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Quiz

Sales Practices for Annuity Producers

Our review of annuity features, benefits, advantages and disadvantages has been intended to lay the groundwork for you to ethically and proficiently help your clients prepare for the risks of retirement. The opportunity for advisors that have skill in both the retirement accumulation and distribution processes is staggering. Equally staggering is the responsibility that is on your shoulders. After all, you are advising people with regard to some of the most important decisions they will make in their entire lives. The consequences of bad decisions can subject people to years of financial discomfort and take away the dignity and freedom of a financially successful retirement.

Model Act Requirements: For all of these reasons, both the California Department of Insurance and the National Associations of Insurance Commissioners (NAIC) have raised the bar on education and supervision of annuity producers. They have mandated more stringent disclosures, higher levels of education, tighter guidelines on replacements, and additional protection for seniors to ensure that our industry establishes a reputation of doing the right thing for the customer instead of pushing products that have high fees and commissions.

Insurer Responsibilities: The regulations do not single out only annuity producers. They extend new requirements to insurance companies that issue annuities, and force them to take greater responsibility for ensuring that financial advisors are representing their products properly. The rules hold both insurers and producers responsible in ensuring that customer recommendations are appropriate, require the establishment of supervisory standards and procedures for suitability review, and direct that all producers complete product specific training delivered by the insurance company that issues each of the products they sell. Producers must complete the training before solicitation of the product.

Keeping Current: As basic as it seems, financial advisors need to know the details of the products they are recommending. It is their responsibility to educate their customers on why the product suits their situation, and to provide a fair and balanced overview of the features and benefits and advantages and disadvantages of the product. This is not possible unless the advisor has taken the time to learn the product in preparation. Completing training requires time and professional commitment. It simply is not easy to keep up with the continuing changes that insurers implement to keep their products competitive. Staying up to date with the slight variations in products like surrender charges, withdrawal provisions, state variations, and other regulations is a constant challenge.

Protection of Seniors: Another area of emphasis pertains to protection of senior citizens. Sales of annuity products to senior consumers have significantly increased in recent years. However, there has also been a rise in the sense of confusion among consumers, particularly seniors, who buy annuity products. Unfortunately, some of the blame for this confusion lies with financial representatives who have employed vague, questionable and even deceptive sales practices in dealing with less sophisticated customers. It is disappointing that greed can motivate companies and agents to take advantage of uninformed consumers, but it has happened and all too frequently.

A. Suitability Standards

The suitability rules impose certain duties and responsibilities on insurers and financial advisors regarding the suitability of an annuity sale or exchange of an annuity. Specifically, in recommending to a consumer the purchase of an annuity or the exchange of an annuity, the financial advisor must have reasonable grounds for believing that the recommendation is suitable for the consumer. This is based on facts disclosed by the consumer regarding financial preferences, experiences and needs. To ensure that an annuity product recommendation is suitable, financial advisors must make reasonable effort to gather the information below prior to the execution of the transaction. The same information standard applies for both a recommendation to purchase or exchange an annuity [contract](#).

Required Suitability Information for Annuity Recommendations

- Age
- Annual income
- Financial situation and needs, including the financial resources used for the funding of the annuity
- Financial experience
- Financial objectives
- Intended use of the annuity
- Financial time horizon
- Existing assets, including investment and life insurance holdings
- Liquidity needs
- Liquid net worth
- Risk tolerance
- Tax status
- Whether or not the consumer has a reverse mortgage

To properly position annuities and recommend appropriate product choices, financial advisors must explain that annuities are first and foremost long-term planning products that are appropriate for those with long-term investment horizons. Annuities generally satisfy needs associated with retirement; there are few exceptions where they are appropriate or efficient for other needs or other objectives.

1. Educating Your Customer

We have examined the suitability information that producers must gather to ensure appropriate recommendations for purchase and exchange. Collection of suitability information is a fundamental requirement in the sales process, but your responsibility in selling or recommending an annuity product or exchange requires that you clearly present the features and benefits of the products. If you have done your job thoroughly, you will be able to answer “yes” to each of these questions, and take pride in the work you have done to educate your customer.

- Has the consumer been reasonably informed of the features of the annuity, including

- Potential surrender period and surrender charges;
 - Potential tax penalties that apply upon withdrawals, exchanges, surrender or annuitization;
 - Fees and charges associated with the base annuity;
 - Fees and charges associated with riders; and
 - Limitations on investment choices and returns.
- Will the customer benefit from any of the following features of an annuity:
 - Tax-deferred growth;
 - Annuitization options;
 - Death benefits; and
 - Living benefit.
- Does the customer understand the unique features of the contracts such as
 - Underlying subaccounts and investment choices;
 - How interest earnings are credited; and
 - Riders and other product enhancements.
- Does the customer understand the purpose of the annuity, and
 - The problem it will solve?
 - Its role in the retirement plan?
- Does the customer recognize the long-term nature of the investment, and
 - The restrictions on liquidity?
 - The costly penalties that may apply on excess withdrawals?
- If an exchange or replacement is involved, does the customer understand the following:
 - That new surrender charges may apply;
 - The benefits that were relinquished in the old contract and why the benefits in the new contract are more attractive;
 - Why the exchange makes sense; and
 - The differences in any fees that apply.

This list of questions is by no means comprehensive, because with each product and situation there are unique circumstances that must be considered. Regardless, you should take your role as an educator very seriously when it comes to selling annuities. Taking time to help people understand what can be complicated products will help ensure that confusion and complaints do not arise after the sale.

B. Mitigating Retirement Risks with Annuities

The use of annuities within a retirement accumulation or distribution strategy, and how they can address challenges that people face while preparing for, or in retirement, have been covered throughout this course. Annuities, when suitable, can be ideal products for managing retirement risks. The 3 headlining risks to successful retirement, along with an annuity-based risk mitigation strategy are recapped below. While not all people are equally exposed to each of these risks, they all merit careful consideration in establishing a retirement plan.

1. **Longevity Risk:** The risk of outliving wealth and available income can be completely eradicated using the lifetime income payout options available through either immediate or deferred fixed annuities, or a variable annuity with a GLWB or GMIB rider.
2. **Market Risk:** The temporary or permanent loss of wealth from market downturns or poor market performance can be managed with a variety of annuity alternatives. Fixed annuities, both traditional and index, include minimum guarantees that ensure growth of contract value even when market performance is negative. Variable contracts with GMAB riders ensure that contract value never

falls below an established minimum, but can still increase in times of strong market performance.

3. **Inflation Risk:** The erosion of purchasing power is a well-founded retirement fear, particularly as people live in retirement for more years than ever before. The risk that rising costs will decrease purchasing power can be managed through the choice of inflation adjusted life income options, which can be chosen for both single and joint life payouts.

Today's annuity products provide strong answers for the risks, fears and uncertainties of retirement. Fred Reish, a well-known lawyer specializing in retirement issues, says it well: *"We've come from thinking that stocks and bonds were the answer to everything to worrying about how to arrange for monthly income to age 80 and beyond. Annuities can take away that worry."*

Thank you for your commitment to learning more about annuities and for sharing the annuity story with retirees and pre-retirees who yearn for retirement security. Your professionalism in helping people live comfortably in retirement will be well rewarded.

C. Suitability Standards for Recommending Annuity Purchases/Exchanges (CIC 10509.910)

Insurers are required to establish a system to supervise and set forth standards and procedures that apply when recommendations to consumers result in annuity product sales. This ensures that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed. These rules also apply to recommendations to exchange or replace an existing annuity.

1. Definitions (CIC 10509.913)

The following are key terms as defined by the California Insurance Code (CIC 10509.913):

Annuity means an annuity that is an insurance product under California law that is individually solicited, whether the product is classified as an individual or group annuity.

Insurance producer means a person required to be licensed under California law to sell, solicit, or negotiate insurance, including annuities.

Recommendation means advice or guidance provided or made by an insurance producer or by an insurer, to an individual consumer that results in a purchase, exchange, or replacement of an annuity in accordance with that advice or guidance.

Replacement means a transaction in which a new policy or [contract](#) is to be purchased, and it is known or should be known to the proposing producer (or insurer) that by reason of the transaction, an existing policy or contract is to be:

- Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer, or otherwise terminated;
- 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;
- Amended so as to effect either a reduction in benefits or a reduction in the term for which coverage would otherwise remain in force or for which benefits would be paid;
- Reissued with a reduction in cash value; or
- Used in a financed purchase.

2. Suitability of Replacement Recommendations (CIC 10509.914)

In recommending to a consumer the purchase or exchange of an annuity that results in an insurance transaction, the insurance producer (or insurer if no producer is involved) must have reasonable grounds for believing that the recommendation is suitable for the consumer based on the consumer's investments and financial situation and needs, including the consumer's suitability information, and that there is a reasonable basis to believe:

- The consumer has been reasonably 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, potential charges for and features of riders, limitations on interest returns, insurance and investment components, and market risk;
- The consumer would receive a tangible net benefit from the transaction;
- The particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of purchase or exchange, and riders and similar product enhancements, if any, are suitable, and in the case of an exchange or replacement, the transaction as a whole is suitable, for the particular consumer based on his or her suitability information;
- In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable, taking into consideration:
 - Whether the consumer will incur a surrender charge, be subject to 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;
 - Whether the consumer would benefit from product enhancements and improvement;
 - Whether the consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 60 months.

Prior to the execution of a purchase, exchange, or replacement of an annuity resulting from a recommendation, an insurance producer (or insurer where no producer is involved), shall make reasonable efforts to obtain the consumer's suitability information.

An insurer shall not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable based on the consumer's suitability information.

Neither a producer nor an insurer shall in any event recommend to a person 65 years of age or older the sale of an annuity to replace an existing annuity that requires the insured to pay a surrender charge for the annuity that is being replaced, where purchase of the annuity does not confer a substantial financial benefit over the life of the policy to the consumer, so that a reasonable person would believe the purchase is unnecessary.

Neither an insurance producer nor an insurer has an obligation to a consumer related to an annuity transaction if:

- No recommendation is made;
- A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer;
- A consumer refuses to provide relevant suitability information and the annuity transaction is not recommended;
- A consumer decides to enter into an annuity transaction that is not based on a recommendation of the insurer or the insurance producer.

An insurer's issuance of an annuity shall be reasonable under all the circumstances which are actually known, or which after reasonable inquiry should be known, to the insurer or the insurance producer at the time the annuity is issued.

An insurance producer (or insurer representative if no insurance producer is involved) must at the time of sale:

- Make a record of any recommendation;
- Obtain a customer-signed statement documenting the customer's refusal to provide suitability information, if any; or
- Obtain a customer-signed statement acknowledging that an annuity transaction is not recommended if the customer decides to enter into an annuity transaction that is not based on the insurance producer's or insurer's recommendation.

3. System of Supervision

An insurer must establish a **supervision system** designed to achieve compliance with this article, including:

- Maintain reasonable procedures to inform its insurance producers of these requirements and incorporate them into relevant insurance producer training manuals;
- Establish standards for insurance producer product training and maintain reasonable procedures to require its producers to comply with the annuity suitability training requirements;
- Provide product-specific training and training materials which explain all material features of its annuity products to its insurance producers;
- Maintain procedures for review of each recommendation prior to issuance of an annuity that are designed to ensure that there is a reasonable basis to determine that a recommendation is suitable. The review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means, including physical review.
- An electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria;
- Maintain reasonable procedures to detect recommendations that are not suitable. This may include confirmation of consumer suitability information, systematic customer surveys, interviews, confirmation letters, and programs of internal monitoring;
- Annually provide a report to its senior management, including to the senior manager responsible for audit functions, which details a review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.

An insurer's supervision system must ensure reasonable supervision of contractual performance, including:

- Reasonable monitoring and, as appropriate, conducting audits to ensure that the contracted function is properly performed; and
- Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager has a reasonable basis to represent, and does represent, that the function is properly performed.

An insurer is not required to include in its system of supervision an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer.

An insurance producer or insurer may not dissuade, or attempt to dissuade, a consumer from any of the following:

- Truthfully responding to an insurer's request for confirmation of suitability information;
- Filing a complaint; or
- Cooperating with the investigation of a complaint.

These rules apply to FINRA broker/dealer sales of variable and fixed annuities. Compliance with the suitability and supervision system requirements set forth in FINRA Rule 2330 meet these requirements, provided that the suitability criteria used also include both the consumer's income and the intended use of the annuity.

4. Violations and Penalties (CIC 10509.916)

The insurer is responsible for compliance with the suitability requirements for annuity transactions established by the California Insurance Code, and if a violation occurs, either because of the action or inaction of the insurer or its insurance producer, the Commissioner may, in addition to any other available penalties, order the insurer, a managing general agent, and/or an insurance producer to take reasonably appropriate corrective action for any consumer harmed by the violation.

5. Recordkeeping (CIC 10509.917)

Insurers and insurance producers are required to 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 insurance transactions for **5 years** after the insurance transaction is completed by the insurer. The insurer may maintain these records on behalf of the insurance producer.

6. Product-Specific Illustrations (CIC 10127.11)

All insurers and life agents offering individual life insurance or annuity contracts issued to senior citizens on and after January 1, 1995, who use nonpreprinted illustrations of nonguaranteed values must disclose on those illustrations or on an attached cover sheet the following statement:

"THIS IS AN ILLUSTRATION ONLY. AN ILLUSTRATION IS NOT INTENDED TO PREDICT ACTUAL PERFORMANCE. INTEREST RATES, DIVIDENDS, OR VALUES THAT ARE SET FORTH IN THE ILLUSTRATION ARE NOT GUARANTEED, EXCEPT FOR THOSE ITEMS CLEARLY LABELED AS GUARANTEED."

This statement must stand out prominently from the other text. All preprinted policy illustrations must contain this notice in 12-point bold print with at least one-half inch space on all four sides and must be printed:

- On the illustration form itself;
- On an attached cover sheet; or
- In the form of a contrasting color sticker placed on the front of the illustration.

All preprinted illustrations containing nonguaranteed values must show the columns of guaranteed values in **bold** print. All other columns used in the illustration must be in standard print. *Values* include cash value, surrender value, and death benefits.

7. Rights and Responsibilities of the Insurance Company (CIC 10127.12, 10127.13)

Whenever an insurer provides an annual statement to an individual annuity contract issued after January 1, 1995, the insurer shall also provide the current accumulation value and the current cash surrender value.

All individual life insurance policies and individual annuity contracts for senior citizens that contain a charge upon surrender, partial surrender, excess withdrawal, or penalties upon surrender shall contain a notice disclosing the location of the charge, the charge time period, the charge information, and any associated penalty information, in bold 12-point print on the front of the policy jacket or on the cover page of the policy.

A policy must have just one cover page. If the notice required by this section and the right to examine notice are both on the cover page, as opposed to the front cover of the policy jacket, they must appear on the same page.

General references to "policy" in this Code regulation refer to both life insurance policies and annuity contracts.

8. General Advertising - Printing License Number on Documents (CIC 1725.5)

In order to facilitate a potential client's investigation of a producer, each producer must place his/her license number on all printed materials placed before the public, including business cards, proposals, and all print advertisements in California.

To ensure that the number is not minimized and would not be missed by a prospective insurance purchaser, the license number must be printed *at least as large as the smallest address or telephone number on the same document*. For licensees with more than one license, a single license number will suffice. Solicitors must use the license number of their employer.

All business cards, written price quotations for insurance products, and any print advertisements must prominently display the word "**Insurance**" in type size no smaller than the largest indicated phone number or 12-point type, whichever is larger.

A first offense will be punished by a fine of \$200, a second by a fine of \$500, and a third by a fine of \$1,000. However, a separate penalty cannot be imposed for each piece of illegal material used. There is a process for explaining violations, and the Commissioner has the option to consider extenuating circumstances and relieve the licensee of the penalty.

