Wisconsin Office of the
COMMISSIONER
OF INSURANCE

Tony Evers, Governor of Wisconsin
Nathan Houdek, Commissioner of Insurance

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TO: Insurers, Intermediaries, and Interested Parties

FROM: Nathan Houdek, Commissioner of Insurance

SUBJECT: Best Interest Law (2021 Wis. Act 260)

This bulletin summarizes a recently enacted law that affects the insurance industry. The Wisconsin Office of the Commissioner of Insurance (OCI) is providing this summary to make insurers, intermediaries, and interested parties aware of the changes. Those affected by these laws should check the statutes for the specific requirements.

Best Interest Law (2021 Wis. Act 260)

On April 15, 2022, Governor Evers signed 2021 Wis. Act 260 which adopted the best interest standard for annuity sales based on the National Association of Insurance Commissioners (NAIC) model law. A copy of the Act may be found here. The law revises the annuity suitability standards found in Wis. Stat. §628.347 to provide greater protections for consumers who purchase annuity products. The NAICs FAQs related to the model law and its development may be found here.

The new law requires that when recommending the sale of an annuity, insurance intermediaries act in the best interest of the consumer and not place their own financial interests ahead of those of the consumer. An insurance intermediary has acted in the best interest of the consumer if the intermediary satisfies the Act's care, disclosure, conflict of interest, and documentation obligations.

Care Obligation

Insurance intermediaries must satisfy the care obligation when recommending an annuity. To comply with the care obligation, an insurance intermediary must:

1. Know the consumer's financial situation, insurance needs, and financial objectives.
2. Understand the product options available to the intermediary for recommendation.
3. 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.
4. Communicate the basis of the recommendation to the consumer.

In determining whether an annuity is appropriate for a consumer, the insurance intermediary must have a reasonable basis to believe the consumer would benefit from certain features of the annuity, such as tax-deferred growth, annuitization, or a death or living benefit. An insurance intermediary must also make reasonable efforts to obtain consumer profile information from the consumer prior to the recommendation. Before making a recommendation, insurance intermediaries must consider all the products they are authorized to sell that would meet the consumer's needs, in addition to annuities.

The relevant factors in determining whether an annuity is appropriate are the consumer's financial situation, insurance needs, and financial objectives as derived from the consumer profile information. Other relevant factors include the characteristics of the insurer, and product costs, rates, benefits, and features. The level of importance of each factor may vary depending on the facts and circumstances of a particular case.

In the case of an exchange or replacement of an annuity, the insurance intermediary shall consider all of the following:

1. Whether the consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits, or be subject to increased fees or charges.
2. Whether the replacing product would substantially benefit the consumer in comparison to the replaced product over the life of the product.
3. Whether the consumer has had another annuity exchange or replacement, particularly within the preceding 60 months.

Intermediaries may not recommend an exchange or replacement if the product would not be in the consumer's best interest based on any of these considerations.

Insurance intermediaries do not have a care obligation to the consumer if the intermediary made no recommendation or a recommendation is made based on inaccurate information provided by the consumer. Insurance intermediaries also do not have a care obligation if the consumer refuses to provide relevant consumer profile information and the annuity transaction is not recommended, or the consumer decides to enter into an annuity transaction that is not based on a recommendation made by the intermediary.

Disclosure Obligation

The law includes additional disclosure requirements that an insurance intermediary must provide prior to a recommendation. Those disclosures include:

1. A description of the scope and terms of the intermediary's relationship with the consumer and the role of the intermediary in the transaction.
2. A statement describing whether the intermediary is licensed and authorized to sell fixed annuities, fixed indexed annuities, variable annuities, life insurance, mutual funds, stocks, bonds, and certificates of deposit.
3. A statement describing the insurers for which the intermediary is authorized to sell insurance products.
4. A description of the sources and types of cash compensation and noncash compensation to be received by the intermediary, including, for example, whether the intermediary is to be compensated for the sale of a recommended annuity by commission as part of a premium or by fee as a result of a contract for advice or consulting services.
5. A notice of the consumer's right to request additional information regarding cash compensation.

