

State Suitability, Fiduciary Duty and Disclosure Initiatives Roundup

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States are stampeding to impose additional duties on those who provide financial advice or make recommendations to consumers. Some of these initiatives result from the states' belief that action is required to wrangle perceived wrongdoings that they thought were lassoed by the DOL's Fiduciary Duty Rule and exemptions, but have now been let out of the barn. Other initiatives seek to include in the herd other types of products and services subject to suitability, best interest, or fiduciary duty. The states' initiatives include:

- **Connecticut** – Effective July 5, 2017, financial planners, who are not regulated by state or federal law, may have to disclose whether they have a fiduciary duty.
- **Delaware** – On November 15, 2017, the Delaware Department of Insurance proposed adding legislation requiring agents, producers, brokers, and companies to complete a written suitability review prior to any issuance of any life, limited benefit, long-term care, and Medicare supplement policy.
- **Illinois** – On February 13, 2018, a placeholder bill without proposed language, titled "Investment Advisor Disclosure Act," was introduced.
- **Maryland** – In January 2018, the Maryland Financial Consumer Protection Commission (Commission) issued its 2017 Interim Report recommending "Maryland take steps to further protect consumers and investors" and extend a "fiduciary duty ... to all financial professionals who provide investment advice." Bills introduced in the Maryland House and Senate require the Commission to monitor the SEC's "actions in addressing conflicts of interest of broker-dealers' offering investment advice" and "changes to State law" addressing fiduciary duty standards of care. The Senate bill also requires that the Commission "study the U.S. Department of Labor rule."

- **Massachusetts** – On February 7, 2018, the Massachusetts Securities Division asked for public comment on a fee table requirement for Massachusetts-registered investment advisors (see page 17).
- **Nevada** – Effective July 1, 2017, Nevada law imposes a statutory fiduciary duty on broker-dealers and investment advisors and authorizes the Administrator of the Nevada Securities Division to adopt regulations defining acts, practices, or courses of business that violate the fiduciary duty owed to clients.
- The Nevada Division of Insurance circulated its January 22, 2018 proposed revisions to Nevada’s suitability requirements. These revisions mirror many of the revisions in the NAIC’s proposed Suitability and Best Interest Standard of Conduct in Annuity Transactions Model (discussed on page 21), including the same definition of best interest and duties for insurers and producers.
- **New Jersey** – Not dissuaded by being bucked in 2016 and 2017, legislation requiring non-fiduciary investment advisors to disclose that they do not have a fiduciary relationship with the client and are not required to act in the client’s best interest was re-introduced.
- **New York** – On December 27, 2017, the New York Department of Financial Services (NYDFS) issued amendments to its proposed Suitability in Life Insurance and Annuity Transactions regulation. The revisions seek to broaden the scope of the rule to apply to life insurance policies as well as in-force policies, expand the information required for suitability analysis, create a best interest standard, and expand disclosures to the consumer, among other requirements. The NYDFS is considering the public comments submitted.

All this state activity leaves the crowd wondering what lies over the horizon.

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