Colorado 4-hour Annuity Training

HOW ANNUITY CONTRACT PROVISIONS AFFECT CONSUMERS

The provisions described here are all common but every one is not available in every contract. **Purchasers must read the contract!** The terms and conditions should be understood by the buyer before completion of the sale. The descriptions here are examples only. Features included in a contract will be defined in the contract. Thus the “owner,” “annuitant,” and “beneficiary” will all be spelled out in the contract definitions.

Identifying and Discussing Contract Provisions

Contract loans- A loan provision may be included in an annuity contract. In general, this feature allows one to borrow up to a specified amount of the annuity’s accumulated value. Since it is a loan, interest will accumulate and it most likely will be to the owner’s advantage to repay it. Like the withdrawal privilege, a loan provision can give some liquid features to an annuity.

Return of principal guarantee - Surrender of the contract should be avoided whenever possible, but individual circumstances may leave a person with no other choice. If an annuity must be surrendered, this feature gives assurance that the company will pay no less than the total dollars that have been paid in premiums (minus any prior partial withdrawals). It applies even if the amount is greater than the cash surrender value defined by the contract.

Minimum Initial Premium- Lower premium amounts are common for qualified contracts so that the annuity can accept small annual IRA contributions. Each annuity contract will designate a minimum premium that the policyowner must pay to purchase an annuity. Normally these amounts are in the $5,000–$10,000 range for single-premium policies and $25–$50 per month for flexible-premium policies. Insurance companies may designate a different minimum amount, depending on the type of funds the client places inside the annuity. For example, a policy might show a minimum premium of $1,000 for a qualified single-premium annuity but still keep the nonqualified annuity minimum premium at $5,000.

Issue Age Each annuity contract will have a provision for the minimum and maximum age of the owner or the annuitant who can purchase the contract. Generally, the insurance company is more interested in the age of the annuitant for purposes of mortality. But the issue age of the owner is also important because of legal issues related to minors who purchase the contract. Normally, an insurance company does not want a minor to own one of its policies because of the minor’s legal right, upon reaching the age of 18, to rescind a purchase made while he or she was a minor. Usually, annuity contracts allow annuitants between the ages of 18 and 85. Some companies may stop issuing annuities at age 70 or 75; other companies will issue annuities up to age 90. In addition, the insurance company may limit the issue age based on the type of funds in the annuity. Qualified annuity contracts, those funded with pre-tax dollars, typically carry a maximum issue age of 70, while nonqualified annuities will be issued to age 85 or 90. The reason for the qualified funds’ limitation is based on the minimum distribution requirements for qualified annuity contracts. The tax code stipulates that qualified plans must distribute a certain percentage of the account after the owner reaches age 70 1/2.

Options Involving the Spouse- The spouse as the beneficiary of an annuity contract may choose not to accept the death benefit and instead may choose to continue the annuity contract with the insurance company. The insurance company will change the owner from the deceased person's name to that of the spouse.

Settlement Options- Deferred annuity contracts also include provisions for taking the money out of the contract at some future contract-owner-determined date- called annuitization- or at some other agreed-upon date. These optional modes of settlement may be taking a lump-sum withdrawal, leaving the proceeds in the contract at interest, choosing fixed-period or fixed-amount payments, or selecting the various life contingent or joint-life-contingent options. Little attention is given to these contractual provisions in periods of high interest rates. As interest rates fall and longevity has increased, the guaranteed lifetime annuitization factors and interest rate guarantees of 3% have real value in comparison to the guarantees in new annuity contracts. The minimum payout rates for settlement options are listed in the annuity policy. In a normal economy, these rates are much lower than what the annuity company can afford to pay. Therefore, it is important for the owner to look at the guaranteed settlement option rates in the policy and compare those rates to the current offerings from the insurance company to be sure to obtain the best rates available. Surrender of the contract should be avoided whenever possible, but circumstances may leave the policyholder with no choice. If someone must surrender his or her annuity, this feature gives assurance that the company will pay no less than the total dollars that have been paid in premiums — minus any prior partial withdrawals already taken. It applies even if the amount is greater than the cash surrender value defined by the contract.

Death Benefits- If the entire annuity value is not consumed during retirement, when the annuitant dies, the annuity will still be in force. Annuities contracts have provide for a beneficiary or some other party to legally receive the values at the annuitant's death. The death benefit can be classified in one of two ways depending on how the death benefit is payable in the policy: Policies are either annuitant driven or owner driven.