The one exception to the license number requirement is motor club (A.A.A., etc.) advertisements which include insurance in a general list of services provided without giving details regarding the insurance products.

Direct Mailers

Mass marketing of insurance products through mail solicitations, print media advertisements, or television and radio are referred to as **direct response** marketing (aka *direct mailers*). The policies provided are generally low in benefits and low in premiums. The term *direct response* refers to the necessity of the potential client to take the initiative and respond to the advertisement through a telephone or mail contact with the insurer as directed in the ad. The rules of CIC 1725.5 for printed materials/print advertisements apply to direct mail.

9. Nonforfeiture (CIC 10168)

These rules do not apply to reinsurance, a group annuity purchased under an employee's retirement plan or deferred compensation plan, or by an employee organization, other than a plan providing individual retirement accounts or individual retirement annuities, premium deposit fund, variable annuity, investment annuity, immediate annuity, any deferred annuity contract after annuity payments have

commenced, or reversionary annuity, nor to any contract delivered outside this state through an agent or other representative of the company issuing the contract.

Minimum Guaranteed Interest Rates (CIC 10168.2, 10168.25)

There are protections in place for [contract](#) owners during periods of low interest rates. The protections apply differently for fixed and flexible contracts, and also depend on when the contracts were issued.

For contracts issued before January 1, 2006, the minimum values of any paid-up annuity, cash surrender or death benefits must be based upon the following minimum nonforfeiture amounts.

With respect to contracts providing for flexible considerations, the minimum nonforfeiture amount prior to the commencement of annuity payments must be equal to an accumulation up to that time at a rate of interest of **3% per annum** of percentages of the net considerations paid prior to that time, decreased by the sum of any prior withdrawals from or partial surrenders of the contract accumulated at a rate of interest of 3%, and the amount of any indebtedness to the company on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the company to the contract.

The net considerations for a given contract year used to define the minimum nonforfeiture amount cannot be less than zero and must be equal to the corresponding gross considerations credited to the contract during that contract year less an annual contract charge of \$30 and less a collection charge of \$1.25 per consideration credited to the contract during that contract year. The percentages of net considerations must be 65% of the net consideration for the first contract year and 87.5% of the net considerations for the second and later contract years.

Notwithstanding these provisions, the percentage must be 65% of the portion of the total net consideration for any renewal contract year which exceeds by not more than two times the sum of those portions of the net considerations in all prior contract years for which the percentage was 65%.

With respect to contracts providing for fixed scheduled considerations, minimum nonforfeiture amounts must be calculated on the assumption that considerations are paid annually in advance, and must be defined as for contracts with flexible considerations which are paid annually with two exceptions:

1. The portion of the net consideration for the first contract year to be accumulated must be the sum of 65% of the net consideration for the first contract year plus 22.5% of the excess of the net consideration for the first contract year over the lesser of the net considerations for the second and third contract years; and
2. The annual contract charge must be the lesser of dollars \$30 or 10% of the gross annual consideration.

With respect to contracts providing for a single consideration, minimum nonforfeiture amounts must be defined as for contracts with flexible considerations except that the percentage of net consideration used to determine the minimum nonforfeiture amount must be equal to 90%, and the net consideration must be the gross consideration less a contract charge of \$75.

For contracts issued after January 1, 2006, the minimum values of any paid-up annuity, cash surrender, or death benefits must be based upon the following minimum nonforfeiture amounts.

The minimum nonforfeiture amount prior to the commencement of any annuity payments shall be equal to an accumulation up to that time, at the rates of interest indicated below, of the net considerations paid prior to that time, decreased by the sum of all of the following:

- Any prior withdrawals from or partial surrenders of the contract, accumulated at the rates of interest indicated below;
- An annual contract charge of \$50, accumulated at the rates of interest indicated below;
- Any state premium tax paid by the company for the contract, accumulated at the rates of interest indicated below;
- However, the minimum nonforfeiture amount may not be decreased by this amount if the premium tax is subsequently credited back to the company;
- The amount of any indebtedness to the company on the contract, including interest due and accrued.

The net considerations for a given contract year used to define the minimum nonforfeiture amount must be an amount equal to 87.5% of the gross considerations credited to the contract during that contract year.

The **interest rate** used to determine minimum nonforfeiture amounts must be the lesser of **3% per** annum and the following:

- The 5-year Constant Maturity Treasury Rate reported by the Federal Reserve as of a date, or averaged over a period, rounded to the nearest one-twentieth of 1%, specified in the contract no longer than 15 months prior to the contract issue date or redetermination date, reduced by 125 basis points, where the resulting rate is not less than 1%.

The interest rate shall apply for an initial period and may be redetermined for additional periods.

During the period or term that a contract provides substantive participation in an equity-indexed benefit, it may increase the reduction by up to an additional 100 basis points to reflect the value of the equity index benefit. The present value at the contract issue date, and at each redetermination date, of the additional reduction may not exceed the market value of the benefit. The Commissioner may require a demonstration that the present value of the additional reduction does not exceed the market value of the benefit. Lacking a demonstration that is acceptable, the Commissioner may disallow or limit the additional reduction.

Death Benefit Guarantees (CIC 10168.4)

For contracts which provide cash surrender benefits, the cash surrender benefits available prior to maturity cannot be less than the present value as of the date of surrender of that portion of the maturity value of the paid-up annuity benefit which would be provided under the contract at maturity arising from considerations paid prior to the time of cash surrender, reduced by the amount appropriate to reflect any prior withdrawals from or partial surrenders of the contract.

The present value must be calculated on the basis of an interest rate not more than 1% higher than the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, decreased by the amount of any indebtedness to the company on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the company to the contract. In no event may any cash surrender benefit be less than the minimum nonforfeiture amount at that time.

The **death benefit** under such contracts must be at least equal to the cash surrender benefit.

No Benefit Disclosure (CIC 10168.7)

Any **contract** that does not provide cash surrender benefits or death benefits at least equal to the minimum nonforfeiture amount prior to the start of any annuity payments must include a statement in a prominent place in the contract that such benefits are not provided.

D. Contract Disclosures

1. Notice of Right to Cancel Policy (CIC 10127.9)

Every policy of individual life insurance must include a notice stating that the policy may be returned by the owner for **cancellation** by delivering it to the insurer or agent through whom it was purchased. The period of time established by the insurer for return of the policy must be between 10 and 30 days. The insured may return the policy to the insurer at any time during the period specified in the notice. In the case of individual life insurance policies (other than variable contracts and modified guaranteed contracts), by delivering the policy during the cancellation period, the owner will void the policy from the beginning, and the parties will be in the same position as if no policy had been issued.

All premiums and policy fees paid for the policy must be refunded by the insurer to the owner within 30 days from the date that the insurer is notified that the insured has canceled the policy.

In the case of variable annuity contracts, variable life insurance contracts, and modified guaranteed contracts, return of the contract during the cancellation period entitles the owner to a refund of account value and any fee paid for the policy. The account value and policy fee must be refunded by the insurer to the owner within 30 days from the date that the insurer is notified that the owner has canceled the policy.

Age 60 or Over

If the insured on the individual life policy or the annuitant on an annuity **contract** is **60 years of age or older**, the insured has a right to cancel the policy for a full refund within **30 days**. Each individual life policy annuity contract (other than variable contracts and modified guaranteed contracts) delivered to a senior consumer must have the following notice either printed on the cover page or policy jacket in 12-point bold print with one inch of space on all sides, or printed on a sticker attached to the cover page or policy jacket:

"IMPORTANT!

YOU HAVE PURCHASED A [LIFE INSURANCE POLICY], [ANNUITY CONTRACT], [MODIFIED GUARANTEED ANNUITY CONTRACT] REFERRED TO BELOW AS A "POLICY." CAREFULLY REVIEW IT FOR LIMITATIONS.

THIS POLICY MAY BE RETURNED WITHIN 30 DAYS FROM THE DATE YOU RECEIVED IT FOR A FULL REFUND BY RETURNING IT TO THE INSURANCE COMPANY OR AGENT WHO SOLD YOU THIS POLICY. AFTER 30 DAYS, CANCELLATION MAY RESULT IN A SUBSTANTIAL PENALTY, KNOWN AS A SURRENDER CHARGE."

The phrase *"after 30 days, **cancellation** may result in a substantial penalty, known as a surrender charge"* may be deleted if the policy does not contain surrender charges or penalties.

Less than 60 Years of Age (CIC 10127.09-10127.10)

The **free look** or **right-to-return period** allowed for new individual life policies must last for at least **10 days**. By law, insurers may give up to 30 days but not less than 10. This does not apply to term conversions or credit life policies.

If the policy is a **replacement**, a minimum **30-day** period is required because this requires even more time for evaluation.

2. Required Disclosures for Immediate Investments (CIC 10127.10)

Individual life insurance policies and annuity contracts (other than variable contracts and modified guaranteed contracts) that are delivered in this state must have the following notice either printed on the cover page or policy jacket in 12-point bold print with one inch of space on all sides or printed on a sticker that is affixed to the cover page or policy jacket:

"IMPORTANT!

YOU HAVE PURCHASED A [LIFE INSURANCE POLICY], [ANNUITY CONTRACT], [MODIFIED GUARANTEED ANNUITY CONTRACT] REFERRED TO BELOW AS A "POLICY." CAREFULLY REVIEW IT FOR LIMITATIONS.

THIS POLICY MAY BE RETURNED WITHIN 30 DAYS FROM THE DATE YOU RECEIVED IT FOR A FULL REFUND BY RETURNING IT TO THE INSURANCE COMPANY OR AGENT WHO SOLD YOU THIS POLICY. AFTER 30 DAYS, CANCELLATION MAY RESULT IN A SUBSTANTIAL PENALTY, KNOWN AS A SURRENDER CHARGE."

According to the Code, the phrase "*after 30 days, **cancellation** may result in a substantial penalty, known as a surrender charge*" may be deleted if the policy does not contain those charges or penalties.

Individual variable annuity contracts, variable life insurance contracts, or modified guaranteed contracts must be accompanied by a notice that includes:

- Cancellation policy;
- Investments restrictions;
- Refund policy; and
- Penalty and surrender charge.

The following notice must be either printed on the cover page or policy jacket in 12-point bold print with one inch of space on all sides, or printed on a sticker that is affixed to the cover page or policy jacket:

"IMPORTANT!

YOU HAVE PURCHASED A [LIFE INSURANCE POLICY], [ANNUITY CONTRACT], [MODIFIED GUARANTEED ANNUITY CONTRACT] REFERRED TO BELOW AS A "POLICY." CAREFULLY REVIEW IT FOR LIMITATIONS.

THIS POLICY MAY BE RETURNED WITHIN 30 DAYS FROM THE DATE YOU RECEIVED IT. DURING THAT 30-DAY PERIOD, YOUR MONEY WILL BE PLACED IN A FIXED ACCOUNT OR MONEY-MARKET FUND, UNLESS YOU DIRECT THAT THE PREMIUM BE INVESTED IN A STOCK OR BOND PORTFOLIO UNDERLYING THE CONTRACT DURING THE 30-DAY PERIOD.

IF YOU DO NOT DIRECT THAT THE PREMIUM BE INVESTED IN A STOCK OR BOND PORTFOLIO, AND IF YOU RETURN THE POLICY WITHIN THE 30-DAY PERIOD, YOU WILL BE ENTITLED TO A REFUND OF THE PREMIUM AND POLICY FEES. IF YOU

DIRECT THAT THE **PREMIUM BE INVESTED IN A STOCK OR BOND PORTFOLIO DURING THE 30-DAY PERIOD**, AND IF YOU RETURN THE POLICY DURING THAT PERIOD, YOU WILL BE ENTITLED TO A **REFUND OF THE POLICY'S ACCOUNT VALUE ON THE DAY THE POLICY IS RECEIVED** BY THE INSURANCE COMPANY OR AGENT WHO SOLD YOU THIS POLICY, WHICH COULD BE LESS THAN THE PREMIUM YOU PAID FOR THE POLICY. A RETURN OF THE POLICY AFTER 30 DAYS MAY RESULT IN A SUBSTANTIAL PENALTY, KNOWN AS A SURRENDER CHARGE."

The sentence '*A return of the policy after 30 days may result in a substantial penalty, known as a surrender charge*' may be deleted if the contract does not contain those charges.

This law does not apply to life insurance policies issued in connection with a credit transaction or issued under a contractual policy change or conversion privilege provision contained in a policy. Also, this law does not apply to contributory and noncontributory employer group life insurance, contributory and noncontributory employer group annuity contracts, and group term life insurance.

During the 30-day [cancellation](#) (free look) period, the premium for a variable annuity may **only be invested in fixed-income investments** and money-market funds, unless the investor specifically requests that the premium be invested in the mutual funds underlying the variable annuity [contract](#).

3. Investment of Variable Annuity Premiums, Individual Annuity Insurance, and Procedures Involving Senior Citizens (CIC 10127.10)

For the purpose of the laws in this section, **senior citizens** are individuals who are 60 years of age or older on the date of purchase of the policy.

Every individual life insurance and annuity [contract](#) that is initially delivered to a senior citizen on or after January 1, 2004, must include a notice stating that the policy may be returned by the owner for [cancellation](#) by delivering it to the insurer or agent from whom it was purchased. The period of time set established by the insurer for return of the policy must be at least 30 days.

During the 30-day cancellation period, the premium for a variable annuity may be invested only in fixed-income investments and money-market funds, unless the investor specifically directs that the premium be invested in the mutual funds underlying the variable annuity contract.

Return of the policy within the 30-day cancellation period will have one of the following effects:

- In the case of individual life insurance policies and variable annuity contracts for which the owner has not directed that the premium be invested in the mutual funds underlying the contract during the cancellation period, return of the policy during the cancellation period will have the effect of voiding the policy from the beginning; the parties will be in the same position as if no policy had been issued. All premiums and policy fees paid will be refunded by the insurer to the owner within 30 days from the date the insurer is notified that the owner has canceled the policy; or
- In the case of a variable annuity for which the owner has directed that the premium be invested in the mutual funds underlying the contract during the 30-day cancellation period, cancellation will entitle the owner to a refund of the account value. The account value will be refunded by the insurer to the owner within 30 days from the date that the insurer is notified that the owner has canceled the contract.

This rule does not apply to life insurance policies issued in connection with a credit transaction or issued under a contractual policy-change or conversion privilege provision contained in a policy. Additionally, this rule does not apply to contributory and noncontributory employer group life insurance, contributory and noncontributory employer group annuity contracts, and group term life insurance.

When an insurer, its agent, group master **policyowner**, or association collects more than one month's premium from a senior citizen at the time of **application** or at the time of delivery of a group term life **insurance policy** or certificate, the insurer must provide the senior citizen a prorated refund of the premium if the senior citizen delivers a cancellation request to the insurer during the first 30 days of the **policy period**.

ADVANTAGES AND DISADVANTAGES OF ANNUITIES FOR INDIVIDUALS UNDER AGE 60

All consumers can benefit from the universal advantages of annuities, including tax deferral, a predictable future income stream, and asset protections and guarantees. However, individuals who are **under age 60** have a longer investment time horizon and have the added advantage of benefiting from the longer accumulation period required, for example, in a deferred annuity and could also withstand the fluctuations in the market that might occur with a variable annuity over time. Withdrawals will be taxed as ordinary income, but in general that will be at a time later in life when the individual is in a lower tax bracket.

Individuals who are under age 60 similarly confront the typical disadvantages of annuity contracts, such as higher fees and commissions, limited liquidity, but they face the further potential disadvantage of being penalized with an IRS penalty of 10% for any withdrawals taken prior to age 59½.

