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**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

MEMORANDUM

TO: Anna Latham, Department of Commerce, Community and Economic Development

FROM: April Simpson, Office of the Lieutenant Governor 
465.4081

DATE: October 24, 2022

RE: Filed Permanent Regulations: Division of Insurance

Department of Commerce, Community, and Economic Development - Division of
Insurance regulations re: Suitability in Annuity Transactions (3 AAC 23, 26)

Attorney General File:	2022200180
Regulation Filed:	10/24/2022
Effective Date:	11/23/2022
Print:	244, January 2023

cc with enclosures: Colleen Bailey, Department of Law
Judy Herndon, LexisNexis

ORDER RA 22-01 ADOPTING CHANGES TO REGULATIONS
OF THE DIVISION OF INSURANCE

The attached 29 pages of regulations, dealing with suitability in annuity transactions are adopted and certified to be a correct copy of the regulation changes that the Division of Insurance adopts under the authority of AS 21.06.090; AS 21.36.020; AS 21.36.030; AS 21.36.040; AS 21.36.050; AS 21.36.900; and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

In considering public comments, the Division of Insurance paid special attention to the cost to private persons of the regulatory action being taken.

The regulation changes adopted under this order take effect on the 30th day after they have been filed by the lieutenant governor, as provided in AS 44.62.180.

Date: July 12, 2022



Lori Wing-Heier
Director

April Simpson for
↑

FILING CERTIFICATION

I, Kevin Meyer, Lieutenant Governor for the State of Alaska, certify that on October 24, 2022, at 4:40 p.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.

AWM

for Lieutenant Governor *Kevin Meyer*

Effective: November 23, 2022.

Register: 244, January 2023.

FOR DELEGATION OF THE LIEUTENANT GOVERNOR'S AUTHORITY

I, KEVIN MEYER, LIEUTENANT GOVERNOR OF THE STATE OF ALASKA, designate the following state employees to perform the Administrative Procedures Act filing functions of the Office of the Lieutenant Governor:

**Josh Applebee, Chief of Staff
Kady Levale, Notary Administrator
April Simpson, Regulations and Initiatives Specialist**

IN TESTIMONY WHEREOF, I have signed and affixed the Seal of the State of Alaska, in Juneau, on December 11th, 2018.



Kevin Meyer
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**KEVIN MEYER
LIEUTENANT GOVERNOR**

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3 AAC 23.208(9) is amended to read:

(9) "online course" means a [SELF-STUDY] course taken on the Internet with an internal testing program that ensures that a licensee cannot take the final examination without completing the course;

(Eff. 1/1/2014, Register 208; am 11 / 23 / 2022, Register 244)

Authority: AS 21.06.090 AS 21.27.020

3 AAC 26.770(a) is amended to read:

3 AAC 26.770. Applicability. (a) Except as provided in (b) of this section, 3 AAC 26.770 - 3 AAC 26.789 apply to any sale or [A] recommendation of an annuity [MADE BY AN INSURANCE PRODUCER OR AN INSURER, IF NO INSURANCE PRODUCER IS INVOLVED, TO A CONSUMER TO PURCHASE OR EXCHANGE AN ANNUITY CONTRACT THAT IS INDIVIDUALLY SOLICITED IF THE RECOMMENDATION RESULTS IN THE RECOMMENDED PURCHASE OR EXCHANGE].

(Eff. 7/25/2008, Register 187; am 10/16/2011, Register 200; am 11 / 23 / 2022, Register 244)

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 a producer and an insurer. (a) When making a recommendation of an annuity, a producer 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 following obligations regarding care, disclosure, conflict of interest, and documentation:

(1) the producer, in making a recommendation,

(A) 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;

(iv) communicate the basis or bases of the recommendation; and

(v) make reasonable efforts to obtain consumer profile information from the consumer before the recommendation of an annuity;

(B) complies with the requirements of (A) of this paragraph as follows:

(i) the producer shall consider the types of product that the producer is authorized to recommend or sell that address the consumer's financial situation, insurance needs, and financial objectives; the producer is not required to analyze or consider any products outside the authority and license of the producer or other possible alternative products or strategies available in the market at the

time of the recommendation; a producer shall be held to the standards applicable to producers with similar authority and licensure;