Interest Rates and Compensation

A real interest rate is the compensation, over and above inflation, that a lender demands to lend his money. Earning $100 today is preferable to earning $100 a year from now. If a person earns $100 today, it can be spent or invested now. The use of $100 earned a year from now must be deferred until that time. This is an example of the time value of money, a fundamental principle of budgeting and investing. The economy determines a general time value of money through the level of interest rates.

First Year Bonus 'Teaser' Rates

This is additional interest granted to new purchasers of annuities that is paid on top of the normal stated current interest rate. These amounts are usually based on the total dollars contained in the contract during its first year. These annuities are often used to attract money from existing annuity contracts, which still may be subject to a surrender charge, by paying extra interest in the first year. This extra interest (the bonus) is designed to offset some of the loss caused by the termination of the old policy. A Bonus rates is an incentive to get people to purchase an annuity. Big bonus incentives mean bigger constraints on when that bonus will be applied or earned. Any forfeiture and possibly even a withdrawal prior to the end of the surrender charge period could void the bonus. Interest rate bonuses often encourage replacement of annuities. The policyowner is lured by the high interest rate and a bonus above the normal current interest rate; the annuity owner may feel that the bonus will help to offset any surrender penalties. Bonus annuities can bear much higher surrender charges than those annuities found without the feature.

Maximum Ages for Benefits to Begin

Non-Qualified Annuities- Annuities are based on life expectancy. Being non-qualified, the tax code specifies no maximum age limitation for contributions or withdrawals. It is at the issuer's discretion as to age at which payments must begin. Once annuitization occurs, payments must be spread evenly over the life expectancy of the annuitant.

Qualified Plans- To make sure that most of the retirement benefits are paid to the plan participant during his or her lifetime, rather than to subsequent beneficiaries after an individual's death, the payments that are received from qualified retirement plans must begin no later than the plan participant's ***required beginning date*** (defined later). The payments each year cannot be less than the ***minimum required distribution***.

If the actual distributions to an individual in any year are less than the minimum required distribution for that year, he or she is subject to an additional tax. The tax equals 50% of the part of the required minimum distribution that was not distributed. A qualified retirement plan includes a qualified employee annuity plan and a tax-sheltered annuity plan (403(b) plan) (for benefits accruing after 1986).

Required beginning date. Unless the rule for 5% owners and IRAs applies, the plan participant must begin to receive distributions from the qualified retirement plan by April 1 of the year that follows the ***later*** of:

- The calendar year in which the subject individual reaches age 70½, or
- The calendar year in which the person retires.

5% owners*.* If a person is a 5% owner of the employer maintaining the qualified retirement plan, the plan participant must begin to receive distributions from the plan by April 1 of the year that follows the calendar year in which he or she reaches age 70½. This rule does not apply if the retirement plan is a government or church plan.

A person is a 5% owner if, for the plan year ending in the calendar year in which he or she reaches age 70½, the person in question owns (or is considered to own under section 318 of the Internal Revenue Code) more than 5% of the outstanding stock (or more than 5% of the total voting power of all stock) of the employer, or more than 5% of the capital or profits interest in the employer.

Age 70½ . A person reaches age 70½ on the date that is 6 calendar months after the date of their 70th birthday. For example, if your 70th birthday was on June 30, 2018, you reached age 70½ on December 31, 2018. If your 70th birthday was on July 1, 2018, you reached age 70½ on January 1, 2019.

Required distributions. By the required beginning date, as explained above, the plan participant must either:

1) Receive his or her entire interest in the plan (for a tax-sheltered annuity, the entire benefit accruing after 1986), or
2) Begin receiving periodic distributions in annual amounts calculated to distribute the entire interest (for a tax-sheltered annuity, the individual's entire benefit accruing after 1986) over a person's life or life expectancy or over the joint lives or joint life expectancies of the plan participant and his or her designated beneficiary (or over a shorter period).

Settlement Options- Death of Owner or Annuitant

A settlement option offering payments after the death of the owner or annuitant offers a hedge against the loss of value of the annuity in the event of an early death. Various types of settlement options include;

Life with period certain guarantee- Payment is made for the longer of the annuitant's lifetime or a certain period of years. If the annuitant dies, payments continue to the beneficiary.

Refund Life Annuity- At the annuitant's death, if the accumulation amount applied to the annuitization of the contract is more than the total of payments made to the annuitant, the difference is paid to the beneficiary in a lump sum.

Joint and Survivor Life Annuity- This annuity pays out over the lifetime of two individuals. They must be natural persons. This type of annuity can be modified to allow a primary beneficiary to receive the full annuity payment while the secondary beneficiary would receive some fractional (half, two-thirds) payment.