ADVANTAGES AND DISADVANTAGES OF ANNUITIES FOR INDIVIDUALS OVER AGE 60

Individuals **age 60 and over**, on the other hand, do not have the same opportunity for a long accumulation period and so the most suitable annuity contracts might include single premium immediate annuities (for example, to accommodate an early retirement package). The advantage of an annuity for an older individual would include the contract guarantees, asset protections, and a predictable income stream for life; however, depending on the type of annuity selected, these customers might be more susceptible to market risk and be more highly impacted by disadvantages such as surrender charges, higher fees and commissions, product complexity, limited liquidity, and the requirement to turn over control of funds to the insurance company. Individuals age 60 and over are considered "*seniors*" by sections of the California Insurance Code and are afforded additional consumer protections by virtue of their age. There are special rules for the free-look period (right to return), limits on how premiums may be invested in the early days of a variable contract, and special rules for illustrations, disclosures, and surrender charges.

E. Provisions for Life and Annuity Contracts, Illustrations, and Nonguaranteed Values for Senior Citizens (CIC 10127.11)

1. Senior Insurance (CIC 785-787)

All insurers, brokers, agents, and others engaged in the transaction of insurance owe a prospective insured who is 65 years of age or older a duty of **honesty, good faith, and fair dealing**.

Free Look

All individual and group disability insurance policies and certificates, and all group life insurance policies and certificates offered for sale to individuals age 65 or older in California must provide an **examination period of 30 days** after the receipt of the policy or certificate for purposes of review of the contract. If the policyholder or certificate holder chooses to cancel the policy or certificate and returns it for cancellation by mail or other delivery method within the 30-day examination period, the return will void the policy or certificate from the beginning, and the parties will be in the same position as if a policy or certificate had not been issued. All premiums paid and any policy or membership fee paid must be fully refunded to the policyholder or certificate holder by the insurer or entity in a timely manner.

Timely manner means no later than 30 days after the insurer or entity issuing the policy or certificate receives the returned policy or certificate.

If the insurer or entity issuing the policy or certificate fails to refund all of the premiums and any policy or membership fee paid in a timely manner, the policyholder or certificate holder must receive interest on the paid premium and policy fee.

Each policy or certificate must have a notice prominently printed in no less than 12-point bold print, on the front of the policy jacket or on the cover page of the policy or certificate and the outline of coverage, stating that the policyholder or certificate holder, as applicable, has the right to return the policy or certificate, by mail or other delivery method, within 30 days after its receipt, and to have the full premium and any policy or membership fee paid refunded.

Advertisements

Any **advertisement** that is directed toward persons age 65 or older must disclose that an agent may contact applicants because of their age. In addition, an agent who makes contact with a person as a result of acquiring that person's name from a lead generating device must disclose that fact in the initial contact with the person.

The term *advertisement* includes envelopes, stationery, business cards, worksheets, questionnaires, or other materials designed to describe and encourage the purchase of a policy or certificate of disability insurance, life insurance, or an annuity, or to collect personal or financial information about a prospective insured or purchaser of an annuity.

The following are rules associated with advertising to the senior market:

- Solicitations must not use names that are deceptive or misleading with regard to the soliciting entity (agent or insurer) or the true purpose of the advertisement (to solicit an insurance sale);
- It is illegal to assert that coverages are somehow provided by or are endorsed by any governmental agencies, nonprofit or charitable institutions, veterans or senior organizations;
- Advertisements may NOT use any of the following:
 - The name of a state or political subdivision in a policy name or description;
 - Any name, service mark, slogan, symbol, etc. implying that insurers or its products are connected with or endorsed by a governmental agency, such as the Social Security Administration or Department of Veterans Affairs;

- An address that would mislead a purchaser with regard to the identity, location, or license status of the insurer or agent.
- Advertisements may NOT imply that the reader may lose a right, privilege, or benefits under federal, state, or local law if he or she fails to respond to the advertisement; and
- All advertisements used by agents, producers, brokers, solicitors, or other persons for a policy of an insurer must have written approval of the insurer before they may be used.

No advertisement for an event at which insurance products will be offered for sale may use the terms "*seminar*", "*class*", "*information meeting*" and similar terms without adding "and insurance sales presentation".

Penalties (CIC 789, 789.3)

The Commissioner has the administrative authority to assess penalties against insurers, brokers, agents, and other entities engaged in the transaction of insurance or any other person or entity for violations of the Code section pertaining to insurance for seniors.

Upon a showing of a violation in any civil action, a court may also assess the penalties prescribed in this section of the Insurance Code.

Whenever the Commissioner has reasonable cause to believe or determines after a public hearing that any insurer, agent, broker, or other person or entity engaged in the transaction of insurance, has violated this article, the Commissioner may make and serve upon the insurer, broker, agent, or other person or entity a **notice of hearing**. The notice must state the Commissioner's intent to assess the administrative penalties, the time and place of the hearing, and the conduct, condition or ground upon which the hearing will be held, and assessing the penalties. The hearing must occur within **30 days after the notice is served**. Within 30 days after the hearing, the Commissioner will issue an order specifying the amount of the penalties to be paid. The penalties resulting from the hearing must be paid to the Insurance Fund.

Any **broker**, agent, or other person or other entity engaged in the transactions of insurance, other than an insurer, who violates these provisions is liable for an **administrative penalty** of no less than **\$1,000 for the first violation**.

Any broker, agent, other person, or other entity engaged in the business of insurance, other than an insurer, who engages in practices prohibited by this article a second or subsequent time or who commits a **knowing violation** is liable for an **administrative penalty** of no less than **\$5,000 and no more than \$50,000** for each violation.

If the Commissioner brings an action against a licensee pursuant and determines that the licensee may reasonably be expected to cause significant harm to senior consumers, the Commissioner may suspend the individual's license pending the outcome of the hearing.

Any insurer who violates this article is liable for an administrative penalty of \$10,000 for the first violation. Any insurer who violates this article with a frequency as to indicate a general business practice or commits a knowing violation of this article, is liable for an administrative penalty of no less than \$30,000 and no more than \$300,000 for each violation.

The Commissioner may require **rescission** of any contract found to have been marketed, offered, or issued in violation of these requirements.

Medi-Cal Required Disclosures (Senate Bill 483, CIC 789.8)

As defined in the California Insurance Code, **elder** means "any person residing in this state who is 65 years of age or older." If a life agent offers to sell to an elder any life insurance or annuity product, the life agent must advise an elder in writing that the sale or **liquidation** of any stock, bond, IRA, certificate of deposit, mutual fund, annuity, or other asset to fund the purchase of this product may have tax consequences, early withdrawal penalties, or other costs or penalties as a result of the sale or liquidation. The elder may wish to consult independent legal or financial advice before selling or liquidating any assets and prior to the purchase of any life or annuity products being solicited, offered for sale, or sold.

A life agent who offers for sale or sells a financial product to an elder on the basis of the product's treatment under the Medi-Cal program may not negligently misrepresent the treatment of any asset under the statutes and rules and regulations of the Medi-Cal program, as it pertains to the determination of the elder's eligibility for any program of public assistance.

A life agent who offers for sale or sells any financial product on the basis of its treatment under the Medi-Cal program must provide, in writing, the following **disclosure** to the elder or the elder's agent:

NOTICE REGARDING STANDARDS FOR MEDI-CAL ELIGIBILITY

If you or your spouse are considering purchasing a financial product based on its treatment under the Medi-Cal program, read this important message!

You or your spouse do not have to use up all of your savings before applying for Medi-Cal.

RECOVERY

An annuity purchased on or after September 1, 2004, shall be subject to recovery by the state upon the annuitant's death under the regulations of the Medi-Cal Recovery Program. Income derived from the annuity must be used to meet the annuitant's share of costs and, if the annuitant is married, the income derived from the annuity may impact the minimum monthly maintenance needs of the annuitant's community spouse. An annuity purchased by a community spouse on or after September 1, 2004, may also be subject to recovery if that spouse is the recipient of past or future Medi-Cal benefits.

UNMARRIED RESIDENT

An unmarried resident may be eligible for Medi-Cal benefits if he or she has less than (insert amount of individual's resource allowance) in countable resources.

The Medi-Cal recipient is allowed to keep from his or her monthly income a personal allowance of (insert amount of personal needs allowance) plus the amount of any health insurance premiums paid. The remainder of the monthly income is paid to the nursing facility as a monthly share of cost.

MARRIED RESIDENT

COMMUNITY SPOUSE RESOURCE ALLOWANCE: If one spouse lives in a nursing facility, and the other spouse does not live in a facility, the Medi-Cal program will pay

some or all of the nursing facility costs as long as the couple together does not have more than (insert amount of community countable assets).

MINIMUM MONTHLY MAINTENANCE NEEDS ALLOWANCE: If a spouse is eligible for Medi-Cal payment of nursing facility costs, the spouse living at home is allowed to keep a monthly income of at least his or her individual monthly income or (insert amount of the minimum monthly maintenance needs allowance), whichever is greater.

FAIR HEARINGS AND COURT ORDERS

Under certain circumstances, an at-home spouse can obtain an order from an administrative law judge or court that will allow the at-home spouse to retain additional resources or income. The order may allow the couple to retain more than (insert amount of community spouse resource allowance plus individual's resource allowance) in countable resources. The order also may allow the at-home spouse to retain more than (insert amount of the monthly maintenance need allowance) in monthly income.

REAL AND PERSONAL PROPERTY EXEMPTIONS

Many of your assets may already be exempt. Exempt means that the assets are not counted when determining eligibility for Medi-Cal.

REAL PROPERTY EXEMPTIONS

ONE PRINCIPAL RESIDENCE: One property used as a home is exempt. The home will remain exempt in determining eligibility if the applicant intends to return home someday. The home also continues to be exempt if the applicant's spouse or dependent relative continues to live in it.

Money received from the sale of a home can be exempt for up to six months if the money is going to be used for the purchase of another home.

REAL PROPERTY USED IN A BUSINESS OR TRADE: Real estate used in a trade or business is exempt regardless of its equity value and whether it produces income.

PERSONAL PROPERTY AND OTHER EXEMPT ASSETS

IRAs, KEOGHs, AND OTHER WORK-RELATED PENSION PLANS: These funds are exempt if the family member whose name it is in does not want Medi-Cal. If held in the name of a person who wants Medi-Cal and payments of principal and interest are being received, the balance is considered unavailable and is not counted. It is not necessary to annuitize, convert to an annuity, or otherwise change the form of the assets in order for them to be unavailable.

PERSONAL PROPERTY USED IN A TRADE OR BUSINESS.

ONE MOTOR VEHICLE.

IRREVOCABLE BURIAL TRUSTS OR IRREVOCABLE PREPAID BURIAL CONTRACTS.

THERE MAY BE OTHER ASSETS THAT MAY BE EXEMPT.

This is only a brief description of the Medi-Cal eligibility rules. For more detailed information, you should call your county welfare department. Also, you are advised to contact a legal services program for seniors or an attorney that is not connected with the sale of this product.

I have read the above notice and have received a copy.

Dated:_____ Signature:_____

2. Effects on Medi-Cal Eligibility (CIC 789.9)

In addition to any other reasons that a sale of an individual annuity to a senior may violate any provision of law, an annuity may not be sold to a senior in any of the following circumstances:

- The senior's purpose in purchasing the annuity is to affect Medi-Cal eligibility and either of the following is true:
 - The purchaser's assets are equal to or less than the community spouse resource allowance established annually by the State Department of Health Services pursuant to the Medi-Cal Act;
 - The senior would otherwise qualify for Medi-Cal;
- The senior's purpose in purchasing the annuity is to affect Medi-Cal eligibility and, after the purchase of the annuity, the senior or the senior's spouse would not qualify for Medi-Cal.

In the event that a fixed annuity is issued to a senior, the issuer must rescind the contract and refund to the purchaser all premiums, fees, any interest earned under the terms of the contract, and costs paid for the annuity. This remedy must be in addition to any other remedy that may be available.

California's Role as a Remainder Beneficiary of Annuities (*California Welfare and Institutions Code (WIC) 14006.15, 14006.41, 14009.6, 14015.1, 14015.2*)

"Equity interest" means the lesser of the following:

- The assessed value of the principal residence determined under the most recent tax assessment, less any encumbrances of record; or
- The appraised value of the principal residence determined by a qualified real estate appraiser who has been retained by the applicant or beneficiary, less any encumbrances of record.

An individual is not eligible for Medi-Cal if his or her equity interest in the principal residence exceeds \$750,000 (this amount is increased annually based on the consumer price index).

This does not apply if:

- The spouse of the individual or the individual's child under age 21 or who is blind or who is disabled is lawfully residing in the individual's home;
- The individual was determined eligible based on an application filed before January 1, 2006;
- The department determines that ineligibility would result in demonstrated hardship on the individual, which is defined as:
 - The individual was receiving Medi-Cal home and facility care prior to January 1, 2006, or qualified for such assistance based on an application filed after that date but before these regulations were finalized;
 - The individual purchased and received benefits under an LTC policy with the California Partnership for Long-Term Care;
 - The individual's equity interest in the principal residence would not exceed the equity interest limit if it had been increased by using the quarterly House Price Index (HPI) for California, published by the Office of Federal Housing Enterprise Oversight (OFHEO);
 - The applicant or beneficiary has been denied a home equity loan by at least three lending institutions, or is ineligible for a Federal Housing Administration (FHA) approved loan or reverse mortgage;

- The applicant or beneficiary, with good cause, is unable to provide verification of the equity value.

WIC 14006.41: When applying to qualify for Medi-Cal, an individual must disclose any interest that he or she or his or her spouse has in an annuity, regardless of whether the annuity is irrevocable or is treated as income or as a resource.

The Department must inform the individual and his or her spouse that, by virtue of its provision of Medi-Cal medical assistance for home and facility care to the individual, the state will, by operation of law, become a remainder **beneficiary** of certain annuities.

WIC 14009.6: As a result of providing Medi-Cal care to an individual, the state must, by operation of law, become a remainder **beneficiary**, of annuities purchased in whole or in part by the individual or his or her spouse in which the individual or his or her spouse is an annuitant, unless the individual or his or her spouse notifies the department in writing that he or she prohibits the state from acquiring a remainder interest in his or her annuity, in which case the purchase of the annuity must be treated as the **transfer** of an asset for less than fair market value.

This applies only to annuities purchased on or after February 8, 2006, or to annuities purchased prior to that date but which have been altered by a transaction occurring after February 8, 2006.

The term **transaction** includes any action taken by the individual or his or her spouse that changes the course of payments to be made by the annuity or the treatment of the income or principal of the annuity.

Transaction does not include:

- Routine changes and automatic events that do not require any action or decision;
- Changes that occur based on the terms of the annuity that existed prior to February 8, 2006, and that do not require a decision, election, or action to take effect;
- Changes that are beyond the control of the individual or the individual's spouse.

Any provision in any annuity that restricts the right of the state to become a remainder beneficiary is void.

If an individual or his or her spouse notifies the department in writing that he or she prohibits the state from acquiring a remainder interest in his or her annuity, the purchase of the annuity must be treated as the transfer of an asset for less than fair market value.

When the state becomes aware of an annuity in which it has acquired a remainder interest, the department will notify the issuer. Upon notification, the issuer must inform the department of the amount of income and principal being withdrawn from the annuity.

The issuer of the annuity must immediately notify the department if there is any change in either of the following:

- The amount of income or principal being withdrawn; or
- The named beneficiaries of the annuity.

WIC 14015: The providing of Medi-Cal may not impose any limitation or restriction upon the person's right to sell, exchange or change the form of property holdings nor may the care provided constitute any encumbrance on the holdings. However, the

transfer or gift of assets, including income and resources, for less than fair market value will result in a period of ineligibility for Medi-Cal.