Upon request of the consumer, an insurance intermediary must disclose a reasonable estimate of the amount of cash compensation to be received by the intermediary and whether the cash compensation is a onetime or multiple occurrence amount.

Insurance intermediaries must make these disclosures on a form substantially similar to the form found here on OCI's website.

Prior to making a recommendation, an insurance intermediary must have a reasonable basis to believe the consumer has been informed of various features of the annuity, including the potential surrender period and surrender charges, potential tax penalty if the consumer sells, exchanges, surrenders, or annuitizes the annuity, riders and other options, limitations on interest returns, potential changes in non-guaranteed elements of the annuity, insurance, and investment components, and market risk.

Conflict of Interest Obligation

Insurance intermediaries are required to identify and avoid or reasonably manage and disclose material conflicts of interest.

Documentation Obligation

An insurance intermediary is required to create a written record at the time of making a recommendation or sale of an annuity. The written record must include the basis for the recommendation.

If a consumer refuses to provide consumer profile information, the insurance intermediary must obtain a signed statement from the consumer that documents the consumer's refusal to provide the information and the consumer's understanding of the ramifications of not providing the information. The signed statement must be on a form substantially similar to the form found here on OCI's website.

If an annuity is not recommended, the insurance intermediary must obtain a signed statement from the consumer that acknowledges an annuity transaction is not recommended if the consumer decides to enter into an annuity transaction without a recommendation. The signed statement must be on a form substantially similar to the form found here on OCI's website.

Insurer's Supervisory Responsibility

The Act also includes some additional responsibilities for insurers in supervising annuity sales. First, insurers must establish and maintain procedures to detect sales that are not in the consumer's best interest. Second, insurers must establish procedures for ensuring that an insurance intermediary has satisfied the disclosure obligations of the Act. Insurers must also establish procedures for identifying and addressing suspicious refusals by consumers to provide consumer profile information. Finally, insurers are required to eliminate any sales contests, sales quotas, bonuses, and noncash compensation that are based on the sales of specific annuities within a limited period of time.

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

Comparable Standards

Similar to current suitability requirements, recommendations of annuities made by Financial Professionals in compliance with comparable standards satisfy the requirements of the best interest requirement. "Financial Professionals" include broker-dealers registered under federal or state securities law, investment advisers registered under federal or state securities law, and a plan fiduciary under the Employee Retirement Income Security Act.

However, even if an annuity is recommended under a comparable standard, OCI retains the right to remedy and investigate annuity sales that violate the best interest standard. In other words, annuity recommendations that do not meet the best interest standard also fail to comply with comparable standards and are subject to OCI enforcement.

Training

The best interest changes to the annuity suitability law also include new training requirements. Insurance intermediaries who have previously completed the four-credit annuity training must either take a one credit training course regarding the best interest changes or take a new/updated four-credit annuity training course which includes information on the best interest standard. Intermediaries seeking to become authorized to sell annuities for the first time must take the new/updated four-credit course. Intermediaries who have previously completed the annuity training have until April 1, 2023, to complete this training.

Completion of a substantially similar training in another state will satisfy the training requirements in Wisconsin. Intermediaries can access available Wisconsin courses via the following link on our website. https://sbs.naic.org/solar-external-lookup/

Insurer Responsibility

The requirement in the existing law continues in that each insurer must verify that the intermediary has completed the required training. Insurers are also required to establish standards for intermediary product training and to provide product-specific training and training material that explains the company's annuity product to its intermediaries prior to soliciting the company's product.

Effective Date

The changes in this Act become effective October 1, 2022.

Any questions concerning this bulletin should be directed to Richard Wicka at Richard.Wicka@wisconsin.gov.