Fixed Amount Annuity- The annuitant or beneficiary receives the annuity amount for a guaranteed certain number of periods. If the annuitant dies before the payments are exhausted, the beneficiary would continue to receive the balance of payments.

Tax-Qualified Plan

With a tax-qualified plan, owner and annuitant are the same person. Any annuity payment that continues on with a beneficiary will be taxable. A death benefit may be purchased as a life insurance feature. The benefit was purchased with the policy and no tax is due. Otherwise payments to a beneficiary are payments of the tax-deferred accumulated value of the annuity and as such, tax is due.

Non-Qualified Plan

If an individual receives a single-sum distribution from a variable annuity contract because of the death of the owner or annuitant, the distribution is generally taxable only to the extent that it is more than the unrecovered cost of the contract. If that person chooses to receive an annuity, he or she recovers the cost tax-free.

Surrender Charges

Annuity contracts carry a surrender charge. A typical contract could have a surrender charge in effect over the first 10 years, but decreasing in amount each year. The contract will explain how the surrender charge applies. An annuity is a long-term investment. The surrender charge discourages the annuity owner from using the funds as a piggy bank. It also allows the insurer to cover the expense of selling and issuing the contract. The charge is usually a percentage of either the fund’s accumulated value or the total premiums paid. Surrender charges are generally waived under certain circumstances, such as death or disability of the annuitant.

Annuity contracts for senior citizens that contain a surrender charge period need to disclose the surrender period and all associated penalties in 10-point print on a notice accompanying the policy.

Values

Insurers issuing flexible premium variable life contracts are required to provide to all prospective purchasers an illustration of cash surrender values prior to or at the time of delivery of the contract. Any illustration of cash surrender values delivered to an applicant or prospective applicant pursuant to this section must:

- include a hypothetical gross investment return of 0.0%, and when other hypothetical gross investment returns are included, the current gross investment return must, to the extent permitted by federal law, be included;
- give equal prominence to both guaranteed and nonguaranteed aspects of the contract if guarantees are included in the contract;
- prominently display, by way of written statement, the hypothetical nature of the illustration as it relates to investment returns;
- prominently state that a contract may terminate due to insufficient premiums and/or poor investment performance; and
- prominently show, by way of written statement, that excessive loans or withdrawals may cause the contract to lapse due to insufficient cash surrender value and, at the option of the insurer, prominently display the effects of loans or withdrawals on contract values.

Market Value Adjustment

Market value adjustments are features added to some deferred annuities to discourage surrenders prior to their contractual maturity date. If, during the contract period and before the maturity date, money in excess of any free-corridor amount is withdrawn, it is subject to a market value adjustment. The market value adjustment is an increase or decrease in the annuity’s value, depending on the level of the general economy’s interest rates relative to the interest rates of the contract from which the withdrawal is taken. Annuities with market value adjustment features often offer a slightly higher interest rate than a comparable fixed annuity without such features. The market value adjustment works in the annuity contract in a manner similar to the way individual bond prices fluctuate. For example, if a contract owner has an annuity with a contractual interest rate of 8 percent with 5 years left prior to its maturity date, and similar contracts are being issued with 4 percent interest rates, the contract owner can expect some gain upon early surrender. This is because the surrender will relieve the insurance company from its 8 percent obligation in a market where interest rates have decreased to 4 percent. On the other hand, if the opposite occurred and the old contractual obligation was for 4 percent in a current interest rate market of 8 percent, the contract owner can expect a negative MVA and therefore will receive a smaller

Policy Administration Charges and Fees

Every insurer that sells annuities charges fees which are connected to the contract. These fees cover the company's costs of administering the annuity. Annuities may charge a nominal annual contract maintenance fee such as one percent of the cash value not to exceed $20–$50. These fees are usually deducted from the annuity cash values, and they will often expire when the contract accrues a certain amount of cash value such as $5,000 or $10,000. This contract provision less has become less common in newly issued annuity contracts.

Withdrawal Privilege Options

In the event the policyowner needs to access funds prior to maturity, the owner has the option of requesting a withdrawal, also called a partial surrender. Withdrawal provisions in deferred annuity contracts allow the policyowner limited withdrawal of funds prior to maturity of the contract. The surrender or withdrawal, if made during the surrender charge period, is normally subject to a surrender charge. If the withdrawal is requested after the policy is beyond its surrender charge period, the policyowner should be able to access the withdrawal without any charges imposed by the insurance company. Withdrawals are not expected to be repaid to the annuity contract. With flexible-premium policies, the withdrawal can later be paid into the annuity policy as new premiums. Annuity policies do not generally have loan provisions available to the policyowner due to tax consequences.