Assets transferred exclusively for a purpose other than to qualify for medical assistance will not result in ineligibility for Medi-Cal and include:

- Assets that would have been considered exempt for purposes of establishing eligibility at the time of transfer;
- Property with a net market value that, when the property is transferred, if included in the property reserve, would not result in ineligibility;
- Assets for which adequate **consideration** is received;
- Property upon which foreclosure or repossession was imminent at the time of transfer, provided there is no evidence of collusion;
- Assets transferred in return for an enforceable **contract** for life care that does not include complete medical care; and A
- Assets transferred without adequate consideration, provided that the **applicant** or **beneficiary** provides convincing evidence to overcome the presumption that the transfer was for the purpose of establishing eligibility or reducing the share of cost.

Assets transferred by the applicant or beneficiary prior to the look-back period established by the department preceding the date of initial application will be presumed to have not been transferred in order to establish Medi-Cal eligibility or reduce the share of cost, and **may not be considered in determining eligibility**.

WIC 14015.1: The department will consider, at initial **application** or redetermination, whether an undue hardship exists prior to imposing a period of ineligibility for Medi-Cal.

An **undue hardship** exists when:

- The individual was found eligible based on an application filed after January 1, 2006 but before these regulations were finalized;
- The deprivation would cause an endangerment to the life or health of the individual;
- The denial would result in the eviction of the individual from a nursing home;
- The individual is otherwise eligible for the Medi-Cal program and unable to obtain home and facility care without Medi-Cal;
- The denial would cause the individual to be unable to remain at home or in the community and would hasten or cause the individual's entry into a medical or long-term care institution; or
- The individual would be deprived of food, clothing, shelter, or other necessities of life.

WIC 14015.2: The following may request a fair hearing on the issue of undue hardship:

- An individual requesting or receiving Medi-Cal;
- A personal representative of an individual requesting or receiving Medi-Cal; or
- The facility in which the individual requesting or receiving Medi-Cal is residing, with the consent of that individual or the personal representative of that individual.

3. In-Home Solicitations: 24-hour Notice Requirement for Persons 65 Years and Older (CIC 789.10)

Any person who meets with a senior in the senior's home is required to notify the senior in writing regarding the visit, its purpose, and the nature of the sales presentation, no less than **24 hours** prior to the initial meeting. If the senior has an existing insurance relationship with an agent and requests a meeting with the agent in

the senior's home on the same day, a notice must be delivered to the senior prior to the meeting.

Upon contacting the senior in the senior's home, the person must, before making any statement other than a greeting, state that the purpose of the contact is to talk about insurance or to gather information for a follow-up visit to sell insurance (if that is the case). The person must then state the name and titles of all persons arriving at the senior's home and the name of the insurer represented by the person (if known).

4. Allegations of Misconduct against a Person 65 Years or Over (CIC 1738.5)

A proceeding that involves allegations of misconduct against a person age 65 or over must be held **within 90 days** after receipt by the department of the notice of defense, unless a continuance is granted by the department or the administrative law judge.

When the hearing has been set, only **the administrative law judge may grant a continuance**, and only upon finding one or more of the following:

- The death or incapacitating illness of a party, a representative or attorney of a party, a witness to an essential fact, or of the parent, child, or member of the household of any of these persons, when it is not feasible to substitute another representative because of the proximity of the hearing date;
- Lack of notice of hearing;
- A material change in the status of the case requiring postponement, or when an executed settlement or stipulated findings of fact eliminate the need for hearing;
- A stipulation for continuance signed by all parties and communicated to the administrative law judge at least 25 business days before the hearing;
- The substitution of the representative or attorney of a party upon showing that the substitution is required;
- The unavailability of a party, representative, attorney, or witness, due to a conflicting and required appearance in a judicial matter if the person did not know and could neither anticipate nor avoid the conflict, and the conflict, with the request for continuance, is immediately communicated to the administrative law judge;
- The unavailability of a party, representative, attorney, or material witness due to an unavoidable emergency;
- Failure by a party to comply with a timely discovery request if the continuance request is made by the party who requested the discovery.

F. Miscellaneous Rules Affecting California Annuity Contracts

1. Issue Age (CIC 10112)

When an annuity **contract** is issued to a minor under age 18, or is issued on the life of the minor for the benefit of the minor's relatives, as long as there is **insurable interest**, the minor may not be deemed incompetent to enter into the contract based on his or her age. The minor must also have all rights and benefits under the policy, including surrender and discharge of benefits. If the minor is under age 16, the exercise of rights requires written consent by the parent or guardian.

All such contracts made by a minor under the age of 18 which may result in any personal liability for assessment must have the written assumption of liability by a parent or guardian in **consideration** of the issuance of the contract.

2. Premium Payments (CIC 10540)

An incorporated life insurer issuing life insurance policies on the reserve basis may collect premiums in advance, and may accept payment of future premiums. The amount **may not exceed the lesser** of:

- The sum of future unpaid premiums; or
- The sum of 10 future unpaid annual premiums.

This does not apply to funds that accumulate under an agreement allowing the purchase of annuities at future dates.

3. Competence (California Civil Code 38, 39)

A **person entirely without understanding** has no power to make a [contract](#) of any kind, but the person is liable for the reasonable value of things furnished to the person necessary for the support of the person or the person's family.

A *conveyance* or other contract of a person of unsound mind, but not entirely without understanding, made before the incapacity of the person has been judicially determined, is subject to [rescission](#).

A *rebuttable presumption* affecting the burden of proof that a person is of unsound mind must exist for purposes of this section if the person is substantially unable to manage his or her own financial resources or resist fraud or undue influence. Substantial inability may not be proved solely by isolated incidents of [negligence](#) or improvidence.

How Cognitive Impairment May Impact an Annuity Purchase

Insurance agents must be alert to the possibility that senior consumers may suffer from cognitive impairments that impact their ability to understand complex insurance products such as annuities.

The signs that a person may be suffering from impaired short-term memory are not as simple as just having difficulty remembering things. Other indications that a prospective client may have a significant cognitive impairment include trouble with language, communication, focus, and reasoning. The individual may suffer from abrupt changes in mood, may be apathetic, or may have difficulty concentrating. They may have trouble carrying on a conversation, often struggling to find words and/or repeating themselves. The person may seem confused about the date and time of day, and not clear on the reason for the meeting/appointment. Any of these behaviors should serve as a red flag that the prospective insured may not have the mental capacity to knowingly enter into a life insurance or annuity [contract](#) and may need to have an attorney, family member or other personal representative in attendance at any sales presentations.

4. Unauthorized Practice of Law (California Business and Professions Code 6125)

No person may practice law in California unless the person is an active member of the State Bar.

Furthermore, an agent, [broker](#), or solicitor who is not an active member of the State Bar of California may not share a commission or other compensation relating to the sale or renewal of an annuity with an active member of the State Bar of California. This includes a bonus, gift, prize, award, or finder's fee. (CIC 1724)

5. Special Ethical Concerns for Senior Citizens (CIC 791.03)

Seniors are among the least likely to report financial crimes or abuses against them because they might be embarrassed at having “been taken,” or because they do not wish to appear to be losing the ability to manage their lives or personal finances.

Unethical agents have been caught selling multiple, duplicative policies to seniors, proposing one type of [insurance policy](#) or annuity contract but delivering another (*bait and switch*), and misleading senior consumers into believing that an annuity product is actually a long-term care contract (or vice-versa).

The California's Medicare supplement and long-term care insurance regulations address unethical practices such as inaccurate or misleading comparisons of existing and proposed replacement contracts, selling a person a third long term care policy within 12 months, or a second Medicare supplement policy. California enacted the **Financial Elder Abuse statutes** in 2002, which, in part, specifically addresses insurance agent abuses of persons age 65 or older.

Under most circumstances, insurance institutions, agents, and insurance-support organizations are not allowed to use **pretext interviews** to obtain information that relates to an insurance transaction.

A **pretext interview** is conducted when any person, in an attempt to gain information about another natural person, does one or more of any of the following:

- Pretends to be someone he or she is not;
- Pretends to represent someone he or she is not actually representing;
- Misrepresents the purpose of the interview; or
- Refuses to identify himself or herself upon request.

Pretext interviews are prohibited during any phase of the transaction process of insurance. This includes information gathering during underwriting. Obviously, the use of a pretext interview could reveal information that is privileged and would not normally be available to the insurer or agent. It could result in an **adverse underwriting decision**. However, in the investigation of a [claim](#), particularly when [fraud](#) is suspected, as an investigative technique, pretext interviews are permitted.

It is further required that the reason of the interview must be to investigate a claim where there is a reasonable basis for suspecting criminal activity, fraud, material [misrepresentation](#), or material nondisclosure in connection with a claim.

6. Recordkeeping by Administrators (CIC 1759.3)

An **administrator** is any person who collects any charge or premium from, or who adjusts or settles claims on, residents of this state in connection with life or health insurance coverage or annuities. "Administrator" does not include employers, unions, insurance companies, producers, and adjusters when engaged in the performance of their duties, creditors, banks, credit card companies, or attorneys who settle claims but do not collect premiums in connection with life coverage or annuities.

There must be a written agreement between an administrator and the insurer, and such written agreement must be retained as part of the official records of both the insurer and the administrator for the duration of the agreement and **5 years** thereafter. The insurer has the right to access the books and records in order to fulfill all of its contractual obligations to insureds. The Commissioner may also have access for the purpose of examination, audit, and inspection.

Failure to keep or maintain the books and records as required will be grounds for the suspension or revocation of the certificate of registration of the administrator.

7. Cause for Suspension of a Producer License (CIC Section 1668.1)

The following actions are cause for suspension of the producer's license:

- The licensee has induced a client to cosign or make a loan, make an investment, make a gift, including a testamentary gift, or provide any future benefit through a right of survivorship to the licensee (or to a relative, friend, or business associate of the licensee).
- The licensee has induced a client, to make the licensee (or the relative, friend, or business associate of the licensee) a **beneficiary** or trustee under the terms of any intervivos or testamentary trust or the owner or beneficiary of a life **insurance policy** or an annuity policy.
- However, if the licensee is also licensed as an attorney, the licensee may be made a trustee under the terms of any intervivos or testamentary trust, provided that the licensee does not sell insurance to the trustor of the trust.
- The licensee who has a power of attorney for a client has sold to the client or has used the power of attorney to purchase an insurance product on behalf of the client for which the licensee has received a commission.

This does not apply if the client is related to the licensee by birth, marriage, or adoption, or is registered as a domestic partner of the licensee.

8. Other Penalties (CIC 780-782)

Statements that are **misrepresentations** of the terms, benefits, or future dividends or benefits of a policy **are prohibited**. Misrepresentations used to induce the sale of a policy (or to cause a policyholder to **lapse**, forfeit, or surrender a policy) are prohibited.

Violations are punishable by a fine of up to \$25,000 or, if the actual loss exceeds \$10,000, then up to three times the amount of the loss, as well as up to one year in jail. Restitution to the victim must be satisfied before any fine is collected.

G. Senate Bill 426

SENATE BILL 426

Effective: January 2016

New consumer protections were enacted with Senate Bill 426, passed in July 2015. The new law protects seniors and their beneficiaries from financial losses incurred when insurers apply surrender penalties to annuities paid as a **death benefit**.

Seniors often buy annuities to protect themselves from outliving their money, although these contracts also contain death benefit provisions in case the annuitant dies before the annuity begins paying benefits.

Surrender penalties are often charged by insurance companies in the first few years of an annuity contract because insurers typically invest in longer duration, liquid assets. Companies have been permitted to apply those penalties to death benefits in the same way that a voluntary surrender is charged a penalty. Because of this, early death in an annuity contract can result in minimal interest earnings or even a death benefit that is lower than what was actually paid in premiums.

While many companies do not currently pay out a death benefit that is less than the premium paid, some insurers do apply surrender penalties reducing the death benefit below the total premiums.

The new law codifies a current best practice for insurers by requiring that the death benefit for fixed deferred annuities be at least equal to the annuity amount or the accumulation value for those annuities issued to consumers 65 years of age or older. This law also prohibits companies from charging a surrender penalty on the death benefit payment.

H. Course Recap

1. Exam Breakdown

The Exam Breakdown should be used to see where to focus your valuable study time. Each test is weighted per chapter, so concentrating your efforts will benefit you when taking the actual exam.



California 8-Hour Annuity Suitability - Final Examination 50 Questions - 2-hour time limit

Chapter	Percentage of Exam
The Importance of Suitable Annuity Sales	3%
Annuity Basics and Definitions	10%
Fixed Annuities	14%
Index Annuities	10%
Immediate Annuities	14%
Variable Annuities	15%
Annuity Tax Concepts	10%
1035 Exchanges and Replacements	4%
Sales Practices for California Producers	20%

2. Key Concepts

THE IMPORTANCE OF SUITABLE ANNUITY SALES	
Retirement Income Planning Concerns	• Retirees are living longer – need for retirement income is increasing • Social Security funds may run out in 25 years • Retirement trends: ◦ Decline in defined benefit plans ◦ Uncertainty of Social Security benefits ◦ Increase in longevity
Annuities in Retirement Planning	Annuities provide income the annuitant cannot outlive; income for retirement NAIC Model Annuity Suitability Act • Act holds insurers and agents responsible for suitability, especially for seniors Annuity disadvantages: • High fees • Limited liquidity • Loss of control of funds
Guaranty	• Protect consumers from insolvent insurers

Associations	Insurers cannot state that their policies are guaranteed by the existence of the insurance Guaranty Association in a sales presentation – unfair trade practice
ANNUITY BASICS AND DEFINITIONS	
Annuity Categories	- Single premium - payments can begin immediately or be deferred - Flexible or periodic premiums – payments can only be deferred - Single premium vs. flexible premium: - Difference: the number of payments that purchase the annuity
Annuity Definitions	- Annuity features and fees: - Tax-deferred accumulation - Multiple payout options - Death benefits (during accumulation) - Tax-free <u>transfer</u> of <u>contract</u> values - Bailout – allowing the annuity owner to surrender the annuity without a charge
Parties to Annuity Contracts	The owner - Most often a natural person who controls the policy (can be a trust or corporation) The annuitant: must be a natural person The <u>beneficiary</u> - Receives death benefits; may be more than one person - Has no rights to change policy The insurance company - Rated for financial stability by A.M. Best, Moody's and Standard and Poor's - Annuity contract value is protected by the state guaranty association
Owner-driven vs. Annuitant-driven Annuity Contracts	Annuitant – driven contract - Beneficiaries receive death benefit at annuitant's death - If owner is not the annuitant, the annuitant receives the contract value only (not death benefit) at owner's death Owner – driven contract - Pays beneficiaries a death benefit when owner dies - If owner is not the annuitant and the annuitant dies, the owner designates a new annuitant and the contract continues
FIXED ANNUITIES	
The Basics of Fixed Annuities	Single payments or multiple payments possible Insurer guarantees interest rate Accumulation grows tax deferred in insurer's general account

Insurer keeps the “spread” between rates it earns on investments and the rates it credits to the annuity

Fixed annuities vs. CDs

- Annuities are not FDIC insured, but backed by insurer’s assets
- Advantage of fixed annuities: interest grows tax deferred (not currently taxable)
- Early withdrawal penalties reduce CD returns; annuities can allow some withdrawals without penalty;
- Annuities have lifetime payout options; CDs do not have structured payout options

Fixed annuities vs. Money Market Accounts

- Annuities have withdrawal limits and fees; money markets are completely liquid
- Money markets earn lower rates, have no tax deferral and no provision for lifetime income
- Advantage of money markets: greater liquidity

Types of Fixed Annuities

- Multi-year guarantee (MYG) or CD-type annuities
 - Rate is often guaranteed for the same term as the surrender charge period
 - Guarantee for several years favors older, risk-adverse investors
- Banded rate or single year guaranteed annuities
 - First year rate is “base rate,” following rates are renewal rates
- Higher, first year “bonus rate” is typical

