

Which Thoroughbred Will Win the Standards of Care Derby?

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The NAIC and the State of New York continue racing as each is revising its suitability regulation to incorporate enhanced standards of care. Only time will tell which version will gallop to victory.

While New York was fast out of the gate, and is pushing to have its version used by all states, it is not a sure bet that New York has the stamina to go the distance. The New York version is saddled with many extra bells and whistles impacting this horse's endurance. While the NAIC stumbled out of the gate after the Fifth Circuit vacated the DOL Rule, it is picking up speed.

Those placing bets should consider the differences between the two horses that will likely impact which one will win the crown:

- New York's has a broader scope by including life insurance, while the leaner NAIC stallion is focusing only on annuities.
- New York's insists on including prudence within its standard of care; several regulators were concerned about including this terminology in the NAIC version.
- New York's imposes additional requirements not included in the NAIC's version including: (1) insurer-provided comparison of fee-based and commission-based versions of products; (2) insurer prevention of incentives which would cause producers to make recommendations that are not in the best interest of the consumer; and (3) insurer procedures designed to prevent financial exploitation and abuse.

As the NAIC and New York continue to jockey for position and consider input from the crowd, ultimately, the true champion will be the horse that can deliver meaningful consumer protection in a manner the industry can implement.