(ii) the requirements of (A) of this paragraph do not create a fiduciary obligation or relationship and only create a regulatory obligation as established in 3 AAC 26.770 - 3 AAC 26.789;

(iii) the consumer profile information, characteristics of the insurer, and product costs, rates, benefits, and features are those factors generally relevant in making a determination 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 required under (A) of this paragraph may vary depending on the facts and circumstances of a particular case; however, each factor may not be considered in isolation;

(iv) the requirements under (A) of this paragraph include having a reasonable basis to believe that the consumer would benefit from certain features of the annuity, such as annuitization, death or living benefit, or other insurance-related features;

(v) the requirements under (A) of this paragraph 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;

(vi) the requirements under (A) of this paragraph do not mean that the annuity with the lowest one-time or multiple occurrence compensation structure shall necessarily be recommended;

(vii) the requirements under (A) of this paragraph do not mean that the producer has ongoing monitoring obligations under the care obligation under (A) of this paragraph, although those obligations may be separately owed under the terms of a fiduciary, consulting, investment advising, or financial planning agreement between the consumer and the producer;

(viii) in the case of an exchange or replacement of an annuity, the producer shall consider the whole transaction; the requirements of this subparagraph include taking into consideration whether 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 subjected to increased fees, investment advisory fees, or charges for riders and similar product enhancements, whether the replacing product would substantially benefit the consumer in comparison to the replaced product over the life of the product, and whether the consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 60 months;

(ix) nothing in 3 AAC 26.770 - 3 AAC 26.789 requires 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 any securities license, in order to fulfill those obligations contained in this section, if the 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;

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(2) before the recommendation or sale of an annuity,

(A) the producer shall furnish the required information on Form 1, made part of this section in substantially the following form:

FORM 1

**INSURANCE AGENT (PRODUCER) DISCLOSURE FOR ANNUITIES
Do Not Sign Unless You Have Read and Understand the Information in this Form**

Date: _____

INSURANCE AGENT (PRODUCER) INFORMATION (“Me”, “I”, “My”)

First Name: _____

Last Name: _____

Business or Agency Name: _____

Website: _____

Business Mailing Address: _____

Business Telephone Number: _____

Electronic Mail Address: _____

National Producer Number in Alaska: _____

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CUSTOMER INFORMATION ("You", "Your")

First Name: _____ Last Name: _____

What Types of Products Can I Sell You?

I am licensed to sell annuities to You in accordance with state law. If I recommend that You buy an annuity, it means I believe that it effectively meets Your financial situation, insurance needs, and financial objectives. Other financial products, such as life insurance or stocks, bonds, and mutual funds, also may meet Your needs.

I offer the following products:

_____ Fixed or Fixed Indexed Annuities

_____ Variable Annuities

_____ Life Insurance

I need a separate license to provide advice about or to sell non-insurance financial products. I have checked below any non-insurance financial products that I am licensed and authorized to provide advice about or to sell.

_____ Mutual Funds

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_____ Stocks/Bonds

_____ Certificates of Deposits

Whose Annuities Can I Sell to You? I am authorized to sell:

_____ Annuities from only One Insurer

_____ Annuities from Two or More Insurers

_____ Annuities from Two or More Insurers although I primarily sell annuities from:

How I'm Paid for My Work:

It's important for You to understand how I'm paid for my work.

Depending on the particular annuity You purchase, I may be paid a commission or a fee.

Commissions are generally paid to Me by the insurance company while fees are generally paid to Me by the consumer. If You have questions about how I'm paid, please ask Me.

Depending on the particular annuity You buy, I will or may be paid cash compensation as follows:

_____ Commission, which is usually paid by the insurance company or other sources, describe:

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_____.

_____ Fees (such as a fixed amount, an hourly rate, or a percentage of your payment), which are usually paid directly by the customer.

_____ Other (Describe): _____.

If You have questions about the above compensation I will be paid for this transaction, please ask me.