GRA and MVA Fixed Annuities

- Guaranteed return annuities pay 100% of purchase payment or “book value”
- Market value adjustment annuities pay an adjusted value based on interest rate fluctuations when premature withdrawals exceed any free withdrawal amounts

Fixed Annuity Contract Features

- Issue ages 0 to 85; typical – age 55 and above
- Contract term – 3 to 10 years
- Bail-out provisions allow policyowners to cash out the contract penalty-free if interest rates fluctuate significantly
 - Policies with a bail-out typically pay lower commissions
- Banding – larger purchases often have higher interest rates, smaller purchase may have higher administrative costs
- Death benefit – in accumulation phase, most often is 100% of purchase payments with surrender penalties waived
- Premium bonus – if bonus is offered, it can be recaptured if contract cancelled in early years

Fixed Annuities and Suitable Sales

Fixed annuities are suitable for older, risk-adverse buyers

Advantages of fixed annuities

	• Safety of principal, easy to understand, tax- deferral, stable growth avoids market volatility, guaranteed income for life feature, penalty-free withdrawals, assets avoid probate Disadvantages of fixed annuities • Lack of liquidity, low interest rates, surrender charges, No preferable capital gains tax treatment, losses to inflation, many fees and charges, possible lock-in at low interest rates
INDEX ANNUITIES	
The Basics of Index Annuities	• Created in response to poor economic times to gain more interest by hedging short call options on market indices • Also called equity indexed annuities – tied to a market index that fluctuates, but not invested in stock or the index
Interest Crediting Strategies	Owner chooses one or more market indices that determines contract benchmark Contract value increases in up markets, is protected in down markets Participation rate determines amount of market gain credited to contract Spread, margin or administrative fee • Spread is the amount (fee) the insurer keeps from the investment of contract purchase payments • Does not result in negative earnings Interest rate caps • Maximum rate credited to annuity contract • Account value does not decrease with negative market performance • Rate cap may be fixed at issue or changed annually if contract permits • May be combined with participation rates
Methods of Calculating Index Returns	Point-to-point method – 2 points: one at start of a term, one at end of a term (simple to calculate) High-water/Low-water method – difference between points in the index's value during the year • High-water calculates difference between starting point and the highest point • Low-water calculates difference between the end of the term and the lowest overall index value Annual reset method – calculates the difference between the end of one year to the end of the next • If index is higher at end of the year, the percentage is credited and locked in • If index is lower at the end of the year, declines in the index value are ignored Average method – daily, monthly, or quarterly; average determines amount to be credited

Index Annuity Contract Features	Same as fixed annuities, except: • Term – 1 to 10 years; longer terms offer higher index interest crediting • Vesting – if contract value is withdrawn prior to end of the term, no interest or partial interest may be credited • Minimum guarantees – range is 1% to 3%, calculated at end of a specified term; contract values will always increase • Surrender charges – typically longer than other annuities • 10/10 rule: charges to 10% in first year, 10-year maximum term • Long surrender periods may not be suitable for clients over age 65
Index Annuities and Suitable Sales	Purchaser wants downside protection and needs inflation protection Company financial strength and past crediting performance are important Broad index choices, not individual investment choices, simplify purchaser's selection and increase account value Long term investment time frame means surrender charge period will not impact investment returns Advantages of index annuities: • Potential upside market increases with no downside loss • Minimum guarantees • Multiple interest crediting methods available • Death benefits • Inflation protection • Protection from market volatility • Life income options Disadvantages of index annuities • Multiple contract "moving parts" make contract complex • Fees and costs often not easy to see in statements • Contract choices make comparisons difficult • Surrender charges are long and restrictive • Early withdrawal penalties may result in purchase payment (principal) losses • Interest crediting methods may result in zero gains for the year Insurers can change key contract features annually
IMMEDIATE ANNUITIES	
Introduction to Single Premium Immediate Annuities	• Income begins within 13 months of purchase • Fills in the gap between guaranteed pension fund income and basic living expenses • Few SPIAs are sold • Types of risk ◦ Longevity – outliving savings and other income sources ◦ Withdrawal risk – retiree may take out too much from liquid investments, too soon, depleting account value early ◦ Sequence of returns – negative market performance early in retirement means account may not provide enough income later

The Basics of SPIA	• No accumulation period: income begins in 30 days to 13 months from purchase • Selected, fixed (unadjusted) monthly, quarterly, semi-annual or annual payments guaranteed for annuitant's life ◦ Used for lump-sum inheritances, legal settlements, lottery winnings, or sale of a large asset
How Income from SPIA is Determined	• The amount of retirement asset used to purchase an immediate annuity should be limited to 25-40% • Income received: earnings and principal • Factors that determine the amount of an SPIA payment: ◦ Interest rate ◦ Size of the initial investment ◦ Payment period
Immediate Annuity Contract Features	Issue ages: 0 to 95; younger annuitants have smaller payouts, unless payout option is "period certain" Potential tax benefits – payments include a return of principal that is not taxed again and investment earnings that are taxable Contract type – fixed (guaranteed) and variable (fluctuating) annuity types available; variable annuity payouts may have a guaranteed minimum Complex features – complete disclosure is necessary Annuity Payout Options • Fixed-period (period certain) – payouts for fixed period, often 5, 10 or 20 years • Fixed amount – owner determines payouts and time period is defined • Life only – lifetime income to a single annuitant as long as they live ◦ Generally, the highest payment amount ◦ Payments stop at death, regardless of contract value or purchase amount • Life with period certain – lifetime payments to single annuitant as long as they live, with payments for a guaranteed time ◦ If annuitant dies before end of period, beneficiary receives payment until the end of the period ◦ If annuitant outlives the period, payments continue until annuitant dies • Life with refund – annuitant receives payments for life ◦ If annuitant has not received the amount of the purchase payment before death, the balance is paid to a beneficiary in a lump sum or installment • Joint and survivor – payments are made for life, based upon 2 lives; often there is a payment reduction after first annuitant dies • Inflation adjusted lifetime income – payments increase by an inflation percentage ◦ Often lower initial payments are followed by higher payments in later years

Single Premium Immediate Annuities and Suitable Sales	Considers current income needs, payout period length and legacy gifts to family and beneficiaries Advantages of immediate annuities - Predictable income for life, many payout options, simplicity with no concerns for market <u>conditions</u>, cash flow maximization, higher returns than CDs, favorable taxes, protection from creditors Disadvantages of immediate annuities - Low rate lock-in, loss of control, lack of liquidity, low returns, no changes are allowed after contract is completed, commissions and fees – payouts are reduced by commission, and insurer administrative fees, <u>adverse selection</u> – annuitant may not live long enough to see promised payout
VARIABLE ANNUITIES	
The Basics of Variable Annuities	Tax deferral and investment flexibility into equities, debt securities, alternative securities, index funds, fixed account options in a single product Annuity investment strategies: - Target Allocation Funds – simplifies choices with active management in a broad index using a fund of funds strategy - Model portfolios – designed by investment managers to meet specific risk and return objectives, from conservative to aggressive - Large institutions use a wide variety of strategies not available to smaller groups - Index funds – designed to duplicate the performance of a market index; can use exchange traded funds (ETFs) - Passive strategy, often results in lower fund costs - Dollar Cost Averaging – fixed amount periodic purchase amounts in fluctuating markets; owner buys more shares when the market declines resulting in a lower average cost per share than the average price per share
Variable Annuity Share Classes	B-shares – no upfront sales charge, but a contingent deferred sales charge if money is withdrawn in 6 to 8 years - Typically, lowest mortality and expense (M & E) charges C-shares – cash surrenders without front-end or back-end fees - M & E and administrative fees apply X-shares – like a premium bonus, an amount credited to account at purchase - Often higher administrative fees and longer surrender charge periods - Recovery provisions allow bonus recovery for early withdrawal A-shares – upfront sales charges with no surrender fees

	• Breakpoints allow lower sales charges for larger purchases • Often have lower M & E and lower administrative fees L-shares – like B-shares, but with a shorter surrender charge period • Typically higher M & E and administrative costs
Other Considerations in the Purchase of Variable Annuities	• Guaranteed death benefit is common • Withdrawal provisions – typically 10% to 15% of initial purchase amounts without surrender charges ◦ Surrender charges often waived for confinement in a nursing facility, terminal illness diagnosis, involuntary job loss, or natural disaster • Transfer fees – a flat fee paid when owner transfers money between subaccounts
Variable Annuity Payout Phase	• Accumulation units are converted to a fixed number of annuity units ◦ Value of annuity units fluctuates depending upon underlying investment performance resulting in a variable payout ◦ Value of the first payment is based upon the assumed interest rate (AIR); a low AIR selection results in faster payment increases ◦ On a month-to-month basis, when investments outperform AIR, payment increase; when investments underperform AIR, payments decrease; if investments equal AIR, payment remains the same
Riders and Living Benefits	Each rider carries a separate charge Death Benefit Riders • Guaranteed Minimum Death Benefit (GMDB) – the standard death benefit • Contract Anniversary or Ratchet – death benefits raise or “step-up” GMDB to the greater of the contract value at death, the purchase payments minus withdrawals, or the contract value on a specified date • Initial Purchase Payment with Interest or Rising Floor – increases GMDB a specified percentage to the greater of the contract value at death or total of purchase payments minus withdrawals • Enhanced Earnings Benefit (EEB) – base death benefit plus a percentage of the contract’s earnings at death Guaranteed Minimum Living Benefit Riders • Guaranteed Minimum Income Benefit (GMIB) – guarantees a minimum return on subaccounts ◦ Available only at annuitization for life, life with period certain and joint life annuitization options • Guaranteed Minimum Withdrawal Benefit (GMWB) – guarantees return of all premiums paid, regardless of subaccount performance • Guaranteed Lifetime Withdrawal Benefit (GLWB) – guarantees income for life and protects against market losses • Guaranteed Minimum Accumulation Benefit (GMAB) – guarantees a minimum account value on a certain date.

	regardless of subaccount performance - Standalone Lifetime Benefits (SALB) – independent of a variable annuity, guarantees an income stream for life - Step-up feature: an annual increase in income
Variable Annuities and Suitable Sales	Considerations include investment risk tolerance, lack of liquidity and high surrender charges Agent must match client risk tolerance and investment choices: may not be suitable for seniors Advantages of variable annuities: - Numerous investment choices – with ability to transfer at will - Tax deferral - Flexibility in investment choices – owners can adjust investments for market conditions and to rebalance portfolio - Alternative fee structures – many sales charge and surrender charge structures allow investors to meet liquidity needs and minimize fees - Professional management – subaccounts and model portfolios give access to professional managers investors could otherwise not afford - Living Benefit Riders – guaranteed income for life and riders to offset market risk - Death benefits – protects original investment for beneficiaries Disadvantages of variable annuities: - High fees - Limited liquidity – surrender charges may last up to 10 years - Market risk – unless owner chooses the fixed account, value is subject to market declines - Complicated features – understanding the many features is difficult - Too many choices – many options make product hard to understand - Unfavorable tax treatment – earnings are taxed as ordinary income; penalties apply to income withdrawals before age 59½ - Forced investment changes – some insurers restrict equity investments in adverse market times
ANNUITY TAX CONCEPTS	
Qualified vs. Nonqualified	- Qualified annuities: - Earnings accumulate tax deferred - Contribution limits (depending on the type of plan) - Distributions are fully taxable
Taxation	Taxation depends upon whether the premiums were paid with pre-tax or after-tax dollars Taxation of annuity premiums - Nonqualified annuity premiums are the contract's cost basis and are not tax deductible; qualified annuity premiums are tax deductible; there is no cost basis - The exclusion ratio establishes the amount of each annuity payment that is a return of cost basis on which taxes have been paid

	Tax-deferred growth • Transfers between subaccounts are not counted as taxable sales and repurchases and gains are deferred • Corporate-owned annuities are subject to current taxes on net investment value gains, minus purchases, annually Gifts of annuity contracts • Taxable income is the difference between the purchase payments and the contract value at the time of the gift • The giver may be subject to gift taxes Withdrawals • Owners must pay ordinary income taxes on all earnings • Nonqualified withdrawals are “earnings first,” e.g., taxable, until all earnings are distributed • Earnings withdrawn prior to age 59½ have 10% IRS penalties • All qualified annuity withdrawals are taxable as ordinary income and a 10% penalty applies before age 59½ Assignments of annuity contracts • Treated as a partial withdrawal • Cash value pledged is a withdrawal • Earnings are distributed first and taxable to assignor Taxation of annuity payments • Amount of principal invested is divided by the number of payment periods; if life income is selected, payment periods are based on the annuitant’s life expectancy • Difference between the periodic payment amount and the amount attributable to return of principal is the exclusion amount • All qualified annuity payments are taxable as ordinary income Beneficiary may: • Take a lump-sum withdrawal and pay taxes • Make withdrawals over 5 years and pay taxes annually • Defer withdrawals to the end of year 5, then withdraw the funds and pay taxes • Take installments over life or over life expectancy and pay taxes on the exclusion ratio annually • Life installments or life expectancy payout option must be selected within 12 months of owner’s death • If beneficiary is the spouse, spouse is treated as the owner and no distributions are required until surviving spouse dies
Estate Tax Concepts	• If a beneficiary is named, no probate • Under the restricted beneficiary feature, the owner can restrict beneficiary, amount, and frequency of benefits paid out after owner’s death if insurer receives the instructions prior to owner’s death
1035 EXCHANGES AND REPLACEMENTS	
Annuity Replacements	Reasons for replacement: • New or changed needs

	• New products with better benefits Responsibilities of the agent in a replacement sale • Full disclosure of all material facts, disadvantages and advantages • Provide “Notice Regarding Replacement” to applicant and have it signed by both the applicant and the agent; copy submitted with application • Provide copies of all written sales material, illustrations or proposals used • Maintain complete files to document the needs analysis and recommendations
• 1035 Exchanges	• Tax-free exchange for like-kind transactions ◦ Life policy to life policy, endowment insurance policy or nonqualified annuity ◦ Endowment life insurance to another endowment life insurance policy or to a nonqualified annuity ◦ Nonqualified annuity to a nonqualified annuity • Results of 1035 Exchange transactions ◦ Cost basis preservation of the original contract ◦ Gains in the old contract are not currently taxed in a 1035 exchange
YOUR RESPONSIBILITY IN SUITABLE ANNUITY SALES	
Suitability Standards	• NAIC Model Act requires agent education and supervision to assure that agents and insurers make suitable recommendations • Ensure producer understanding by the consumers, especially seniors • Must have reasonable grounds to believe that recommendation is suitable • Must consider, at minimum, client’s age, annual income, financial needs, current assets and funding sources, current insurance policy death benefits, financial experience and risk tolerance, financial objectives, intended annuity use, financial time line, liquidity needs and liquid net worth, and tax status • Educating Your Customer ◦ Client should understand that an annuity is long-term investment designed to provide retirement income ◦ Client should have a separate emergency fund for liquidity ◦ Client should understand all aspects of the product, including costs, penalties, fees, restrictions, death benefits, living benefits, annuitization, how earnings are credited, liquidity restrictions, tax deferral and tax penalties ◦ If annuity is a qualified annuity, client should understand IRA withdrawal rules

I. Attachments

1. Attachment I: Annuity Legislative History – Provider Reference

Provider Legislative Reference

Understanding of the following annuity legislation is significant. It provides the evolutionary changes for each law throughout the years. It is important to know what impact the following pieces of legislation have had on annuity insurance. To review or obtain copies of the following pieces of legislation, you may log onto the California Legislature's Web site at <http://www.leginfo.ca.gov> or you may call the Legislative Bill Room at (916) 445-2645 to order copies of this legislation.

Year: 2003

SB 620, 2003, (Scott, Chapter 547), Annuities: life insurance: required disclosures and prohibited sales practices.

