

RCW 48.23.015 Purchase or exchange of annuities—Definitions—Standards—Requirements—Conduct—Records—Penalties—Rules. (Effective until January 1, 2024.) (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.]

RCW 48.23.015 Purchase or exchange of annuities—Definitions—Standards—Requirements—Conduct—Records—Penalties—Rules. (Effective January 1, 2024.) (1) This section applies to any sale or recommendation of an annuity.

(2) 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) "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.

(c) "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:

(i) Age;

(ii) Annual income;

(iii) Financial situation and needs, including debts and other obligations;

(iv) Financial experience;

(v) Insurance needs;

- (vi) Financial objectives;
- (vii) Intended use of the annuity;
- (viii) Financial time horizon;
- (ix) Existing assets or financial products, including investment, annuity, and insurance holdings;
- (x) Liquidity needs;
- (xi) Liquid net worth;
- (xii) Risk tolerance including, but not limited to, willingness to accept nonguaranteed elements in the annuity;
- (xiii) Financial resources used to fund the annuity; and
- (xiv) Tax status.

(d) "FINRA" means the financial industry regulatory authority or a successor agency.

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

(f) "Intermediary" means an entity contracted directly with an insurer or with another entity contracted with an insurer to facilitate the sale of the insurer's annuities by producers.

(g) "Material conflict of interest" means 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. "Material conflict of interest" does not include cash compensation or noncash compensation.

(h) "Noncash compensation" means any form of compensation that is not cash compensation including, but not limited to, health insurance, office rent, office support, and retirement benefits.

(i) "Nonguaranteed elements" means the premiums, credited interest rates including any bonuses, benefits, values, dividends, noninterest 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. An element is considered nonguaranteed if any of the underlying nonguaranteed elements are used in its calculation.

(j) "Producer" has the same meaning as "insurance producer" in RCW 48.17.010 and also includes an insurer where no producer is involved.

(k) "Recommendation" means advice provided by a producer to an individual consumer that was intended to or does result in a purchase, an exchange, or a replacement of an annuity in accordance with that advice.

"Recommendation" 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.

(l) "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 proposing insurer, whether or not 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:

(i) Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer, or otherwise terminated;

(ii) 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;

(iii) 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;

(iv) Reissued with any reduction in cash value; or

(v) Used in a financed purchase.

(m) "SEC" means the United States securities and exchange commission.

(3) Best interest obligations. A producer, when making a recommendation of an annuity, 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 they have satisfied the obligations in this subsection regarding care, disclosure, conflict of interest, and documentation.

(a) Care obligation.

(i) The producer, in making a recommendation shall exercise reasonable diligence, care, and skill to:

(A) Know the consumer's financial situation, insurance needs, and financial objectives;

(B) Understand the available recommendation options after making a reasonable inquiry into options available to the producer;

(C) 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; and

(D) Communicate the basis or bases of the recommendation.

(ii) The requirements under (a)(i) of this subsection include making reasonable efforts to obtain consumer profile information from the consumer prior to the recommendation of an annuity.

(iii) The requirements under (a)(i) of this subsection require a producer to consider the types of products the producer is authorized and licensed to recommend or sell that address the consumer's financial situation, insurance needs, and financial objectives. This does not require analysis or consideration of 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. Producers shall be held to standards applicable to producers with similar authority and licensure.

(iv) The requirements under this subsection do not create a fiduciary obligation or relationship and only create a regulatory obligation as established in this section.

(v) 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 of this section may vary depending on the facts and circumstances of a particular case. However, each factor may not be considered in isolation.

(vi) The requirements under (a)(i) of this subsection include having a reasonable basis to believe the consumer would benefit from certain features of the annuity, such as annuitization, death or living benefit, or other insurance-related features.

(vii) The requirements under (a)(i) of this subsection 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 producer enhancements, if any.

(viii) The requirements under (a)(i) of this subsection do not mean the annuity with the lowest one-time or multiple occurrence compensation structure shall necessarily be recommended.