I may also receive other indirect compensation resulting from this transaction (sometimes called "non-cash" compensation), such as health or retirement benefits, office rent and support, or other incentives from the insurance company or other sources.

By signing below, You acknowledge that You have read and understand the information provided to You in this document.

Customer Signature

Date

Agent (Producer) Signature

(B) upon request of the consumer or the consumer's designated representative, the producer shall

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

(ii) disclose 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; the frequency and amount may be stated as a range of amounts or percentages;

(C) a producer must have a reasonable basis to believe, before or at the time of the recommendation or sale of an annuity, that the consumer has been informed of the features of the annuity, such as

(i) the potential surrender period and surrender charge;

(ii) the potential tax penalty if the consumer sells, exchanges, surrenders, or annuitizes the annuity;

(iii) mortality and expense fees;

(iv) investment advisory fees;

(v) any annual fees;

(vi) potential charges for and features of riders or other options of the annuity;

(vii) limitations on interest returns;

(viii) potential changes in non-guaranteed elements of the annuity;

(ix) insurance and investment components; and

(x) market risk;

(3) 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) a 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 3 AAC 26.770 - 3 AAC 26.789;

(B) obtain, if the consumer refuses to provide the consumer profile information or provides only limited information, a consumer signed statement on Form 2, made a part of this section in substantially the following form:

FORM 2

CONSUMER REFUSAL TO PROVIDE INFORMATION Do Not Sign Unless You Have Read and Understand the Information in this Form.

Why are You being given this form?

You are buying a financial product—an annuity.

To recommend a product that effectively meets Your needs, objectives and situation, the agent broker, or company needs information about You, Your financial situation, insurance needs and financial objectives.

If you sign this form, it means You have not given the agent, broker, or company some or all the information needed to decide if the annuity effectively meets Your needs, objectives, and

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situation. You may lose protections under the Insurance Code of Alaska if You sign this form or provide inaccurate information.

Statement of Purchaser:

_____ I refuse to provide this information at this time.

_____ I have chosen to provide LIMITED information at this time.

Customer Signature

Date

and

(C) obtain a consumer signed statement on Form 3, made a part of this section in substantially the following form:

FORM 3

**Consumer Decision to Purchase an Annuity NOT Based on a Recommendation.
Do Not Sign This Form Unless You Have Read and Understand It.**

Why are You being given this form?

You are buying a financial product—an annuity.

To recommend a product that effectively meets your needs, objectives and situation, the agent, broker, or company has the responsibility to learn about You, your financial situation, insurance needs and financial objectives.

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If you sign this form, it means You know that you're buying an annuity that was not recommended.

Statement of Purchaser:

I understand that I am buying an annuity, but the agent, broker, or company did not recommend that I buy it. If I buy it **without a recommendation**, I understand I may lose protections under the Insurance Code of Alaska.

Customer Signature

Date

Agent/Producer Signature

Date

(5) any requirement applicable to a producer under this subsection applies to every 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 producer has 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 a producer do not in and of themselves constitute material control or influence.

(b) For the purposes of an annuity subject to (2) of this subsection,

(1) a producer, except as provided in (2) of this subsection, has no obligation to a consumer under (a)(1) of this section related to any annuity transaction if

(A) no recommendation is made;

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

(C) the consumer refuses 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 producer; and

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

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

(1) an insurer shall establish and maintain a supervision system that is reasonably designed to achieve compliance with 3 AAC 26.770 - 3 AAC 26.789, that includes the insurer

(A) establishing and maintaining procedures to inform its producers of the requirements of 3 AAC 26.770 - 3 AAC 26.789;

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

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

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

(E) establishing and maintaining procedures for the review of each recommendation before the issuance of an annuity that are designed to ensure that 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; review procedures may apply a screening system for identifying selected transactions for additional review and may be accomplished electronically or through other means, including physical means; such an electronic or other system may be designed to require additional review of only those transactions identified for additional review by the selection criteria;

(F) establishing and maintaining reasonable procedures to detect recommendations that are not in compliance with (a), (b), (d), and (e) of this section; this may include confirmation of the consumer's consumer profile information, systematic customer surveys, producer and consumer interviews, confirmation letters, producer statements and 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;

