

AUTHORITY: sections 374.045, 375.141, and 375.143, RSMo Supp. 2013, and sections 375.934, 375.936, and 375.948, RSMo 2000. Original rule filed Sept. 30, 2016.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Insurance, Financial Institutions and Professional Registration, Attention: Tamara W. Kopp, Receivership Counsel, Director's Office, PO Box 690, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 400—Life, Annuities and Health
Chapter 5—Advertising and Material Disclosures**

PROPOSED RULE

20 CSR 400-5.900 Suitability in Annuity Transactions

PURPOSE: The purpose of the rule is to require insurers to establish a system to supervise recommendations and to set forth standards and procedures for recommendations to consumers that result in transactions involving annuity products so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed. Nothing herein shall be construed to create or imply a private cause of action for a violation of this rule. This rule implements the National Association of Insurance Commissioners (NAIC) Suitability in Annuity Transactions Model Regulation #275. This rule identifies and defines conduct that constitutes unfair trade practices under the Unfair Trade Practice Act, sections 375.930-375.948, RSMo, and effectuates and aids in the interpretation of sections 375.141.1(8) and 375.143, RSMo, with respect to the demonstration of incompetence, untrustworthiness, financial irresponsibility, and customer suitability in the offer, sale, or exchange of annuity products.

(1) Scope. This rule shall apply to any recommendation to purchase, exchange, or replace an annuity made to a consumer by an insurance producer, or an insurer where no producer is involved, that results in the purchase, exchange, or replacement recommended.

(2) Exemptions. Unless otherwise specifically included, this rule shall not apply to transactions involving—

(A) Direct response solicitations where there is no recommendation based on information collected from the consumer pursuant to this rule;

(B) Contracts used to fund—

1. An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);

2. A plan described by Sections 401(a), 401(k), 403(b), 408(k), or 408(p) of the *Internal Revenue Code* (IRC), as amended, if established or maintained by an employer;

3. A government or church plan defined in Section 414 of the IRC, 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 IRC;

4. A nonqualified deferred compensation arrangement estab-

lished or maintained by an employer or plan sponsor;

5. Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

6. Formal prepaid funeral contracts.

(3) Definitions.

(A) "Annuity" means an annuity that is an insurance product under state law that is individually solicited, whether the product is classified as an individual or group annuity.

(B) "Continuing education credit" or "CE credit" means one (1) continuing education credit in accordance with section 375.020, RSMo.

(C) "Continuing education provider" or "CE provider" means an individual or entity that is approved to offer continuing education courses pursuant to section 375.020, RSMo.

(D) "FINRA" means the Financial Industry Regulatory Authority or a succeeding agency.

(E) "Insurer" means a company required to be licensed under the laws of this state to provide insurance products, including annuities.

(F) "Insurance producer" means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance, including annuities.

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

(H) "Replacement" means a transaction in which a new policy or contract is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer if there is no producer, that by reason of the transaction, an existing policy or contract has been or is to be—

1. Lapsed, forfeited, surrendered, or partially surrendered, assigned to the replacing insurer, or otherwise terminated;

2. 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;

3. Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;

4. Reissued with any reduction in cash value; or

5. Used in a financed purchase.

(I) "Suitability information" means information that is reasonably appropriate to determine the suitability of a recommendation, including the following:

1. Age;

2. Annual income;

3. Financial situation and needs, including the financial resources used for the funding of the annuity;

4. Financial experience;

5. Financial objectives;

6. Intended use of the annuity;

7. Financial time horizon;

8. Existing assets, including investment and life insurance holdings;

9. Liquidity needs;

10. Liquid net worth;

11. Risk tolerance; and

12. Tax status.

(J) "Tangible net benefit" means that the transaction will demonstrably improve the financial position of the consumer.

(4) Duties of Insurers and of Insurance Producers.

