

States Spring Into Action With Best Interest Rules for Annuities

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In February 2020, the NAIC approved revisions to the Suitability in Annuity Transactions Model 275, adopting a four-part best interest obligation, including the following obligations: care, disclosure, conflict of interest, and documentation. The revisions to Model 275 also fertilized the producer training requirements and the insurer supervision system with respect to annuity recommendations to consumers. The status of state adoption of changes to their suitability requirements are as follows:

- Adopted: Arizona, Arkansas, Delaware, Idaho, Iowa, Michigan, Nebraska, North Dakota, Ohio, Rhode Island
- Pending: Alabama, Connecticut, Kentucky, Maine, Montana, Nevada,¹ Texas, Virginia

Below is a summary of the differences between the state initiatives and the revisions to Model 275.

To graft with the federal securities laws and the Department of Labor, Model 275 adopted a “best interest obligation” standard. Alabama and Kentucky differ from Model 275 because their state initiatives currently do not use the term “best interest,” but the operative provisions of these states’ initiatives contain the same four parts as the Model 275 “best interest obligation.”

As part of the care obligation, Model 275 requires the producer to communicate the basis of the recommendation to the consumer. During its drafting sessions, the NAIC Suitability Working Group opted not to require this to be in writing. However, Montana specifically requires a producer to “communicate the basis or bases of the recommendation to the consumer in writing.”

As part of the disclosure obligation, Model 275 requires the producer to provide the following to the consumer:

1. Descriptions of (a) the producer-consumer relationship and the producer's role in the transaction and (b) the sources and types of both cash and non-cash compensation that the producer receives from the transaction.
2. Affirmative statements regarding (a) the products the producer is licensed and authorized to sell and (b) whether the producer is authorized, contracted, or able to sell insurance products for one insurer, two or more insurers, or two or more insurers although the producer primarily contracts with one insurer.
3. Notice of a consumer's right to request other information regarding cash compensation.

Model 275 provides a template for such disclosure in Appendix A and requires the consumer to sign the last page of this disclosure document. However, Maine's proposed changes require the consumer to sign each page of the producer disclosure.

Further updates to Model 275 address (a) new producer training requirements on the revised standard of care and (b) the ability to satisfy those training requirements with "substantially similar" courses. These updates to Model 275, and state differences, are as follows:

- *Training Requirements for Existing Producers* – Under Model 275, existing producers that completed an annuity training course under the prior model will have six months to comply with the new model. Existing producers can come into compliance by completing either (1) a new four-credit annuity training course or (2) a one-credit training course to cultivate an existing producer's knowledge of the new model requirements.
 - Kentucky and Texas leave out the provisions that permit existing producers who have already taken the four-credit course to take only the additional one-credit course.
 - North Dakota pruned away the six-month delay in the implementation of the revised producer training requirement for existing producers that are already licensed.
- *Substantially Similar Courses* – Under the revised Model 275, in addition to having reciprocity of producer training courses between states, producer training requirements can be satisfied by courses that are "substantially similar" to those described in Model 275.
 - Alabama and Kentucky omit the allowance for "substantially similar" courses to satisfy their revised producer training requirements. However, both include reciprocity for courses from another state.
 - Montana weeds out the ability for annuity training courses from other states to satisfy its revised producer training requirements.

¹ Nevada's current proposal is not based on the 2020 revisions to Model 275; however, Nevada is expected to introduce a substitute proposal that follows Model 275.

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