Free-Corridor Amount- To accommodate a contract owner's unforeseen need for money, practically all companies provide a free withdrawal corridor. A free corridor is some maximum amount of money that a contract owner can withdraw from the contract each year without incurring a surrender charge. If a contract owner elects to make an early withdrawal of just part of the funds in an annuity contract before the end of the surrender charge period, there is likely to be a free-corridor amount that he or she can withdraw without any charge. Normally, this amount is about 10 percent of the last year's accumulation value or 10 percent of the initial premium paid. However, some contracts do not allow any withdrawals without charge; the most generous allow withdrawals of up to 15 percent per contract year without charge. Amounts in excess of the free corridor amount are subject to proportional surrender charges. A prospective purchaser should carefully examine surrender charges and free-corridor provisions.

Annuitization Options

The annuitization phase starts with the first scheduled payment to the annuitant. The simplest form of annuity is the life annuity, where the annuitant receives scheduled payments for the remainder of his or her lifetime. The types of annuities settlement options are mentioned in IV A 6 above. Annuities can be immediate or deferred, variable or fixed. The opposite of any sort of annuitization would be some method of systematic withdrawal. The advantage of annuitization is its hedge against longevity.

Systematic withdrawal has the advantage of immediate access to principal and the availability of better interest rates for the principal.

Contract Provisions Typically Common to Fixed Annuities

Insurance companies develop and sell annuity contracts. The contract between the insurer and the client describes what happens during the accumulation and distribution phases of the contract. It sets forth the rights and obligations of the contracting parties. Generally speaking, the client agrees to be a purchaser and to place money into an annuity contract in order to have the rights offered under the contract. The insurance company agrees to the obligations because it has the capacity to meet those obligations and is in the business of doing so as a for-profit enterprise. Although insurance companies are regulated by the individual states and contract forms have to be acceptable to each state, in the interest of efficiency, there is a great deal of standardization in all annuity contracts.

Death Benefits

All deferred annuity contracts provide for a death benefit prior to the annuity starting date. Death payments after the annuity starting date would be a form of settlement option. Tax code changes in 1985 provide that a death benefit is payable if any owner of the annuity dies before the maturity date. See information further on in this section (a. & b. “Rights and Obligations….”) for further discussion. Some annuities provide that a death benefit is payable only if the owner dies, so long as the contract provides for a new annuitant to take the place of the deceased annuitant. The amount of the death benefit payable under a deferred fixed annuity will normally be the accumulated value of the contract, possibly reduced by any applicable surrender charge. Variable annuities also provide a death benefit, based on total premiums paid or the annuity’s account value.

Federal tax law calls for the distribution within five years of a contract’s entire cash value if the ‘holder’ (owner) dies before the maturity date. The entire death benefit must be distributed within five years of the date of the owner’s death. However, there is an exception to the five-year rule, if the death benefit is paid as an annuity over the life, or a period not longer than the life expectancy, of the beneficiary and the payments start within one year of the owner’s date of death. If an annuity contract has joint owners, the distributions at death rules are applied upon the first death. Under a special exception to the distribution at death rules, if the beneficiary is the surviving spouse of the owner, the annuity contract may be continued with the surviving spouse as the owner. If the owner of the annuity is a non-natural owner, then the annuitant’s death triggers the distribution at death rules. In addition, the distribution at death rules is also triggered by a change in the annuitant on an annuity contract owned by a non-natural person.

Rights and Obligations of the Annuity Owner

The person who purchases the annuity is the owner. The Owner may be more than one individual, or an annuity can be held by a person that is not a natural person, such as a corporation or a trust (special rules apply for “nonnatural” Owners). The Owner may also be the Annuitant or the Beneficiary. There is no limit to the number of Owners on any one contract.

i. Entities Eligible for Annuity Ownership

The owner of an annuity is the party who pays the premiums for the contract. The owner of a nonqualified annuity is the person with total control of the contract prior to the annuitant's death. In most instances, the owner will be one person, the person whose money buys the contract. Other forms of ownership may be desirable in limited circumstances.

Joint ownership and taxes-Joint ownership was more common in the past than today. Previously, a parent, age 50, might buy a deferred annuity with a child, age 25, as the joint owner and annuitant. The parent set the maturity date at the annuitant's 85th birthday. The child owned the contract after the parent's death and income tax deferral of up to 60 years was possible.

The Tax Reform Act of 1986 amended Internal Revenue Code (IRC) Section 72(s)(1) to require annuity contracts be distributed within five years. The law effectively disallows long periods of tax deferral through joint ownership arrangements.

