentation on behalf of an insurance producer. This section does not relieve an insurance producer of the obligation to maintain records of insurance transactions as required by RCW 48.17.470.

(8) The commissioner may adopt rules to implement and administer this section.

(9) Unless otherwise specifically included, this section does not apply to recommendations involving:

(a) Direct response solicitations when there is no recommendation based on information collected from the consumer under this section; or

(b) Contracts used to fund:

(i) An employee pension or welfare benefit plan that is covered by the employment and income security act;

(ii) A plan described by sections 401(a), 401(k), 403(b), 408(k), or 408(p) of the internal revenue code, as amended, if established or maintained by an employer;

(iii) A government or church plan defined in section 414 of the internal revenue code, 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 internal revenue code;

(iv) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

(v) Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

(vi) Formal prepaid funeral contracts.

(10) This section does not affect the application of chapter 21.20 RCW. [2009 c 18 § 2.]

Purpose—2009 c 18: "The purpose of this act is to permit and set standards for producers and insurers selling annuity products issued after July 26, 2009, that ensure consumers purchase annuities suitable to their financial and insurance needs and life circumstances." [2009 c 18 § 1.]