An act to amend Sections 787, 1725.5, 10127.10, and 10509.8 of, and to add Sections 789.9, 789.10, 1724, and 1749.8 to, the Insurance Code, relating to insurance.

- Enacts additional restrictions on advertising practices that target senior citizens and would expand the scope of existing restrictions, currently applicable to disability insurance, to life insurance and annuities.
- Prohibits the sale of annuities to seniors in certain circumstances.
- Prohibits insurance agents, brokers, and solicitors who are not attorneys from sharing commissions or other compensation with attorneys.
- Requires, effective January 1, 2005, specific training for life agents in order for these producers to sell annuities, unless the agents are nonresident agents who represent a direct response provider, as defined.
- Limits the investment of premiums during the 30-day cancellation period, except as specified, and revises the disclosure requirements applicable to the sale of life insurance and annuity products to seniors.
- Imposes restrictions on the sale of life insurance policies and annuities in the home of a senior citizen.
- Prohibits an agent or insurer from recommending the unnecessary replacement, as defined, of an annuity by a senior citizen.
- Imposes certain duties on the Insurance Commissioner in this regard, and enacts other related provisions.

SB 618, (Scott, Chapter 546), Insurance: unfair acts: licenses.

An act to amend Sections 782, 786, 789.3, and 10509.9 of, and to add Sections 1668.1 and 1738.5 to, the Insurance Code, relating to unfair acts.

- Raises the fine for a violation of these provisions to \$1,500.
- Extends to individuals age 65 or older who purchase life insurance the protections described above that apply to those individuals who purchase disability policies.
- Declares that it applies to the purchase of life insurance only to the extent that it does not conflict with the provisions of law regarding cancellation of life insurance policies and annuities.
- Increases the amounts of these monetary penalties, as specified.

Provider Legislative Reference**Annuities****Page 15**

- Provides that, if the commissioner brings an action against a licensee under these provisions and determines that the licensee may reasonably be expected to cause significant harm to seniors, the commissioner may suspend the license pending the outcome of the action. It allows the commissioner to require the rescission of any contract marketed, offered, or issued in violation of these provisions.
- Authorizes the commissioner to suspend or revoke any permanent license issued if the licensee induces the client to make a loan or gift to or investment with the licensee, or to otherwise act in other specified ways that benefit the licensee or other people acquainted with or related to the licensee.
- Requires that, if a disciplinary hearing of this type involves allegations of misconduct directed against a person age 65 or over, the hearing be held within 90 days after the Department of Insurance receives the notice of defense, unless a continuance is granted.
- Sets forth the grounds for granting a continuance, and provides that the burden of proof in a hearing shall be by a preponderance of the evidence.
- Increases the amounts of these monetary penalties, as specified, and allows the commissioner to suspend or revoke the license of any person who violates these provisions.

AB 284 (Chavez, Chapter 381), Deferred annuities: nonforfeiture

An act to amend Sections 10168.1 and 10168.2 of, and to add Sections 10168.25 and 10168.92 to, the Insurance Code, relating to annuities.

- Requires that these annuity contracts also provide that the company shall grant the paid-up annuity benefit upon the written request of the contract owner.
- Eliminates the requirement applicable to certain contracts that a company reserve the right to defer the payment of the cash surrender benefit for a period of 6 months, and instead allows the company to reserve that right after making written request and receiving written approval of the commissioner, as specified.
- Allows payment of the cash surrender benefit to be deferred for a period not to exceed 6 months.
- Provides for a uniform method of calculating minimum nonforfeiture amounts under these contracts. It modifies the interest rate applicable to accumulations under these contracts, the amounts by which those accumulations may be decreased, and the minimum amount of considerations used to determine the minimum nonforfeiture amount, as specified.
- Provides that these provisions shall apply to contracts issued on and after January 1, 2006, but that a company may elect to apply them, on a contract-form-by-contract-form basis, to any contract issued on or after January 1, 2004, and before January 1, 2006.
- Allows the Insurance Commissioner to adopt regulations to implement these provisions and to adjust the calculation of minimum nonforfeiture amounts for certain other contracts.

Provider Legislative Reference**Annuities****Page 16*****Year: 2002*****AB 2984 (Committee on Insurance, Chapter 203), Insurance: depository institutions: production agencies: surplus line brokers: reinsurance intermediaries.**

An act to amend Sections 1628, 1637, 1639, 1656, 1662, 1679, 1704, 1750.5, 1765.2, 1767, 1768, 1781.3, and 10234.93 of, to add Sections 1638.5 and 1639.1 to, to add Article 5.2 (commencing with Section 759) to Chapter 1 of Part 2 of Division 1 of, and to repeal Sections 1647, 1648, 1649, 1659, and 1714 of, the Insurance Code, relating to insurance.

- Establishes provisions regulating retail sales practices, solicitations, advertising, and offers of any insurance product or annuity to a consumer by a depository institution, or any person engaged in those activities at the office of a depository institution or on behalf of a depository institution.
- Revises licensing provisions with regard to production agencies, surplus line brokers, and reinsurance intermediaries, and also revises requirements for certain licensees within those categories. Because this bill expands the duties of a surplus line broker and thereby expand the definitions of crimes associated with a violation of these duties, the bill imposes a state-mandated local program.
- Provides that no reimbursement is required by this act for a specified reason.

Year: 2000**SB 423 (Johnston, Chapter 694), Life insurance: guaranteed living benefits**

An act to add Section 10506.5 to the Insurance Code, relating to insurance, and declaring the urgency thereof, to take effect immediately.

- Authorizes a life insurer to deliver or issue for delivery variable contracts or riders to variable contracts containing guaranteed living benefits, as defined, under certain conditions.

AB 2107 (Scott, Chapter 442), Elder Abuse

An act to add Section 6177 to the Business and Professions Code, and to amend and renumber Section 10193 of, to amend Section 10234.8 of, and to add Section 789.8 to, the Insurance Code, and to amend Section 15610.30 of the Welfare and Institutions Code, relating to elder abuse.

- Imposes the duty of honesty, good faith, and fair dealing on insurers, brokers, agents, and others engaged in the business of Medicare supplemental insurance and long-term care insurance with respect to prospective policyholders.
- Only permits life agents, on or after July 1, 2001, to sell or offer for sale to an elder or his or her agent any financial product on the basis of the product's treatment under Medi-Cal after providing the elder or his or her agent with a specified disclosure, in writing, explaining the resource and income requirements of the Medi-Cal program, including, but not limited to, certain exempt resources, certain protections against spousal impoverishment, and certain circumstances under which an interest in a home may be transferred without affecting Medi-Cal eligibility. The bill excludes from the application of these disclosure provisions credit life insurance, as defined.

Provider Legislative Reference**Annuities****Page 17**

- Requires the State Bar to make a report, by December 31 of each year, to the Legislature on the provision of financial services by lawyers to elders, as specified. The report would include the number of complaints filed and investigations initiated, the type of charges made, and the number and nature of disciplinary actions taken by the State Bar.
- Revises the definition of existing law that defines financial abuse for the purpose of reporting and investigating elder and dependent adult abuse.

Year: 1998**SB 1718 (Calderon, Chapter 386), Life insurance.**

An act to amend Sections 10509.6 and 10541 of the Insurance Code, relating to life insurance.

- Existing law provides that every life insurer that uses an agent shall, among other things, when a replacement of insurance is involved, provide a notice delivered with the policy that the applicant has a right to an unconditional refund of all premiums, which right may be exercised within 20 days of the date of delivery of the policy. Existing law contains other provisions applicable to variable annuity contracts, variable life insurance contracts, and modified guaranteed contracts that authorize the return of the contract during the cancellation period. This bill adds the latter provision to the previous provisions requiring the applicant to be given notice of a right to an unconditional refund, and changes the 20-day period for the exercise of the right to obtain a refund to a 30-day period.
- Existing law permits certain insurers to issue funding agreements and provides that this authorization does not affect the priority of claims against insolvent insurers. This bill corrects a cross-reference relating to this priority of claims.

Year: 1997**SB 203 (Lewis, Chapter 28), Insurers: mortality tables.**

An act to amend Sections 10163.2, 10489.2, and 10489.3 of the Insurance Code, relating to insurance.

- Existing law regulates the types of benefits to be paid under a policy of life insurance in the event of a default in premium payments or upon surrender of the policy, and also regulates the manner in which reserves are to be maintained by insurers issuing life insurance policies and annuity and pure endowment contracts.
- Existing law provides for insurers to use certain mortality tables for these purposes that have been approved by the Insurance Commissioner through promulgation of a regulation. This bill alternatively allows the commissioner to approve mortality tables through issuance of a bulletin.

Year: 1994**SB 1505 (Calderon, Chapter 984), Life insurance and annuity contracts: senior citizen**

Provider Legislative Reference**Annuities****Page 18****policies and annuities**

An act to amend Sections 10127.10, 10127.11, 10127.12, 10127.13, and 10506.3 of the Insurance Code, relating to life insurance, and declaring the urgency thereof, to take effect immediately.

- Makes specified changes in the cancellation procedures and notice requirements and, in addition, applies those procedures and requirements to individual annuity contracts. In addition, for variable annuity contracts, variable life insurance contracts, and modified guaranteed contracts, a cancelling purchaser would be entitled to a refund of any policy fee paid as well as payment for the value of the account. These provisions do not apply to specified types of group life insurance or group annuity contracts. Under specified circumstances, senior citizens are entitled to refunds if they cancel policies of group term life insurance during the first 30 days of the policy period. The bill also makes conforming changes.
- Also adds the options of stating only the location in the policy text of the required information in 12-point bold type on the cover page of the policy, or by disclosing that information on a sticker that is affixed to the cover page of the policy or to the policy jacket.
- Provides that modified guaranteed annuities are subject to the forfeiture provisions for individual deferred annuities computed under the terms of the annuity, but excluding market adjustment factors, as specified. In addition, group annuities exempted from the provisions governing individual deferred annuities are also exempted from any modified guaranteed annuity regulations.
- This exemption is retroactive to January 1, 1987, to the extent that the assets underlying the group contracts have not been maintained in a separate account. The bill provides that it is to take effect immediately as an urgency statute.

AB 1667 (Hoge, Chapter 6), California Insurance Guarantee Association

An act to amend Sections 1063, 1063.1, 1063.2, 1063.4, 1063.5, 1063.7, 1067.04, 1067.05, and 10112.5 of, to add Section 1067.055 to, and to repeal and add Section 1063.3 of, the Insurance Code, relating to insurance, and declaring the urgency thereof, to take effect immediately.

- Existing law establishes a California Insurance Guarantee Association and specifies those insurers that are required to be members of the association. It exempts certain classes of insurance from assessments and other requirements of the association. This bill specifically enumerates those exempt classes of insurance, and provides that any insurer admitted to transact only those classes or kinds of insurance excluded from specified provisions shall not be a member of the association.
- Existing law provides that the association shall be managed by a board of governors serving for 3 year terms. Those terms expire each year. This bill provides that those terms expire each year on December 31.
- This bill also, among other things, does all of the following with respect to the California Insurance Guarantee Association: (a) Revises the definition of "insolvent insurer," and "covered claims," and defines "ocean marine insurance," as specified. (b) Revises certain policy construction and cancellation provisions with respect to insurer insolvency. (c) Revises the authorization of the association to submit reports

Provider Legislative Reference**Annuities****Page 19**

and make recommendations to the Insurance Commissioner regarding the financial condition of member insurers, and certain examination and other report requirements, as specified. (d) Revises insolvency premium provisions, as specified. (e) Specifies certain notice provisions with respect to an ancillary liquidator.

- Existing law provides for the California Life and Health Insurance Guarantee Association. The statute that established that association abolished the California Life Insurance Guaranty Association and the Robbins-Seastrand Health Insurance Guaranty Association. This bill provides that the California Life and Health Insurance Guarantee Association is created by the merger of the Robbins-Seastrand Health Insurance Guaranty Association with and into the California Life Insurance Guaranty Association and that the association succeeds to the rights, property, and obligations of the predecessors, as specified.
- Revises provisions dealing with the applicability of specified disability insurance policies issued outside of California to an employer whose principle place of business and majority of employees are located outside of California.

Year: 1993

SB 1065 (Mello, Chapter 516), Life insurance.

An act to add Sections 10127.10, 10127.11, 10127.12, and 10127.13 to the Insurance Code, relating to insurance.

- Adds additional provisions which permit a senior citizen, as defined, to cancel any policy of life insurance within 30 days following delivery, as specified. It requires those policies to contain a notice of that provision. Those provisions are inapplicable to individual life insurance policies issued in connection with a credit transaction or issued under a contractual policy change or conversion privilege provisions contained in a policy.
- Additionally makes those provisions inapplicable to noncontributory employer group life insurance contracts.
- Requires offerings of life insurance policies to senior citizens that contain illustrations of nonguaranteed values to contain certain disclosures. It requires annual statements to senior citizen policyowners to disclose the current accumulation value and current cash surrender value and requires life insurance policies for senior citizens, which contain a surrender charge period to disclose the surrender period and penalties associated therewith.

2. Attachment II: Life Agent Disclosure Requirements

Attachment II**Life Agent Disclosure Requirements
for Sales to Elders****Assembly Bill 2107**

Effective July 1, 2001, Chapter 442, Statutes of 2000 (Assembly Bill 2107, Scott), strengthens the Elder Abuse and Dependent Civil Protection Act with respect to selling insurance and financial products to elders and clarifies the definition of financial abuse. (The definition of "elders" is any person residing in this state that is 65 years of age or older.)

At the time of the enactment of this law, a life agent is required to make specified disclosures about the potential consequences of entering into financial transactions related to an elder's potential eligibility for Medi-Cal coverage and prohibits a life agent from negligently misrepresenting a product based on its treatment under Medi-Cal.

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**Life Agent Disclosure Requirements
for Sales to Elders - Assembly Bill 2107
Page 2**

Required Medi-Cal Disclosure

A life agent who offers for sale or sells any financial product on the basis of its treatment under the Medi-Cal program shall provide, in writing, the following disclosure to the elder or the elder's agent:

NOTICE REGARDING STANDARDS FOR MEDI-CAL ELIGIBILITY

If you or your spouse are considering purchasing a financial product based on its treatment under the Medi-Cal program, read this important message!

You or your spouse does not have to use up all of your savings before applying for Medi-Cal.

UNMARRIED RESIDENT

An unmarried resident may be eligible for Medi-Cal benefits if he or she has less than \$2,000 in countable resources.

The Medi-Cal recipient is allowed to keep from his or her monthly income a personal allowance of \$35 plus the amount of any health insurance premiums paid. The remainder of the monthly income is paid to the nursing facility as a monthly share of cost.

MARRIED RESIDENT

COMMUNITY SPOUSE RESOURCE ALLOWANCE: If one spouse lives in a nursing facility, and the other spouse does not live in a facility, the Medi-Cal program will pay some or all of the nursing facility costs as long as the couple together does not have more than \$92,760 + \$2,000 (for 2004).

MINIMUM MONTHLY MAINTENANCE NEEDS ALLOWANCE: If a spouse is eligible for Medi-Cal payment of nursing facility costs, the spouse living at home is allowed to keep a monthly income of at least his or her individual monthly income or \$2319 (for 2004), whichever is greater.

FAIR HEARINGS AND COURT ORDERS

Under certain circumstances, an at-home spouse can obtain an order from an administrative law judge or court that will allow the at-home spouse to retain

**Life Agent Disclosure Requirements
for Sales to Elders - Assembly Bill 2107
Page 3**

additional resources or income. The order may allow the couple to retain more than \$92,760 + \$2,000 (for 2004) in countable resources. The order also may allow the at-home spouse to retain more than \$2319 (for 2004) in monthly income.

REAL AND PERSONAL PROPERTY EXEMPTIONS

Many of your assets may already be exempt. Exempt means that the assets are not counted when determining eligibility for Medi-Cal.