(ix) The requirements under (a)(i) of this subsection do not mean the producer has ongoing monitoring obligations under the care obligation under this section, although such an obligation may be separately owed under the terms of a fiduciary, consulting, investment advising, or financial planning agreement between the consumer and the producer.

(x) In the case of an exchange or replacement of an annuity, the producer shall consider the whole transaction, which includes 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, or charges for riders and similar product enhancements;

(B) The replacing product would substantially benefit the consumer in comparison to the replaced product over the life of the product; and

(C) The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 60 months.

(xi) Nothing in this section should be construed to require 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 but not limited to any securities license, in order to fulfill the duties and obligations contained in this section; provided 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.

(b) Disclosure obligation.

(i) Prior to the recommendation or sale of an annuity, the producer shall prominently disclose to the consumer on a form substantially similar to appendix A, as published on the commissioner's website:

(A) A description of the scope and terms of the relationship with the consumer and the role of the producer in the transaction;

(B) An affirmative statement on whether the producer is licensed and authorized to sell the following products:

(I) Fixed annuities;

(II) Fixed indexed annuities;

(III) Variable annuities;

(IV) Life insurance;

(V) Mutual funds;

(VI) Stocks and bonds; and

(VII) Certificates of deposit;

(C) An affirmative statement describing the insurers the producer is authorized, contracted, appointed, or otherwise able to sell insurance products for, using the following descriptions:

(I) From one insurer;

(II) From two or more insurers; or

(III) From two or more insurers although primarily contracted with one insurer;

(D) A description of the sources and types of cash compensation and noncash compensation to be received by the producer, including whether the producer is to be compensated for the sale of a recommended annuity by commission as part of premium or other remuneration received from the insurer, intermediary, or other

producer or by fee as a result of a contract for advice or consulting services; and

(E) A notice of the consumer's right to request additional information regarding cash compensation described in this subsection (3) (b);

(ii) Upon request of the consumer or the consumer's designated representative, the producer shall disclose:

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

(B) 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, which may be stated as a range of amounts or percentages; and

(iii) Prior to or at the time of the recommendation or sale of an annuity, the producer shall have a reasonable basis to believe the consumer has been 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, any annual fees, potential charges for and features of riders or other options of the annuity, limitations on interest returns, potential changes in nonguaranteed elements of the annuity, insurance and investment components, and market risk.

(c) Conflict of interest obligation. 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.

(d) Documentation obligation. A producer shall at the time of recommendation or sale:

(i) Make a written record of any recommendation and the basis for the recommendation subject to this section;

(ii) Obtain a consumer signed statement on a form substantially similar to appendix B as published on the commissioner's website documenting:

(A) A customer's refusal to provide the consumer profile information, if any; and

(B) A customer's understanding of the ramifications of not providing his or her consumer profile information or providing insufficient consumer profile information; and

(iii) Obtain a consumer signed statement on a form substantially similar to appendix C as published on the commissioner's website acknowledging the annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the producer's recommendation.

(e) Application of the best interest obligation. Any requirement applicable to a producer under this subsection shall apply 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.

(4) Transactions not based on a recommendation.

(a) Except as provided under (b) of this subsection, a producer shall have no obligation to a consumer under subsection (3)(a) of this section related to any annuity transaction if:

(i) No recommendation is made;

(ii) A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer;

(iii) A consumer refuses to provide relevant consumer profile information and the annuity transaction is not recommended; or

(iv) A consumer decides to enter into an annuity transaction that is not based on a recommendation of the producer.

(b) An insurer's issuance of an annuity subject to (a) of this subsection must be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.

(5) Supervision system.

(a) Except as permitted under subsection (4) of this section, an insurer may not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity would effectively address the particular consumer's financial situation, insurance needs, and financial objectives based on the consumer's consumer profile information.

(b) An insurer must establish and maintain a supervision system that is reasonably designed to achieve the insurer's and the producer's compliance with this section.