(A) In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer where no producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the

consumer on the basis of the facts disclosed by the consumer as to his or her investments and other insurance products and as to his or her financial situation and needs, including the consumer's suitability information, and that there is a reasonable basis to believe all of the following:

1. The consumer has been reasonably informed of various features of the annuity, such as the potential surrender period and surrender charge, potential tax penalty if the consumer sells, exchanges, surrenders, or annuitizes the annuity, mortality and expense fees, investment advisory fees, potential charges for and features of riders, limitations on interest returns, insurance and investment components, and market risk. The requirements of this rule are intended to supplement and do not replace any disclosure requirements in other rules or statutes;

2. The consumer would receive a tangible net benefit from the transaction;

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, if any, are suitable (and in the case of an exchange or replacement, the transaction as a whole is suitable) for the particular consumer based on his or her suitability information; and

4. In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable including taking into consideration whether—

A. 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 subject to increased fees, investment advisory fees, charges for riders, and similar product enhancements;

B. The consumer would benefit from product enhancements and improvements, and specifically, whether the consumer would receive a tangible net benefit from the transaction; and

C. The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding thirty-six (36) months.

(B) Prior to the execution of a purchase, exchange, or replacement of an annuity resulting from a recommendation, an insurance producer, or an insurer where no producer is involved, shall make reasonable efforts to obtain the consumer's suitability information.

(C) Except as permitted under subsection (4)(D), an insurer shall not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable based on the consumer's suitability information and that the consumer would receive a tangible net benefit.

(D) (Reserved)

1. Except as provided under paragraph (4)(D)2. of this rule, neither an insurance producer, nor an insurer, shall have any obligation to a consumer under subsections (4)(A) or (4)(C) of this rule related to any annuity transaction if—

A. No recommendation is made;

B. A recommendation was made and was later found to have been unknowingly prepared based on materially inaccurate information provided by the consumer;

C. A consumer refuses to provide relevant suitability 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 insurer or the insurance producer.

2. An insurer's issuance of an annuity subject to paragraph (4)(D)1. of this rule shall be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.

(E) An insurance producer or, where no insurance producer is involved, the responsible insurer representative, shall at the time of sale—

1. Make a record of any recommendation subject to subsection (4)(A) of this rule;

2. Obtain a customer signed statement documenting a cus-

tomers refusal to provide suitability information, if any; and

3. Obtain a customer signed statement acknowledging that an annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the insurance producer's or insurer's recommendation.

(F) (Reserved)

1. An insurer shall establish a supervision system that is reasonably designed to achieve the insurer's and its insurance producers' compliance with this rule, including, but not limited to, the following:

A. The insurer shall maintain reasonable procedures to inform its insurance producers of the requirements of this rule and shall incorporate the requirements of this rule into relevant insurance producer training manuals;

B. The insurer shall establish standards for insurance producer product training and shall maintain reasonable procedures to require its insurance producers to comply with the requirements of section (5) of this rule;

C. The insurer shall provide product-specific training and training materials which explain all material features of its annuity products to its insurance producers;

D. The insurer shall maintain procedures for review of each recommendation prior to issuance of an annuity that are designed to ensure that there is a reasonable basis to determine that a recommendation is suitable. Such review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means including, but not limited to, physical review. Such an electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria;

E. The insurer shall maintain reasonable procedures to detect recommendations that are not suitable. This may include, but is not limited to, confirmation of consumer suitability information, systematic customer surveys, interviews, confirmation letters, and programs of internal monitoring. Nothing in subparagraph (4)(F)1.E. prevents an insurer from complying with subparagraph (4)(F)1.E. by applying sampling procedures, or by confirming suitability information after issuance or delivery of the annuity; and

F. The insurer shall annually provide a report to senior management, including to the senior manager responsible for audit functions, which details 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. (Reserved)

A. Nothing in this subsection restricts an insurer from contracting for performance of a function (including maintenance of procedures) required under paragraph (4)(F)1. of this rule. An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to section (6) of this rule regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with subparagraph (4)(F)2.B. of this rule.

B. An insurer's supervision system under paragraph (4)(F)1. of this rule shall include supervision of contractual performance under subsection (4)(F) of this rule. This includes, but is not limited to, the following:

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

(II) Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager has a reasonable basis to represent, and does represent, that the function is properly performed.

3. An insurer is not required to include in its system of supervision an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer.

(G) An insurance producer shall 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.