REAL PROPERTY EXEMPTIONS

ONE PRINCIPAL RESIDENCE. One property used as a home is exempt. The home will remain exempt in determining eligibility if the applicant intends to return home someday.

The home also continues to be exempt if the applicant's spouse or dependent relative continues to live in it.

Money received from the sale of a home can be exempt for up to six months if the money is going to be used for the purchase of another home.

REAL PROPERTY USED IN A BUSINESS OR TRADE. Real estate used in a trade or business is exempt regardless of its equity value and whether it produces income.

PERSONAL PROPERTY AND OTHER EXEMPT ASSETS

IRAs, KEOGHs, AND OTHER WORK-RELATED PENSION PLANS. These funds are exempt if the family member whose name it is in does not want Medi-Cal. If held in the name of a person who wants Medi-Cal and payments of principal and interest are being received, the balance is considered unavailable and is not counted. It is not necessary to annuitize, convert to an annuity, or otherwise change the form of the assets in order for them to be unavailable.

PERSONAL PROPERTY USED IN A TRADE OR BUSINESS

ONE MOTOR VEHICLE

IRREVOCABLE BURIAL TRUSTS OR IRREVOCABLE PREPAID BURIAL CONTRACTS.

**Life Agent Disclosure Requirements
for Sales to Elders - Assembly Bill 2107
Page 4**

THERE MAY BE OTHER ASSETS THAT MAY BE EXEMPT.

This is only a brief description of the Medi-Cal eligibility rules, for more detailed information, you should call your county welfare department. Also, you are advised to contact a legal services program for seniors or an attorney that is not connected with the sale of this product.

I have read the above notice and have received a copy.

Dated: _____

Signature: _____

Signature: _____

The statement required in this subdivision shall be printed in at least 12-point type, shall be clearly separate from any other document or writing, and shall be signed by the prospective purchaser and that person's spouse, and legal representative, if any.

The State Department of Health Services (<http://www.dhs.ca.gov/mcs/default.htm>) shall update this form to ensure consistency with state and federal law and make the disclosure available to agents and brokers through its Internet Web site.

Life Agent's Duties

Pursuant to Section 10193 of the California Insurance Code, with regard to Medicare supplement insurance and long-term care insurance, all insurers, brokers, agents, and others engaged in the business of insurance owe a policyholder or a prospective policyholder a duty of honesty, and a duty of good faith and fair dealing.

Conduct of an insurer, broker, or agent during the offer and sale of a policy previous to the purchase is relevant to any action alleging a breach of the duty of honesty, and a duty of good faith and fair dealing.

**Life Agent Disclosure Requirements
for Sales to Elders - Assembly Bill 2107
Page 5**

Elder Abuse

Pursuant to Section 15610.30 of the California Welfare & Institutions Code:

(a) "Financial abuse" of an elder or dependent adult occurs when a person or entity does any of the following:

- (1) Takes, secretes, appropriates, or retains real or personal property of an elder or dependent adult to a wrongful use or with intent to defraud, or both.
- (2) Assists in taking, secreting, appropriating, or retaining real or personal property of an elder or dependent adult to a wrongful use or with intent to defraud, or both.

(b) A person or entity shall be deemed to have taken, secreted, appropriated, or retained property for a wrongful use if, among other things, the person or entity takes, secretes, appropriates or retains possession of property in bad faith.

(1) A person or entity shall be deemed to have acted in bad faith if the person or entity knew or should have known that the elder or dependent adult had the right to have the property transferred or made readily available to the elder or dependent adult or to his or her representative.

(2) For purposes of this section, a person or entity should have known of a right specified in paragraph (1) if, on the basis of the information received by the person or entity or the person or entity's authorized third party, or both, it is obvious to a reasonable person that the elder or dependent adult has a right specified in paragraph (1).

Life Agent Financial Products Disclosure

Pursuant to Section 789.8 of the California Insurance Code, if a life agent offers to sell to an elder any life insurance or annuity product, the life agent shall advise an elder or elder's agent in writing that the sale or liquidation of any stock, bond, IRA, certificate of deposit, mutual fund, annuity, or other asset to fund the purchase of this product may have tax consequences, early withdrawal penalties, or other costs or penalties as a result of the sale or liquidation, and that the elder or elder's agent may wish to consult independent legal or financial advice before selling or liquidating any assets and prior to the purchase of any life or annuity products being solicited, offered for sale, or sold. This section does not apply to a credit life insurance product.

A life agent who offers for sale or sells a financial product to an elder on the basis of the product's treatment under the Medi-Cal program may not negligently misrepresent the treatment of any asset under the rules and regulations of the Medi-Cal program, as it pertains to the determination of the elder's eligibility for any program of public assistance.

A life agent who offers for sale or sells any financial product on the basis of its treatment under the Medi-Cal Program shall provide, in writing, the required disclosure.

**Life Agent Disclosure Requirements
for Sales to Elders - Assembly Bill 2107
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BILL NUMBER: AB 2107 CHAPTERED
BILL TEXT

CHAPTER 442

FILED WITH SECRETARY OF STATE SEPTEMBER 14, 2000

APPROVED BY GOVERNOR SEPTEMBER 13, 2000

PASSED THE ASSEMBLY AUGUST 29, 2000

PASSED THE SENATE AUGUST 28, 2000

AMENDED IN SENATE AUGUST 24, 2000

AMENDED IN SENATE AUGUST 18, 2000

AMENDED IN SENATE AUGUST 7, 2000

AMENDED IN ASSEMBLY MAY 31, 2000

AMENDED IN ASSEMBLY MAY 16, 2000

AMENDED IN ASSEMBLY APRIL 24, 2000

AMENDED IN ASSEMBLY APRIL 3, 2000

INTRODUCED BY Assembly Member Scott
(Coauthor: Assembly Member Jackson)

FEBRUARY 22, 2000

An act to add Section 6177 to the Business and Professions Code, and to amend and renumber Section 10193 of, to amend Section 10234.8 of, and to add Section 789.8 to, the Insurance Code, and to amend Section 15610.30 of the Welfare and Institutions Code, relating to elder abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 2107, Scott. Elder abuse.

(1) Existing law imposes on all insurers, brokers, agents, and others engaged in the business of Medicare supplemental insurance and long-term care insurance with a policyholder, a duty of honesty, good faith, and fair dealing.

This bill would impose the duty of honesty, good faith, and fair dealing on insurers, brokers, agents, and others engaged in the business of Medicare supplemental insurance and long-term care insurance with respect to prospective policyholders.

The bill would only permit life agents, on or after July 1, 2001, to sell or offer for sale to an elder or his or her agent any financial product on the basis of the product's treatment under Medi-Cal after providing the elder or his or her agent with a specified disclosure, in writing, explaining the resource and income requirements of the Medi-Cal program, including, but not limited to,

**Life Agent Disclosure Requirements
for Sales to Elders - Assembly Bill 2107
Page 7**

certain exempt resources, certain protections against spousal impoverishment, and certain circumstances under which an interest in a home may be transferred without affecting Medi-Cal eligibility.

The bill would exclude from the application of these disclosure provisions credit life insurance, as defined.

(2) Existing law prohibits conflicts of interest between an attorney and client.

This bill would require the State Bar to make a report, by December 31 of each year, to the Legislature on the provision of financial services by lawyers to elders, as specified. The report would include the number of complaints filed and investigations initiated, the type of charges made, and the number and nature of disciplinary actions taken by the State Bar.

(3) Existing law defines financial abuse for the purpose of reporting and investigating elder and dependent adult abuse. This bill would revise that definition.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 6177 is added to the Business and Professions Code, to read:

6177. The State Bar by December 31 of each year shall report to the Legislature on the number of complaints filed against California attorneys alleging a violation of this article. The report shall also include the type of charges made in each complaint, the number of resulting investigations initiated, and the number and nature of any disciplinary actions take by the State Bar for violations of this article.

SEC. 2. Section 789.8 is added to the Insurance Code, to read:

789.8. (a) "Elder" for purposes of this section means any person residing in this state, 65 years of age or older.

(b) If a life agent offers to sell to an elder any life insurance or annuity product, the life agent shall advise an elder or elder's agent in writing that the sale or liquidation of any stock, bond, IRA, certificate of deposit, mutual fund, annuity, or other asset to fund the purchase of this product may have tax consequences, early withdrawal penalties, or other costs or penalties as a result of the sale or liquidation, and that the elder or elder's agent may wish to consult independent legal or financial advice before selling or liquidating any assets and prior to the purchase of any life or annuity products being solicited, offered for sale, or sold. This section does not apply to a credit life insurance product as defined in Section 779.2.

(c) A life agent who offers for sale or sells a financial product to an elder on the basis of the product's treatment under the Medi-Cal program may not negligently misrepresent the treatment of any asset under the statutes and rules and regulations of the Medi-Cal program, as it pertains to the determination of the elder's eligibility for any program of public assistance.

**Life Agent Disclosure Requirements
for Sales to Elders - Assembly Bill 2107
Page 8**

(d) A life agent who offers for sale or sells any financial product on the basis of its treatment under the Medi-Cal program shall provide, in writing, the following disclosure to the elder or the elder's agent:

"NOTICE REGARDING STANDARDS FOR MEDI-CAL ELIGIBILITY

If you or your spouse are considering purchasing a financial product based on its treatment under the Medi-Cal program, read this important message!

You or your spouse do not have to use up all of your savings before applying for Medi-Cal.

UNMARRIED RESIDENT

An unmarried resident may be eligible for Medi-Cal benefits if he or she has less than (insert amount of individual's resource allowance) in countable resources.

The Medi-Cal recipient is allowed to keep from his or her monthly income a personal allowance of (insert amount of personal needs allowance) plus the amount of any health insurance premiums paid. The remainder of the monthly income is paid to the nursing facility as a monthly share of cost.

MARRIED RESIDENT

COMMUNITY SPOUSE RESOURCE ALLOWANCE: If one spouse lives in a nursing facility, and the other spouse does not live in a facility, the Medi-Cal program will pay some or all of the nursing facility costs as long as the couple together does not have more than (insert amount of community countable assets).

MINIMUM MONTHLY MAINTENANCE NEEDS ALLOWANCE: If a spouse is eligible for Medi-Cal payment of nursing facility costs, the spouse living at home is allowed to keep a monthly income of at least his or her individual monthly income or (insert amount of the minimum monthly maintenance needs allowance), whichever is greater.

FAIR HEARINGS AND COURT ORDERS

Under certain circumstances, an at-home spouse can obtain an order from an administrative law judge or court that will allow the at-home spouse to retain additional resources or income. The order may allow the couple to retain more than (insert amount of community spouse resource allowance plus individual's resource allowance) in countable resources. The order also may allow the at-home spouse to retain more than (insert amount of the monthly maintenance need allowance) in monthly income.

**Life Agent Disclosure Requirements
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REAL AND PERSONAL PROPERTY EXEMPTIONS

Many of your assets may already be exempt. Exempt means that the assets are not counted when determining eligibility for Medi-Cal.

REAL PROPERTY EXEMPTIONS

ONE PRINCIPAL RESIDENCE. One property used as a home is exempt. The home will remain exempt in determining eligibility if the applicant intends to return home someday.

The home also continues to be exempt if the applicant's spouse or dependent relative continues to live in it.

Money received from the sale of a home can be exempt for up to six months if the money is going to be used for the purchase of another home.

REAL PROPERTY USED IN A BUSINESS OR TRADE. Real estate used in a trade or business is exempt regardless of its equity value and whether it produces income.

PERSONAL PROPERTY AND OTHER EXEMPT ASSETS

IRAs, KEOGHs, AND OTHER WORK-RELATED PENSION PLANS. These funds are exempt if the family member whose name it is in does not want Medi-Cal. If held in the name of a person who wants Medi-Cal and payments of principal and interest are being received, the balance is considered unavailable and is not counted. It is not necessary to annuitize, convert to an annuity, or otherwise change the form of the assets in order for them to be unavailable.

PERSONAL PROPERTY USED IN A TRADE OR BUSINESS.

ONE MOTOR VEHICLE.

IRREVOCABLE BURIAL TRUSTS OR IRREVOCABLE PREPAID BURIAL CONTRACTS.

THERE MAY BE OTHER ASSETS THAT MAY BE EXEMPT.

This is only a brief description of the Medi-Cal eligibility rules, for more detailed information, you should call your county welfare department. Also, you are advised to contact a legal services program for seniors or an attorney that is not connected with the sale of this product.

I have read the above notice and have received a copy. Dated:

Signature: _____"

The statement required in this subdivision shall be printed in at least 12-point type, shall be clearly separate from any other document or writing, and shall be signed by the prospective purchaser and that person's spouse, and legal representative, if any.

**Life Agent Disclosure Requirements
for Sales to Elders - Assembly Bill 2107
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(e) The State Department of Health Services shall update this form to ensure consistency with state and federal law and make the disclosure available to agents and brokers through its Internet website.

(f) Nothing in this section allows or is intended to allow the unlawful practice of law.

(g) Subdivisions (b) and (d) shall become operative on July 1, 2001.

SEC. 3. Section 10193 of the Insurance Code is amended and renumbered to read:

10192.55. (a) With regard to Medicare supplement insurance, all insurers, brokers, agents, and others engaged in the business of insurance owe a policyholder or a prospective policyholder a duty of honesty, and a duty of good faith and fair dealing.

(b) Conduct of an insurer, broker, or agent during the offer and sale of a policy previous to the purchase is relevant to any action alleging a breach of the duty of honesty, and a duty of good faith and fair dealing.

SEC. 4. Section 10234.8 of the Insurance Code is amended to read:

10234.8. (a) With regard to long-term care insurance, all insurers, brokers, agents, and others engaged in the business of insurance owe a policyholder or a prospective policyholder a duty of honesty, and a duty of good faith and fair dealing.

(b) Conduct of an insurer, broker, or agent during the offer and sale of a policy previous to the purchase is relevant to any action alleging a breach of the duty of honesty, and a duty of good faith and fair dealing.

SEC. 5. Section 15610.30 of the Welfare and Institutions Code is amended to read:

15610.30. (a) "Financial abuse" of an elder or dependent adult occurs when a person or entity does any of the following:

(1) Takes, secretes, appropriates, or retains real or personal property of an elder or dependent adult to a wrongful use or with intent to defraud, or both.

(2) Assists in taking, secreting, appropriating, or retaining real or personal property of an elder or dependent adult to a wrongful use or with intent to defraud, or both.

(b) A person or entity shall be deemed to have taken, secreted, appropriated, or retained property for a wrongful use if, among other things, the person or entity takes, secretes, appropriates or retains possession of property in bad faith.

**Life Agent Disclosure Requirements
for Sales to Elders - Assembly Bill 2107
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(1) A person or entity shall be deemed to have acted in bad faith if the person or entity knew or should have known that the elder or dependent adult had the right to have the property transferred or made readily available to the elder or dependent adult or to his or her representative.

(2) For purposes of this section, a person or entity should have known of a right specified in paragraph (1) if, on the basis of the information received by the person or entity or the person or entity's authorized third party, or both, it is obvious to a reasonable person that the elder or dependent adult has a right specified in paragraph (1).

(c) For purposes of this section, "representative" means a person or entity that is either of the following:

(1) A conservator, trustee, or other representative of the estate of an elder or dependent adult.

(2) An attorney-in-fact of an elder or dependent adult who acts within the authority of the power of attorney.

**Life Agent Disclosure Requirements
for Sales to Elders - Assembly Bill 2107
Page 12**

(SAMPLE FROM INSURER)

TITLE: _____

To: _____
Prospective California Client *(please print)*

From: _____
Agent *(please print)*

Pursuant to California Insurance regulation, I am required to advise you of the following:

In the event I recommend that you sell or liquidate any stocks, bonds, IRA, certificate of deposit, mutual fund annuity, or other assets to fund the purchase of an annuity from an insurance company, you may be subject to some or all of the following:

1. Tax consequences;
2. Early withdrawal penalties;
3. Or, other costs or penalties.

You may wish to consult an independent legal or financial advisor before selling or liquidating any assets and prior to purchasing an annuity.

