Wisconsin Legislative Council

ACT MEMO

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2021 Wisconsin Act 260

[2021 Senate Bill 644]

Annuity Transactions

PRIOR LAW

Under prior law, an insurance intermediary was required to have reasonable grounds to believe that the recommendation to purchase or exchange an annuity was suitable for a consumer. A determination of suitability was required to be based on facts disclosed by the consumer, including the consumer's age, annual income, financial situation and needs, financial experience, objectives and intended use of the annuity, and other statutorily identified financial information. An insurance intermediary was also required to consider whether the consumer was reasonably informed of the features of the annuity, whether the consumer would benefit from the annuity's features, whether the transaction as a whole is suitable, and other factors based on the particular transaction.

An insurance intermediary was required to make reasonable efforts to obtain a consumer's suitability information before recommending an annuity, and an insurer could not issue an annuity unless it was reasonable to believe the annuity was suitable for the consumer. An intermediary could sell an annuity without those steps only in certain circumstances, such as when an intermediary did not make a recommendation, or a consumer provided incomplete or inaccurate information.

An intermediary was required to maintain a record of any recommendation, and obtain a signed statement from a consumer if the consumer refused a recommendation or refused to provide suitability information. An insurer was required to establish a supervision system to reasonably ensure its own and its intermediaries' compliance with these requirements. Monitored transactions in compliance with the Financial Industry Regulatory Authority requirements (commonly referred to as FINRA requirements) generally satisfied the suitable-sales requirements.

2021 WISCONSIN ACT 260

2021 Wisconsin Act 260 maintains the general requirement to ensure that an annuity sale or exchange is appropriate for a consumer, but modifies certain aspects to align with the annuity suitability "best interest" model regulation revised and adopted by the National Association of Insurance Commissioners (NAIC) in 2020.

Best Interest Standard

Rather than requiring an insurance intermediary to have reasonable grounds to believe that the recommendation to purchase or exchange an annuity is suitable for a consumer, the act requires an insurance intermediary to act in the best interest of the consumer under the circumstances known at the time a recommendation is made. An intermediary may not place the financial interest of the intermediary or insurer ahead of the consumer's interest, but the standard does not create a fiduciary obligation or relationship.

To act in a consumer's best interest, an insurance intermediary must satisfy four types of obligations relating to care, disclosures, conflict of interests, and documentation. The obligations apply when an insurance intermediary exercises material control or influence in the making of a recommendation, and receives direct compensation regardless of any direct contact with the consumer.[1]

Under the **care obligation**, an insurance intermediary must exercise reasonable diligence, care, and skill to have a reasonable basis to believe a recommendation option effectively addresses a consumer's financial situation, insurance needs, and financial objectives, evaluated in light of the consumer's profile information. As under prior law, a consumer's profile information is based on facts disclosed by a consumer, including the consumer's age, annual income, financial situation and needs, financial experience, objectives and intended use of the annuity, other statutorily identified financial information, and new factors relating to insurance needs and the financial resources used to fund an annuity. The act identifies a number of other factors required in the exercise of reasonable diligence, care, and skill in making an annuity recommendation.

Under the **disclosure obligation**, an insurance intermediary is required to prominently disclose the scope and terms of the intermediary's relationship with the consumer and the role of the intermediary in the transaction. An intermediary must disclose the types of products that the intermediary may sell and the insurers for which the intermediary may sell insurance products. In addition, an intermediary must disclose the intermediary's sources and types of compensation, and provide a notice of a consumer's right to request additional information regarding cash compensation.

Under the **conflict of interest obligation**, an insurance intermediary must identify and avoid, or reasonably manage and disclose, conflicts of interest. This includes a material conflict of interest where a reasonable person would expect a financial interest of an insurance intermediary in the sale of an annuity to influence the impartiality of a recommendation. A material conflict of interest does not include cash compensation or noncash compensation from an insurer, other insurance intermediary, or directly from a consumer.

Under the **documentation obligation**, an insurance intermediary must make a written record of any recommendation and the basis for the recommendation. As under prior law, an intermediary must obtain a signed statement from a consumer if the consumer refused a recommendation or refused to provide profile information.

The Office of the Commissioner of Insurance (OCI) is required to provide forms based on the NAIC model regulation, relating to an intermediary's obligations.

Insurer's Supervisory Responsibility

As under prior law, an insurer is required to maintain a supervision system to reasonably ensure its own and its intermediaries' compliance with these requirements. In addition, an insurer must establish and maintain reasonable procedures to assess whether an intermediary has provided the required information, and to identify and address suspicious refusals by consumers to provide profile information. An insurer must also identify and eliminate any sales contests, quotas, bonuses, and noncash compensation that are based on the sales of specific annuities within a set period of time.

Similar to prior law, the act also explicitly states that an insurer may not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity will effectively address a

[1] Activities such as providing or delivering marketing or educational materials, product wholesaling or other back office product support, and conducting general supervision of an insurance intermediary, do not, in and of themselves, constitute material control or influence. Similarly, general communications to the public, generalized customer service assistance, general educational information and tools, prospectuses, and other product and sales materials do not constitute a "recommendation."

particular consumer's financial situation, insurance needs, and financial objectives, based on the consumer's profile information.

Comparable Standards

Similar to prior law, the act specifies that recommendations and sales of annuities made in compliance with comparable standards may satisfy the best interest standards. Comparable standards include broker-dealer regulations under FINRA, investment advisor duties imposed by contract or under other laws, and plan fiduciary duties under the Employee Retirement Income Security Act (commonly referred to as ERISA) or the Internal Revenue Code.

If an insurer intends to satisfy the act's requirements under a comparable standard, it must monitor the financial professional's conduct and assist the supervising entity with maintaining its supervision system. The use of a comparable standard does not limit OCI's ability to investigate and enforce the provisions of the act.

In all cases, an insurer may not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity will effectively address a particular consumer's financial situation, insurance needs, and financial objectives, based on the consumer's profile information.

Training

The act specifies that the annuity training course for an intermediary who engages in the sale of annuities must include training on the appropriate standard of conduct. The act further specifies that an intermediary who has previously completed an annuity training course must complete either an updated annuity training course, or a one-time, one credit, training course on appropriate practices under the act, by April 1, 2023.

No Private Cause of Action

The act specifies that its provisions may not be construed to create or imply a private cause of action for a violation of the best interest standards.

Effective date: October 1, 2022

MSK:jal