A joint annuity is a joint tenancy with right of survivorship. Joint ownership may cause adverse gift and estate tax consequences. If a party purchases a joint annuity and contributes the entire premium, there is a taxable gift of one-half of the premium to the other owner. At the first owner's death, the contract's entire value will be included in the gross estate unless it is proved the survivor contributed to the contract. A special rule applies to married couples; one-half of the value is included in the estate of the first owner to die regardless of actual contribution.

Contingent ownership- The selection of a contingent owner is important if the owner is not the annuitant. The death of an annuitant causes the immediate maturity of the contract. The annuity ceases to exist; all that is left is the death proceeds payable to the beneficiary. Conversely, when the owner dies but the annuitant still lives, the contract continues, but with a new owner. If an owner dies before the annuity starting date, IRC Section 72(s) requires the contract be distributed within five years. This five-year distribution rule does not apply if the spouse is the new owner.

ii. Rights of Annuity Owner in Owner-Driven Contract

By "driven" it is meant that certain actions occur upon death that are beyond the control of named parties to the contract. Before proceeding further it is important to understand three concepts that directly affect annuity contract structuring surrounding the event of death:

- **The Death of the Holder Rule** states that upon the death of a holder, death benefits of the annuity must and will be paid out. The "holder" is synonymous with the taxpayer/owner in any contract.
- **In the case of a non-natural trust-owner,** the annuitant is considered the owner, but only for death distributions. The IRS enacted these contract provisions after January 18, 1985 to prevent generational tax skipping. After April 22, 1987, the provision became applicable to "any holder."
- **The Spousal continuation Rule [IRC 72(s)]** states that the deceased owner's surviving spouse can become the contract owner. The surviving spouse can then

continue the contract throughout his or her lifetime and is not forced to take a distribution. If anyone else is named as a primary beneficiary along with the spouse, the option of the surviving spouse becoming the contract owner can be lost.

In cases where a child and spouse are named as primary beneficiaries, some companies will allow spousal continuation but only on the spouse's remaining portion of the contract. The IRC states only that the beneficiary be a spouse; however, some contracts specify that the spousal election letter will only be sent out if the surviving spouse is the "sole" beneficiary, which is a narrower interpretation of IRC. Death benefits can come in two forms:

1. The assets that have accumulated in the annuity investment itself, or,
2. Enhanced death benefits provide the potential of greater payouts based on certain contract guarantees. The enhanced death benefits feature offers another advantage over many other types of investments.

Owner-Driven- All annuity contracts are currently "owner-driven" in the sense that, under current law, the death of an owner requires a payout of an annuity, regardless of whether an annuitant is alive. Likewise, the death of an annuitant in most contracts currently issued (annuitant-driven) also requires a payout, per the terms of the annuity. It is the Internal Revenue Code that requires the payout at the death of the owner. The payout at the death of an annuitant is per the terms of the contract; it is the company's determination of whether there will be a payout at the death of the annuitant. Under an owner-driven contract, only the death of the owner triggers the guaranteed death benefit. Here is an example:
Owner-Driven Contract
Owner: Husband
Annuitant: Wife
Beneficiary: Children
Original Deposit/Guaranteed Death Benefit: $750,000
Current Value: $400,000

Now, if the wife dies, the husband is generally able to name another annuitant without a payout or any other consequences. He simply names another annuitant. There is no step up in the value of the contract though, because it is owner-driven, and the owner did not die.

On the other hand, if the husband dies, then the contract must pay out, even though the wife/annuitant is still alive. Furthermore, since it is an owner-driven contract, the guaranteed death benefit applies. In this case, the children will have a death benefit of $750,000 for which to select a distribution option.

iii. Rights of Annuity Owner in Annuitant-Driven Contract

An annuitant-driven contract means the contract requires a payout at the death of the annuitant. It is worth noting that there is another substantive point on how annuitant-driven contracts work. It determines when the guaranteed death benefits are applicable**.** In an annuitant-driven contract, generally only the death of the annuitant will trigger the guaranteed death benefit (as opposed to the standard death benefit, the current value). As mentioned above, under an owner-driven contract, only the death of the owner triggers the guaranteed death benefit. Here is an annuitant-driven example:

Annuitant-Driven Contract
Owner: Husband
Annuitant: Wife
Beneficiary: Children
Original Deposit/Guaranteed Death Benefit: $750,000
Current Value: $400,000

If the husband dies, the contract must pay out, per the IRC. However, because the contract is annuitant-driven (and the annuitant/wife is still alive), the standard death benefit of the current value is paid out. Therefore, the children will receive the current value of $400,000 (despite the fact that the annuitant/wife is still alive) for which they must select a distribution.