(H) (Reserved)

1. Sales made in compliance with FINRA requirements pertaining to suitability and supervision of annuity transactions shall satisfy the requirements under this rule. This subsection applies to FINRA broker-dealer sales of annuities if the suitability and supervision is similar to those applied to variable annuity sales. However, nothing in this subsection shall limit the director's ability to enforce (including investigate) the provisions of this rule.

2. For paragraph (4)(H)1. of this rule to apply, an insurer shall—

A. Monitor the FINRA member broker-dealer using information collected in the normal course of an insurer's business; and

B. Provide to the FINRA member broker-dealer information and reports that are reasonably appropriate to assist the FINRA member broker-dealer to maintain its supervision system.

(I) Failure to comply with the requirements set forth in section (4) of this rule shall constitute false information and/or misrepresentations and false advertising of insurance policies and/or misrepresentation in insurance applications as those terms are used in section 375.936(4), (6), and (7), RSMo.

(5) Insurance Producer Training.

(A) An insurance producer shall 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.

(B) (Reserved)

1. (Reserved)

A. An insurance producer who engages in the sale of annuity products shall complete a one- (1-) time four (4) credit training course approved by the director and provided by a director-approved education provider.

B. Insurance producers who hold a life insurance line of authority on the effective date of this rule and who desire to sell annuities shall complete the requirements of this subsection within six (6) months after the effective date of this rule. Individuals who obtain a life insurance line of authority on or after the effective date of this rule may not engage in the sale of annuities until the annuity training course required under this subsection has been completed.

2. The minimum length of the training required under subsection (5)(B) of this rule shall be sufficient to qualify for at least four (4) CE credits, but may be longer.

3. The training required under subsection (5)(B) of this rule shall include information on the following topics:

- A. The types of annuities and various classifications of annuities;
- B. Identification of the parties to an annuity;
- C. How product specific annuity contract features affect consumers;
- D. The application of income taxation of qualified and non-qualified annuities;
- E. The primary uses of annuities; and
- F. Appropriate sales practices, replacement, and disclosure requirements.

4. Providers of courses intended to comply with subsection (5)(B) of this rule shall cover all topics listed in the prescribed outline and shall not present any marketing information or provide training on sales techniques or provide specific information about a particular insurer's products. Additional topics may be offered in conjunction with and in addition to the required outline.

5. A provider of an annuity training course intended to comply with subsection (5)(B) of this rule shall register as a CE provider in this state and comply with the rules and guidelines applicable to insurance producer continuing education courses as set forth in sec-

tion 375.020, RSMo.

6. Annuity training courses may be conducted and completed by classroom or self-study methods in accordance with section 375.020, RSMo.

7. Providers of annuity training shall comply with the reporting requirements in accordance with section 375.020, RSMo.

8. The satisfaction of the training requirements of another state that are substantially similar to the provisions of this subsection shall be deemed to satisfy the training requirements of this subsection in this state.

9. An insurer shall verify that an insurance producer has completed the annuity training course required under this subsection before allowing the producer to sell an annuity product for that insurer. An insurer may satisfy its responsibility under this subsection by obtaining certificates of completion of the training course or obtaining reports provided by director-sponsored database systems or vendors or from a reasonably reliable commercial database vendor that has a reporting arrangement with approved insurance education providers.

(C) Failure to comply with the requirements set forth in section (5) of this rule shall constitute false information and/or misrepresentations and false advertising of insurance policies and/or misrepresentation in insurance applications as those terms are used in section 375.936(4), (6), and (7), RSMo.

(6) Recordkeeping.

(A) Insurers, general agents, independent agencies, and insurance producers shall maintain or be able to make available to the director records of the information collected from the consumer and other information used in making the recommendations that were the basis for insurance transactions for a period of not less than three (3) years after the insurance transaction is completed by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of an insurance producer.

(B) Records required to be maintained by this rule may be maintained in paper, photographic, micro-process, magnetic, mechanical or electronic media, or by any process that accurately reproduces the actual document.

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**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 400—Life, Annuities and Health
Chapter 13—Health Insurance Rates**

PROPOSED RULE

20 CSR 400-13.100 Health Insurance Rates

PURPOSE: This rule prescribes the form and content of the rate