(G) establishing and maintaining reasonable procedures to assess, before 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;

(H) establishing and maintaining reasonable procedures to identify and address suspicious consumer refusals to provide consumer profile information;

(I) establishing and maintaining 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; nothing in this subparagraph prohibits the receipt of health insurance, office rent, office support, retirement benefits, or other employee benefits by employees, if those benefits are not based upon the volume of sales of a specific annuity within a limited period of time; and

(J) annually providing a written report to its senior management, including the senior manager responsible for audit functions; the report must detail 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;

(2) nothing in this subsection restricts an insurer from contracting for the performance of any of the functions, including maintenance of procedures, required under this section; an insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties under 3 AAC 26.785 regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with (3) of this subsection;

(3) an insurer's supervision system under this subsection must include supervision of contractual performance under this subsection; this includes the following:

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

(B) annually obtaining written certification from a senior manager with responsibility for the contracted function that the manager has a reasonable basis to represent, and does represent, that the contracted function is properly performed; and

(4) an insurer is not required to include in its supervision system

(A) a producer's recommendation to consumers of products other than the annuity products 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) A producer or an insurer may not dissuade, or attempt to dissuade, a consumer from

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

(2) filing a complaint; or

(3) cooperating with the investigation of a complaint.

(e) Recommendations and sales of annuities made in compliance with comparable standards satisfy the requirements of 3 AAC 26.770 - 3 AAC 26.789, subject to the following:

(1) this subsection applies to recommendations and sales of annuities made by professionals in compliance with business rules, controls, and procedures that satisfy a comparable standard even if the standard would not otherwise apply to the product or recommendation at issue; nothing in this subsection limits the director's ability to investigate and enforce the provisions of 3 AAC 26.770 - 3 AAC.26.789;

(2) nothing in (1) of this subsection limits the insurer's obligation to comply with the care obligation in (c)(1) 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 (1) of this subsection to apply, an insurer shall

(A) monitor the relevant conduct of the financial professional seeking to rely on (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 the insurer's business; and

(B) provide to the entity responsible for supervising the financial professional seeking to rely on (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 the 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 29 U.S.C. 1002(21) (sec. 3(21) Employee Retirement Income Security Act of 1974 (ERISA)) or fiduciary under 26 U.S.C. 4975(e)(3) (Internal Revenue Code) or any amendments or successor statutes to those provisions;

(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 SEC Regulation Best Interest (Reg BI) and any amendments or successor regulations to those provisions;

(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 those investment advisers or investment adviser representatives by contract or under 15 U.S.C. 80b-1 - 80b-21 (Investment Advisers Act of 1940), including the Form ADV and interpretations; and

(C) with respect to plan fiduciaries or fiduciaries, the duties, obligations, prohibitions, and all other requirements attendant to that status under 29 U.S.C. 1001 - 1461 (Employee Retirement Income Security Act of 1974 (ERISA)) or 26 U. S.C. 4975 (Internal Revenue Code) and any amendments or successor statutes to those provisions. (Eff. 7/25/2008, Register 187; am 10/16/2011, Register 200; am

11 / 23 / 2022, Register 244)

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 26.778 is amended to read:

3 AAC 26.778. Producer [INSURANCE PRODUCER] annuity training

requirement. (a) 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. A [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 OCTOBER 16, 2011 AND COMPLETES THE TRAINING REQUIREMENTS OF THIS SUBSECTION AFTER JANUARY 1, 2011 AND BEFORE JANUARY 16, 2012; OR

(2) THE INSURANCE PRODUCER OBTAINS A LIFE INSURANCE LINE OF AUTHORITY AFTER OCTOBER 16, 2011 AND COMPLETES THE TRAINING REQUIREMENTS OF THIS SUBSECTION BEFORE SELLING AN ANNUITY PRODUCT.]