If the wife dies, then the contract must pay out. Furthermore, because the contract is annuitant-driven, and the wife/annuitant has died, the guaranteed death benefit of $750,000 is payable. However, the death benefit is paid to the children, as primary beneficiaries. Since the husband is still alive, but the children have received the proceeds, this may be deemed a taxable gift from the husband to the children of $750,000 at the death of the wife.

Rights and Obligations of the Annuitant

The annuitant is often characterized as the 'measuring life' under an annuity because the duration of the annuity payments made by the issuer (or the payment of a death benefit before annuity payments begin) may depend on how long the annuitant lives. His or her life measures the benefits under the contract.

i. Entities Eligible for Role as Annuitant

The annuitant is the person who receives annuity benefits at the contract maturity date. The annuitant is always an individual; it cannot be an unnatural person. The annuitant typically has no rights under an annuity contract. Upon the annuitant's death, the contract matures automatically and the cash value is paid to the designated beneficiary. The annuitant can be the same person as the owner. Naming an annuitant other than the owner exposes the owner to two risks: first, the annuitant may predecease the owner, which causes contract maturity and distribution of cash value to the named beneficiary; second, the annuity benefits will be paid to the annuitant, not the owner, on the annuity starting date. Few companies accept joint annuitants. In any event, there is no reason to use this designation. Naming an annuitant other than the owner is justified only if the proposed owner is older than the maximum age permitted by the insurance company, age 75 years, for example. If the proposed wants to own an annuity, he or she must name some younger annuitant, such as a child.

ii. Role of Annuitant in Owner-Driven Contracts

In an Owner Driven contract, owners have all legal rights, and can change the designated annuitant as needed without any negative tax or penalties, as the contract specifies. Owner Driven contracts pay out only upon the death of the owner.

iii. Role of Annuitant in Annuitant-Driven Contracts

In an Annuitant-Driven contract, owners can usually be changed. It is contract specific as to whether an annuitant can be changed once the contract is issued. Also, the contract will pay out upon the death of either the owner or the annuitant. In either form of contract, Owner-Driven or Annuitant-Driven, changes to beneficiaries (primary or contingent) may always be made. A key to death benefit payouts is to know on whose life the enhanced benefits are actually based. The owner or the annuitant can trigger enhancement of death benefits.

- Owner-Driven contract, death benefits are based on the death of the owner.
- Annuity-Driven contract, death benefits are based upon the death of the annuitant.
  - On the owner's death, distributions will occur as "distributions of annuity assets."
  - On the death of the annuitant the distributions will come out in the form of "death benefits" (enhanced or not).

The different handling can bring about adverse income tax, gift tax, and premature distribution penalties to various named parties to the annuity contract.

Charges and Fees

Annuity contracts will designate a minimum premium that the policyowner must pay to purchase an annuity. Normally these amounts are in the $5,000–$10,000 range for single-premium policies and $25–$50 per month for flexible-premium policies. Insurance companies may designate a different minimum amount, depending on the type of funds the client places in the annuity. For example, a policy might show a minimum premium of $1,000 for a qualified single-premium annuity but still keep the nonqualified annuity minimum premium at $5,000. Lower premium amounts are common for qualified contracts so that the annuity can accept small annual IRA contributions. Deferred annuities may charge a nominal annual contract maintenance fee such as one percent of the cash value not to exceed $20–$50. These fees are usually deducted from the annuity cash values, and they will often expire when the contract accrues a certain amount of cash value such as $5,000 or $10,000. Recent competition among annuity products, however, has made this contract provision less common in newly issued annuity contracts.

Interest Rates Strategies

The amount of interest the annuity product earns is of primary importance to the owner of the policy. In addition, because the initial interest rate is guaranteed for some period of time in the terms of the contract, the length of the guarantee period is critical. A potential annuity purchaser needs to know how the insurance carrier has typically treated its policyholders in terms of renewal interest rates. These are the interest rates declared once the initial guaranteed interest rate period has expired.

Two questions a person should ask when considering the purchase of an annuity are;

- What is the current interest rate being paid?
- For what length of time is that interest rate guaranteed? Will it be one year, two years, five years, or longer?

