

Several Teams Compete to Reach NAIC Suitability Model Finals

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On May 31 and June 1, several teams competed over proposed revisions to the Suitability in Annuity Transactions Model Regulation (#275) (Suitability Model) at the in-person meeting of the National Association of Insurance Commissioners' (NAIC) Annuity Suitability Working Group (Suitability WG). The industry called foul on several issues, including:

- whether the Suitability Model will incorporate the best interest standard of care;
- whether the Suitability Model will include a safe harbor for compliance with other standards of conduct regimes;
- how cash and non-cash compensation should be disclosed;
- what responsibility insurers will have to supervise third-party producers; and
- what a producer's responsibility will be where no recommendation is made, or where the consumer provides no suitability information.

The Suitability WG called a time-out, and these topics will be discussed at a future meeting.

Several regulatory teams gave a sneak-peak at their playbook and highlighted issues important to their home states, as follows:

1. California

- Wants to avoid any technical fouls by prohibiting any producer compensation based on sales goals or contests because of conflicts of interest concerns.
- Does not want to allow producers to recommend the replacement of a product they are not licensed to sell.
- Wants to require 14-point font size for certain disclosures.
- Wants to assist seniors in the golden state by adding senior citizen status to the list of suitability information a producer is required to consider when making a recommendation.
- Wants to require that a replacement provide a "tangible net benefit" to the consumer.

2. Iowa

- Wants to require disclosure of the frequency and amount of commissions received after the first year.

3. New York

- Wants to require disclosure, when a producer only sells the products of one insurer, that the producer will not consider the products of another company even though those products may be more suitable for the consumer.
- Wants to include life insurance within the scope of the Suitability Model.
- Wants to incorporate a "best interest" standard of care.

4. Tennessee

- Wants to block out a "best interest" standard of care, but prefers a "suitability plus" standard.

5. Ohio

- Wants to require disclosure if a producer is recommending a product from an insurer that the producer is not appointed

with and the details of any compensation agreement with the appointed producer.

It is unclear whether any of these plays will lead to a basket and become part of the Suitability Model. The Suitability WG is creating a revised draft of the Suitability Model to incorporate several revisions for further discussion and comment. The Suitability WG will hold another meeting before the August NAIC Summer National Meeting to continue reviewing the comments received on the Suitability Model.

Carlton Fields Jordan Burt, P.A. will continue monitoring the discussion of the Suitability Model and the varied standard of conduct proposals from other regulators.

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