(b) A [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 23.208 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 OCTOBER 16, 2011 AND COMPLETES THE TRAINING REQUIREMENTS OF THIS SUBSECTION AFTER JANUARY 1, 2011 AND BEFORE JANUARY 16, 2012; OR

(2) THE INSURANCE PRODUCER OBTAINS A LIFE INSURANCE LINE OF AUTHORITY AFTER OCTOBER 16, 2011 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 specific [FIXED, VARIABLE, 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; and
- (6) the appropriate standard of conduct, 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 23.208 and include a certificate of completion to a [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 23.208.

(g) A [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 credit hour requirements under AS 21.27.020 and 3 AAC 23.100 - 3 AAC 23.208.

(i) An insurer shall verify that a [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.

(j) A producer who has completed an annuity training course, that the director approved before January 15, 2023, shall complete before July 15, 2023 either

(1) a new four credit-hour training course approved by the director after July 15, 2022; or

(2) an additional one-time one credit-hour training course approved by the director and provided in accordance with AS 21.27.020 and 3 AAC 23.100 - 3 AAC 32.208 on appropriate sales practices, replacement, and disclosure requirements under 3 AAC 26.770 - 3 AAC 26.789, as those provisions are set out on ^{November 23, 2022} ~~{effective date of regulations}~~.

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(k) The satisfaction of the components of the training requirements of any course or courses with components substantially similar to the provisions of this section also satisfies the training requirements of this section in this state. [AN INSURER MAY SATISFY ITS RESPONSIBILITY UNDER THIS SECTION BY OBTAINING CERTIFICATES OF COMPLETION OF TRAINING COURSES OR OBTAINING REPORTS PROVIDED BY REASONABLY RELIABLE DATABASE VENDORS THAT HAS A REPORTING ARRANGEMENT WITH APPROVED INSURANCE EDUCATION PROVIDERS.] (Eff.

10/16/2011, Register 200; am 1/1/2014, Register 208; am 11 / 23 / 2022 Register 244)

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 amended to read:

3 AAC 26.780. Records. (a) A [AN INSURANCE] producer or insurer shall comply with the requirements of AS 21.27.320 and 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 insurer, general agent, independent agency, or producer shall maintain or be able to make available to the director records of the information collected from the consumer, disclosures made to the consumer, including summaries of oral disclosures, and other information used in making the recommendations that were the basis for transactions after the transactions were completed by the insurer consistent with AS 21.27.350. An insurer is permitted, but is not required, to maintain documentation on behalf of a producer.** [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;

am 11 / 23 / 2022, Register 244)

Authority:	AS 21.06.090	AS 21.36.020	AS 21.36.050
	AS 21.09.320	AS 21.36.030	AS 21.36.900
	AS 21.27.350	AS 21.36.040	

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

3 AAC 26.785. Compliance mitigation; penalties; enforcement. (a) An insurer is responsible for compliance with 3 AAC 26.770 - 3 AAC 26.789. If a violation occurs, either because of the action or inaction of the insurer or its producer, the director may order

(1) an insurer to take reasonably appropriate corrective action for any consumer harmed by a failure to comply with 3 AAC 26.770 - 3 AAC 26.789 by the insurer, by an entity contracted to perform the insurer's supervisory duties, or by the producer;

(2) a general agency, independent agency, or the producer to take reasonably appropriate corrective action for any consumer harmed by the producer's violation of 3 AAC 26.770 - 3 AAC 26.789;

(3) appropriate penalties and sanctions.

(b) Any applicable penalty under AS 21.36.910 may be reduced or eliminated by the director if corrective action for the consumer was taken promptly after a violation was discovered or the violation was not part of a pattern or practice.

(c) The authority to enforce compliance with of 3 AAC 26.770 - 3 AAC 26.789 is vested exclusively with the director. (Eff. 11 / 23 / 2022, Register 244)

Authority: AS 21.06.090 AS 21.36.040 AS 21.36.900
AS 21.36.020 AS 21.36.050 **AS 21.36.910**
AS 21.36.030

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

3 AAC 26.786. Private cause of action. (a) Nothing in 3 AAC 26.770 - AAC 26.789 creates or implies a private cause of action for a violation of 3 AAC 26.770 - AAC 26.789 or subjects a producer to civil liability under the best interest standard of care set out in 3 AAC 26.775 or under standards governing the conduct of a fiduciary or a fiduciary relationship. (Eff. 11 / 23 / 2022, Register 244)