The length of time the annuity will pay the initial interest rate is important. Purchasers need to know how long they can count on the insurance company paying the higher initial interest rate. Often, the interest rate guarantee period is tied to the length of the annuity's surrender charge period. Fixed-interest deferred annuity contracts will also provide a minimum interest rate, and the insurance company guarantees that it will never credit an interest rate less than this percentage to the annuity. This rate has typically been 3 %. Interest rates in the economy fell towards 1% in the first half-decade of the 21st Century. Although a boon for contract holders, the 3% guaranteed rates caused insurers to see more money go out the window than was coming in the front door. The result has been a movement to tie minimum interest rates to economy-wide rates, not set them in stone.

Bonus Interest Rates- These are extra amounts of interest granted to new purchasers that are paid in addition to the normal stated current interest rate. Based on the total dollars contained in the contract during its first year, these rates are designed to attract money from existing annuity contracts. The agent and the potential purchaser should be well informed regarding any bonus interest rates. Bonus rates are enticements. Bigger enticements usually mean bigger constraints down the road when that bonus will be applied or earned. Forfeiture or withdrawal prior to the end of the surrender charge period could void the bonus

Crediting Methods

Companies use several methods to establish the current interest rate to be credited to their accumulation accounts.

Portfolio Rates

The portfolio average method credits all policyholders with a composite rate of interest that reflects the company's earnings on its entire portfolio of investments during the year in question. During periods of rising interest rates, the interest credited to the "new" contributions received during the year will be heavily influenced by the interest earned on investments attributable to "old" contributions; those received and invested 5, 10, 15 or more years earlier. The interest credited will therefore be stabilized. Thus, when interest rates are rising, contributions made in the year 199X earn 4%, funds placed in the accounts (old or new) in year 199Y earn 4.5%, and all funds in year 199Z earn 5%. When interest rates are falling, contributions made in the year 200X earn 4%, funds placed in the accounts (old or new) in year 200Y earn 3.5%, and all funds in year 200Z earn 3%.

New Money Rates

With new money rates (sometimes referred to as the 'banding'), the contributions made by all policyholders in any given period are banded together and credited with a rate of interest consistent with the actual yield that such funds obtained during that period. If a company's average return on all money is 4% in a given period, the contributions made by all participants during the current period may be credited with 5% if the company was able to make new investments that, on average, returned in excess of 5% interest. Additionally, the interest rate credited on those contributions should continue to earn 5% until the monies are reinvested. After reinvestment, the interest on these contributions will change and the rate credited to contributions banded in the following period could be higher or lower.

With increasing interest rates and reinvestment of assets every year, an investment in year 199x might earns 5% (the new money rate for that year) and then earn 5.25% in the second year and 5.5% in the third year. An investment in year 2 earns 10% (the new money rate for that year) and then earns 10.25% in the second year and 10.5% in the third year. Finally, an investment in year 3 earns 11%.

Minimum Guaranteed Interest Rates

The minimum guaranteed interest rate is the lowest rate the annuity will earn. This rate is stated in the contract. The Standard Nonforfeiture Law (SNFL) for annuities was developed by the NAIC in the late 1970's. The model law mandates a 3% minimum guaranteed interest rate for fixed annuities. This minimum caused solvency concerns to emerge among insurers offering annuity products as interest rates drifted lower through the beginning of the 21st Century. Some annuity contracts apply different interest rates to each premium paid by the annuitant on premiums paid during different time periods. Other annuity contracts may have two or more accumulated values that fund different benefit options. These accumulated values may use different interest rates. The purchaser gets only one of the accumulated values depending on which benefit is chosen.

Contract Provisions Common to Variable Annuities

As the name implies, with a variable annuity the annuity holder receives varying rates of return on the funds placed in the annuity. The return is dependent on the risk taken by the annuity holder and the economic performance of the various components of the annuity portfolio.

Variable Options

There are several contract provisions common to variable annuities. Not all annuities will contain all provisions. It is important that the purchaser understands the several options available and makes an informed decision about which features he or she wants.

Equity-Based

Equity-based guarantees refer to applying equity indexes as an option in the valuation of the accounts. Some form of guarantee as to the minimum value is made by the insurer regarding the value of the portfolio held by the annuitant in the variable accounts. Such products are relatively new. The insurance industry has had limited experience in setting and implementing reserves for products containing equity-based guarantees. Furthermore, limited data on policyholder behavior makes it difficult for actuaries to develop methodologies for price and evaluate these products."

Risk-Based

This feature refers to interest rate risk. An interest rate guarantee based on bond or interest rate indexing is designed to guarantee the minimum value of the variable accounts in the variable annuity. Inflation, which is uncertain when the annuity is purchased, can reduce the real value of the annuity payout. The absence of markets for purchasing power-adjusted annuities has been pointed out as one of the important rationales for government-provided retirement income programs[1]. The introduction of Treasury securities which guarantee returns after inflation may lead to changes in this situation, and in particular, may facilitate the introduction of purchasing-power-adjusted annuities by some insurance companies.