(c) An insurer may contract with a third party, including producers, a general agent, or independent agency, to establish and maintain a system of supervision as required in this subsection with respect to 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.

(d) 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 producer solicited transactions; or

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

(e) 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.

(6) Safe harbor.

(a) Recommendations and sales of annuities made in compliance with comparable standards shall satisfy the requirements under this section. This subsection applies to recommendations and sales of annuities made by financial professionals in compliance with business rules, controls, and procedures that satisfy a comparable standard even if such a standard would not otherwise apply to the product or recommendation at issue. However, nothing in this subsection shall limit the insurance commissioner's ability to investigate and enforce the provisions of this section.

(b) Nothing in (a) of this subsection shall limit the insurer's obligation to comply with subsection (5)(a) 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.

(c) For (a) of this subsection to apply, an insurer shall:

(i) Monitor the relevant conduct of the financial professional seeking to rely on (a) 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 an insurer's business; and

(ii) Provide to the entity responsible for supervising the financial professional seeking to rely on (a) 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 such entity to maintain its supervision system.

(d) For purposes of this subsection, "financial professional" means a producer that is regulated and acting as:

(i) A broker-dealer registered under federal or state securities laws or a registered representative of a broker-dealer;

(ii) 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

(iii) A plan fiduciary under section 3(21) of the employee retirement income security act of 1974 (ERISA) or fiduciary under section 4975(e)(3) of the internal revenue code (IRC) or any amendments or successor statutes thereto.

(e) For purposes of this subsection, "comparable standards" means:

(i) 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, but not limited to, regulation best interest and any amendments or successor regulations thereto;

(ii) 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 such investment advisers or investment adviser representatives by contract or under the investment advisers act of 1940 or applicable state securities law including, but not limited to, the Form ADV and interpretations; and

(iii) With respect to plan fiduciaries or fiduciaries, the duties, obligations, prohibitions, and all other requirements attendant to such status under ERISA or the IRC and any amendments or successor statutes thereto.

(7) An insurer is responsible for compliance with this section. If a violation occurs, either because of the action or inaction of the insurer or its producer, the commissioner may order:

(a) An insurer to take reasonably appropriate corrective action for any consumer harmed by a failure to comply with chapter 64, Laws of 2023 by the insurer, an entity contracted to perform the insurer's supervisory duties, or by the producer;

(b) A general agency, independent agency, or the producer to take reasonably appropriate corrective action for any consumer harmed by the producer's violation of this section; and

(c) Appropriate penalties and sanctions.

(8) 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 or the violation was not part of a pattern or practice. This subsection does not limit the commissioner's ability to enforce this section or other applicable sections of Title 48 RCW.

(9) The authority to enforce compliance with this section is vested exclusively with the commissioner.

(10) Insurers, general agents, independent agencies, and producers must maintain or be able to make available to the commissioner 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 the insurance transaction for five years after the insurance transaction is completed by the insurer. An insurer is permitted, but is not required, to maintain documentation on behalf of a producer. This section does not relieve a producer of the obligation to maintain records of insurance transactions as required by RCW 48.17.470.

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

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

(13) 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;

(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; or

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

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

(d) Formal prepaid funeral contracts.

(14) This section does not affect the application of chapter 21.20 RCW.

(15) Nothing in this section shall be construed to create or imply a private cause of action for a violation of this section or to subject a producer to civil liability under the best interest standard of care outlined in subsection (3) of this section or under standards governing the conduct of a fiduciary or a fiduciary relationship. [2023 c 64 § 2; 2009 c 18 § 2.]

Purpose—2023 c 64: "The purpose of this act is to require producers, as defined in RCW 48.23.015, to act in the best interest of the consumer when making a recommendation of an annuity and to require insurers to establish and maintain a system to supervise recommendations so that the insurance needs and financial objectives of consumers at the time of the transaction are effectively addressed." [2023 c 64 § 1.]

Effective date—2023 c 64: "This act takes effect January 1, 2024." [2023 c 64 § 3.]

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.]