Authority: **AS 21.03.060** AS 21.36.030 AS 21.36.050

AS 21.06.090

AS 21.36.040

AS 21.36.900

AS 21.36.020

3 AAC 26.789 is repealed and readopted to read:

3 AAC 26.789. Definitions. In 3 AAC 27.770 - 3 AAC 26.789,

(1) "annuity" has the meaning given in AS 21.12.055 with respect to an insurance product that is individually solicited, whether the product is classified as an individual or group annuity;

(2) "cash compensation" means any discount, concession, fee, service fee, commission, sales charge, loan, override, or cash benefit received by a producer in connection with the recommendation or sale of an annuity from an insurer, intermediary, or directly from the consumer;

(3) "consumer profile information" means information that is reasonably appropriate to determine whether a recommendation addresses the consumer's financial situation, insurance needs, and financial objectives, including at a minimum the following:

(A) age;

(B) annual income;

(C) financial situation and needs, including debts and other obligations;

(D) financial experience;

(E) financial objectives;

(F) intended use of the annuity;

(G) financial time horizon;

(H) existing assets or financial products, including investment, annuity, and insurance holdings;

(I) liquidity needs;

(J) liquid net worth;

(K) risk tolerance, including willingness to accept non-guaranteed elements in the annuity;

(L) tax status;

(M) financial resources used to fund the annuity; and

(N) insurance needs;

(4) "continuing education credit hour" has the meaning given in 3 AAC 23.208;

(5) "direct-response solicitation" means a solicitation solely through mail, telephone, the Internet, or other mass communication media;

(6) "FINRA" means the Financial Industry Regulatory Authority or a succeeding agency;

(7) "insurer" means a company required to be licensed under AS 21.12.055 to provide insurance products, including annuities;

(8) "intermediary" means an entity contracted with an insurer or with another entity contracted with an insurer to facilitate the sale of the insurer's annuities by producers;

(9) "material conflict of interest" means

(A) a financial interest of the producer in the sale of an annuity that a reasonable person would expect to influence the impartiality of a recommendation;

(B) does not include cash compensation or non-cash compensation;

(10) "non-cash compensation" means any form of compensation that is not cash compensation, including health insurance, office rent, office support, and retirement benefits.

(11) "non-guaranteed elements" means the premiums, credited interest rates including any bonus, benefits, values, dividends, non-interest-based credits, charges, or elements of formulas used to determine any of these, that are subject to company discretion and are not guaranteed at issue; for purposes of this paragraph an element is considered non-guaranteed if any of the underlying non-guaranteed elements are used in its calculation;

(12) "producer" has the meaning given to "insurance producer" in AS 21.27.990, including for purposes of 3 AAC 26.770 - 3 AAC 26.789 an insurer where no producer is involved;

(13) "recommendation" means

(A) advice provided by a producer to an individual consumer that was intended to result or does result in a purchase, exchange, or replacement of an annuity in accordance with that advice;

(B) does not include general communication to the public, generalized customer services assistance, or administrative support, general educational information and tools, prospectuses, or other product and sales material;

(14) "replacement" means a transaction in which a new annuity is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer, regardless of whether a producer is involved, that by reason of the transaction, an existing annuity or other insurance policy has been or is to be any of the following:

(A) lapsed, forfeited, surrendered, or partially surrendered, assigned to the replacing insurer, or otherwise terminated;

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(B) 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;

(C) amended so as to effect either a reduction in

(i) benefits; or

(ii) the term for which coverage would otherwise remain in force or for which benefits would be paid;

(D) reissued with any reduction in cash value; or

(E) used in a financed purchase;

(15) "SEC" means the United States Securities and Exchange Commission. (Eff. 7/25/2008, Register 187; am 10/16/2011, Register 200; am 1/1/2014, Register 208; am 11 / 23 / 2022, Register 244)

Authority: AS 21.06.090 AS 21.27.990 AS 21.36.040
AS 21.27.350 AS 21.36.020 [AS 21.36.990]
AS 21.36.030