I acknowledge receipt of this disclosure and understand its contents.

Signature of Prospective California Client

Date

Signature of Agent

Date

**Life Agent Disclosure Requirements
for Sales to Elders - Assembly Bill 2107
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(SAMPLE FROM INSURER)

NOTICE REGARDING STANDARDS FOR MEDI-CAL ELIGIBILITY

If you or your spouse are considering purchasing a financial product based on its treatment under the Medi-Cal program, read this important message!

You or your spouse do not have to use up all of your savings before applying for Medi-Cal.

UNMARRIED RESIDENT

An unmarried resident may be eligible for Medi-Cal benefits if he or she has less than \$2,000 in countable resources.

The Medi-Cal recipient is allowed to keep from his or her monthly income a personal allowance of \$35 plus the amount of any health insurance premiums paid. The remainder of the monthly income is paid to the nursing facility as a monthly share of cost.

MARRIED RESIDENT

COMMUNITY SPOUSE RESOURCE ALLOWANCE: If one spouse lives in a nursing facility, and the other spouse does not live in a facility, the Medi-Cal program will pay some or all of the nursing facility costs as long as the couple together does not have more than \$92,760 + \$2,000 (for 2004).

MINIMUM MONTHLY MAINTENANCE NEEDS ALLOWANCE: If a spouse is eligible for Medi-Cal payment of nursing facility costs, the spouse living at home is allowed to keep a monthly income of at least his or her individual monthly income or \$2319 (for 2004), whichever is greater.

FAIR HEARINGS AND COURT ORDERS

Under certain circumstances, an at-home spouse can obtain an order from an administrative law judge or court that will allow the at-home spouse to retain additional resources or income. The order may allow the couple to retain more than \$92,760 + \$2,000 (for 2004) in countable resources. The order also may allow the at-home spouse to retain more than \$2319 (for 2004) in monthly income.

REAL AND PERSONAL PROPERTY EXEMPTIONS

Many of your assets may already be exempt. Exempt means that the assets are not counted when determining eligibility for Medi-Cal.

REAL PROPERTY EXEMPTIONS

ONE PRINCIPAL RESIDENCE. One property used as a home is exempt. The home will remain exempt in determining eligibility if the applicant intends to return home someday.

The home also continues to be exempt if the applicant's spouse or dependent relative continues to live in it.

**Life Agent Disclosure Requirements
for Sales to Elders - Assembly Bill 2107
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Money received from the sale of a home can be exempt for up to six months if the money is going to be used for the purchase of another home.

REAL PROPERTY USED IN A BUSINESS OR TRADE. Real estate used in a trade or business is exempt regardless of its equity value and whether it produces income.

PERSONAL PROPERTY AND OTHER EXEMPT ASSETS

IRAs, KEOGHs, AND OTHER WORK-RELATED PENSION PLANS. These funds are exempt if the family member whose name it is in does not want Medi-Cal. If held in the name of a person who wants Medi-Cal and payments of principal and interest are being received, the balance is considered unavailable and is not counted. It is not necessary to annuitize, convert to an annuity, or otherwise change the form of the assets in order for them to be unavailable.

PERSONAL PROPERTY USED IN A TRADE OR BUSINESS

ONE MOTOR VEHICLE

IRREVOCABLE BURIAL TRUSTS OR IRREVOCABLE PREPAID BURIAL CONTRACTS.

THERE MAY BE OTHER ASSETS THAT MAY BE EXEMPT.

This is only a brief description of the Medi-Cal eligibility rules, for more detailed information, you should call your county welfare department. Also, you are advised to contact a legal services program for seniors or an attorney that is not connected with the sale of this product.

I have read the above notice and have received a copy.

Dated: _____

Signature: _____

Signature: _____

3. Attachment III: Penalties

Eight-Hour Annuity Training Outline

Attachment III

Penalties Defined (Section 782, 786, 789.3, 1738.5, 10509.910 et seq. of the CIC)

California Insurance Code	Violation	Penalty
Section 782 Establishes penalties for violation of section 780 and section 781	Section 780 - Prohibited Misrepresentation Section 781 - Twisting (see page 3 for actual language)	Punishable by fine not to exceed \$25,000, or if victim loss exceeds \$10,000, the fine not to exceed 3 times the loss suffered by the victim, by imprisonment not to exceed 1 year or by both a fine and imprisonment Restitution to victim pursuant to Section 1202.4 of the Penal Code shall be satisfied before any fine imposed by this section is collected
Section 786 Provides for an examination period of 30 days after the receipt of the policy or certificate for purposes of review of the contract	no violations or penalties cited in this section (see page 3 for actual language)	
Section 789.3 Administrative penalties; amounts; rescission of contracts	Section 789.3: (a) and (b) by broker, agent, or other person engaged in the transactions of insurance other than an insurer (see page 4 for actual language) (d) and (e) by insurer	789.3(a) minimum \$1,000 for the first violation 789.3(b) minimum \$5,000 and no more than \$50,000 each subsequent violation 789.3(c) Commissioner may suspend or revoke license 789.3(d) \$10,000 for the first violation 789.3(e) minimum \$30,000 and no more than \$300,000 each violation thereafter 789.3(f) Commissioner may require rescission of contract

Section 1668.1 Acts that constitute cause to suspend or revoke any permanent license issued pursuant to this chapter	no violations or penalties cited in this section (see page 5 for actual language)	
Section 1738.5 A proceeding held pursuant to section 1668, 1668.5, 1738, 1739, or 12921.8	no violations or penalties cited in this section (see page 5 for actual language)	
Section 10509.9 Administrative penalties:	Section 10509.9: (a) and (b) by any agent or other person or entity engaged in the business of insurance other than an insurer (see page 6 for actual language) (c) and (d) by insurer (see page 6 for actual language) (e) by person or entity after a hearing (see page 6 for actual language)	10509.9 (a) \$1,000 for the first violation 10509.9 (b) minimum \$5,000 and no more than \$50,000 each subsequent violation 10509.9 (c) \$10,000 for the first violation 10509.9 (d) minimum \$30,000 and no more than \$300,000 each violation thereafter 10509.9 (e) the Commissioner may suspend or revoke the license
Section 10509.916 Insurer responsibilities	violations and penalties to be determined (see page 7 for actual language)	

Current Law

This list includes the statutes stated in SB 618 and the penalty statute from AB 689 (Chapter 295, Statutes of 2011) Insurance: annuity transactions, Section 10509.914 of the California Insurance Code, which will take effect on January 1, 2012.

Section 780: An insurer or officer or agent thereof, or an insurance broker or solicitor shall not cause or permit to be issued, circulated or used, any statement that is known, or should have been known, to be a misrepresentation of the following:

- (a) The terms of a policy issued by the insurer or sought to be negotiated by the person making or permitting the misrepresentation.
- (b) The benefits or privileges promised thereunder.
- (c) The future dividends payable thereunder.

Section 781: (a) A person shall not make any statement that is known, or should have been known, to be a misrepresentation (1) to any other person for the purpose of inducing, or tending to induce, such other person either to take out a policy of insurance, or to refuse to accept a policy issued upon an application therefor and instead take out any policy in another insurer, or (2) to a policyholder in any insurer for the purpose of inducing or tending to induce him or her to lapse, forfeit or surrender his or her insurance therein.

(b) A person shall not make any representation or comparison of insurers or policies to an insured which is misleading, for the purpose of inducing or tending to induce him or her to lapse, forfeit, change or surrender his or her insurance, whether on a temporary or permanent plan.

Section 782: Any person who violates the provisions of Section 780 or 781 is punishable by a fine not exceeding twenty-five thousand dollars (\$25,000), or in a case in which the loss of the victim exceeds ten thousand dollars (\$10,000), by a fine not exceeding three times the amount of the loss suffered by the victim, by imprisonment in a county jail for a period not to exceed one year, or by both a fine and imprisonment. Restitution to the victim ordered pursuant to Section 1202.4 of the Penal Code shall be satisfied before any fine imposed by this section is collected.

Section 786: All disability insurance and life insurance policies and certificates offered for sale to individuals age 65 or older in California shall provide an examination period of 30 days after the receipt of the policy or certificate for purposes of review of the contract, at which time the applicant may return the contract. The return shall void the policy or certificate from the beginning, and the parties shall be in the same position as if no contract had been issued. All premiums paid and any policy or membership fee shall be fully refunded to the applicant by the insurer or entity in a timely manner.

a) For the purposes of this section a timely manner shall be no later than 30 days after the insurer or entity issuing the policy or certificate receives the returned policy or certificate.

b) If the insurer or entity issuing the policy or certificate fails to refund all of the premiums paid, in a timely manner, then the applicant shall receive interest on the paid premium at the legal rate of interest on judgments as provided in Section 685.010 of the Code of Civil Procedure. The interest shall be paid from the date the insurer or entity received the returned policy or certificate.

(c) Each policy or certificate shall have a notice prominently printed in no less than 10-point uppercase type, on the cover page of the policy or certificate and the outline of coverage, stating that the applicant has the right to return the policy or certificate within 30 days after its receipt via regular mail, and to have the full premium refunded.

(d) In the event of any conflict between this section and Section 10127.10 with respect to life insurance, the provisions of Section 10127.10 shall prevail.

Section 789.3: (a) Any broker, agent, or other person or other entity engaged in the transactions of insurance, other than an insurer, who violates this article is liable for an administrative penalty of no less than one thousand dollars (\$1,000) for the first violation.

(b) Any broker, agent, other person, or other entity engaged in the business of insurance, other than an insurer, who engages in practices prohibited by this article a second or subsequent time or who commits a knowing violation of this article, is liable for an administrative penalty of no less than five thousand dollars (\$5,000) and no more than fifty thousand dollars (\$50,000) for each violation.

(c) If the commissioner brings an action against a licensee pursuant to subdivision (a) or (b) and determines that the licensee may reasonably be expected to cause significant harm to seniors, the commissioner may suspend his or her license pending the outcome of the hearing described in subdivision (c) of Section 789.

(d) Any insurer who violates this article is liable for an administrative penalty of ten thousand dollars (\$10,000) for the first violation.

(e) Any insurer who violates this article with a frequency as to indicate a general business practice or commits a knowing violation of this article, is liable for an administrative penalty of no less than thirty thousand dollars (\$30,000) and no more than three hundred thousand dollars (\$300,000) for each violation.

(f) The commissioner may require rescission of any contract found to have been marketed, offered, or issued in violation of this article.

Section 1668.1: (a) The licensee has induced a client, whether directly or indirectly, to cosign or make a loan, make an investment, make a gift, including a testamentary gift, or provide any future benefit through a right of survivorship to the licensee, or to any of the persons listed in subdivision (e).

(b) The licensee has induced a client, whether directly or indirectly, to make the licensee or any of the persons listed in subdivision (e) a beneficiary under the terms of any intervivos or testamentary trust or the owner or beneficiary of a life insurance policy or an annuity policy.

(c) The licensee has induced a client, whether directly or indirectly, to make the licensee, or a person who is registered as a domestic partner of the licensee, or is related to the licensee by birth, marriage, or adoption, a trustee under the terms of any intervivos or testamentary trust. However, if the licensee is also licensed as an attorney in any state, the licensee may be made

a trustee under the terms of any inter vivos or testamentary trust, provided that the licensee is not a seller of insurance to the trustor of the trust.

(d) The licensee, who has a power of attorney for a client has sold to the client or has used the power of attorney to purchase an insurance product on behalf of the client for which the licensee has received a commission.

(e) Subdivisions (a) and (b) shall also apply if the licensee induces the client to provide the benefits in those subdivisions to the following people:

- (1) A person who is related to the licensee by birth, marriage, or adoption.
- (2) A person who is a friend or business acquaintance of the licensee.
- (3) A person who is registered as a domestic partner of the licensee.

(f) This section shall not apply to situations in which the client is:

- (1) A person related to the licensee by birth, marriage, or adoption.
- (2) A person who is registered as a domestic partner of the licensee.

Section 1738.5: A proceeding held pursuant to Section 1668, 1668.5, 1738, 1739, or 12921.8 that involves allegations of misconduct perpetrated against a person age 65 or over shall be held within 90 days after receipt by the department of the notice of defense, unless a continuance of the hearing is granted by the department or the administrative law judge. When the matter has been set for hearing, only the administrative law judge may grant a continuance of the hearing. The administrative law judge may, but need not, grant a continuance of the hearing, only upon finding the existence of one or more of the following:

(a) The death or incapacitating illness of a party, a representative or attorney of a party, a witness to an essential fact, or of the parent, child, or member of the household of any of these persons, when it is not feasible to substitute another representative, attorney, or witness because of the proximity of the hearing date.

(b) Lack of notice of hearing as provided in Section 11509 of the Government Code.

(c) A material change in the status of the case where a change in the parties or pleadings requires postponement, or an executed settlement or stipulated findings of fact obviate the need for hearing. A partial amendment of the pleadings shall not be good cause for continuance to the extent that the un-amended portion of the pleadings is ready to be heard.

(d) A stipulation for continuance signed by all parties, or their authorized representatives, that is communicated with the request for continuance to the administrative law judge no later than 25 business days before the hearing.

(e) The substitution of the representative or attorney of a party upon showing that the substitution is required.

(f) The unavailability of a party, representative, or attorney of a party, or witness to an essential fact, due to a conflicting and required appearance in a judicial matter if, when the hearing date was set, the person did not know and could neither anticipate nor at any time avoid the conflict,

and the conflict, with the request for continuance, is immediately communicated to the administrative law judge.

(g) The unavailability of a party, a representative or attorney of a party, or a material witness due to an unavoidable emergency.

(h) Failure by a party to comply with a timely discovery request if the continuance request is made by the party who requested the discovery.

Section 10509.9: (a) Any agent or other person or entity engaged in the business of insurance, other than an insurer, who violates this article is liable for an administrative penalty of no less than one thousand dollars (\$1,000) for the first violation.

(b) Any agent or other person or entity engaged in the business of insurance, other than an insurer, who engages in practices prohibited by this chapter a second or subsequent time or who commits a knowing violation of this article, is liable for an administrative penalty of no less than five thousand dollars (\$5,000) and no more than fifty thousand dollars (\$50,000) for each violation.

(c) Any insurer who violates this article is liable for an administrative penalty of ten thousand dollars (\$10,000) for the first violation.

(d) Any insurer who violates this article with a frequency as to indicate a general business practice or commits a knowing violation of this article, is liable for an administrative penalty of no less than thirty thousand dollars (\$30,000) and no more than three hundred thousand dollars (\$300,000) for each violation.

(e) After a hearing conducted in accordance with Chapter 4.5 (commencing with Section 11400) and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, the commissioner may suspend or revoke the license of any person or entity that violates this article.

(f) Nothing in this section shall be deemed to affect any other authority provided by law to the commissioner.

Section 10509.916: (a) An insurer is responsible for compliance with this article. If a violation occurs, either because of the action or inaction of the insurer or its insurance producer, the commissioner may, in addition to any other available penalties, remedies, or administrative actions, order any or all of the following:

(1) An insurer to take reasonably appropriate corrective action for any consumer harmed by the insurer's, or by its insurance producer's, violation of this article.

(2) A managing general agent or an insurance producer to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of this article.

(3) Penalties and sanctions pursuant to Section 10509.9. For purposes of Section 10509.9, this article shall be deemed to be part of Article 8 (commencing with Section 10509), and the

commissioner may in a single enforcement action seek penalties for a first and a second or subsequent violation.

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