Charges and Fees

The charges and fees under a variable annuity are different from those found in fixed annuities. This comes from the fact that variable annuities are subject to a greater degree of regulation because variable annuities are considered to be securities. The prospective purchaser of a variable annuity must be given a prospectus. Also, agents who sell these products must maintain a Securities and Exchange Commission license to sell securities, in addition to the state-issued license. Fees commonly charged to holders of variable annuities include;

Companies can charge a fee for each variable investment account to cover the extra management expenses associated with the particular account.

A mortality expense, generally 1%, is deducted proportionately from each of the variable accounts as well.

There can be a fee for switching between accounts or funds offered by the variable annuity. Annuity holders can transfer funds from the guaranteed account to (or between) variable accounts. A certain minimum number of such transfers might be gratis, after which fees apply. The issuer can also regulate timing or frequency of jumps between accounts.

Annualized Interest Rates and Fixed Account Bonuses- Bonus interest rates are extra amounts of interest granted to new purchasers of fixed-interest deferred annuities that are paid in addition to the normal stated current interest rate. These amounts are usually based on the total dollars contained in the contract during its first year. Bonus plan annuities are designed to attract money from existing annuity contracts, which still may be subject to a surrender charge, by paying extra interest in the first year. This extra interest (the bonus) is designed to offset some of the loss caused by the termination of the old policy. Potential purchasers must understand that these bonuses have an indirect cost behind them. Thus, the agent must be sure to tell prospects of any circumstance in which the bonus will not be paid, such as early termination or surrender. Interest rate bonuses often encourage replacement of annuities. The policyowner is lured by the high interest rate and a bonus above the normal current interest rate; the annuity owner may feel that the bonus will help to offset any surrender penalties he or she may incur. Bonus annuities will bear much higher surrender charges than a nonbonus product, putting the policyowner at a still greater disadvantage.

Death Benefit Guarantees

For variable annuities, the death benefit is to be at least equal to the cash surrender benefit. The cash surrender benefits are not to be less than the present value of that

[1] “A Framework for Social Security Analysis,” Peter Diamond *Journal of Public Economics*, vol. 8, no. 3 (1977), pp. 275-298.

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 prior withdrawals or partial surrenders of the contract. The present value is calculated on the basis of an interest rate not more than 1 percent higher than the interest rate specified in the contract for accumulating the net considerations to determine the maturity value, decreased by indebtedness including interest, and increased by any existing additional amounts credited by the company to the contract. Cash surrender benefit cannot be less than the minimum nonforfeiture amount.

Living Benefit Guarantees

Insurance companies offer living benefits that give principal protection throughout the entire term of a variable annuity contract. The living benefits come in several forms:

- The guaranteed minimum income benefit, which guarantees a minimum level of income at annuitization
- The guaranteed minimum accumulation benefit, which guarantees a minimum account value at some point in the future
- The guaranteed minimum withdrawal benefit, which guarantees a minimum stream of income, equal to return of the variable annuity owner’s principal, if withdrawn within specified limits over time.

Loan Provisions

A loan provision may be included in an annuity contract. In general, this feature allows one to borrow up to a specified amount of the annuity’s accumulated value.

Amount not received as an annuity- If a loan is received under an annuity contract, the amount received is treated as an amount not received as an annuity and included in current income. This is true whether the amount is received directly under the contract from the insurer or indirectly from another source. Any assignment or pledge of an annuity contract used to obtain a loan from a third party is considered to be an amount not received as an annuity.

Loans Treated as Distributions- If a person borrows money from his or her retirement plan, the loan must be treated as a nonperiodic distribution from the plan unless it qualifies for the exception explained below. Further, it applies if a person renegotiates, extends, renews, or revises a loan that qualified for the exception below if the altered loan does not qualify. The taxable part may be subject to the additional tax on early distributions. It is not an eligible rollover distribution and does not qualify for the 10-year tax option.

Exception for qualified plan, 403(b) plan, and government plan loans. At least part of certain loans under a qualified employee plan, qualified employee annuity, tax-sheltered annuity (TSA) plan, or government plan is not treated as a distribution from the plan. This exception applies only to a loan that either:

• Is used to buy an individual’s main home, or
• Must be repaid within 5 years.

To qualify for this exception, the loan must require substantially level payments at least quarterly over the life of the loan. If a loan qualifies for this exception, it must be treated as a nonperiodic distribution only to the extent that the loan, when added to the outstanding balances of all the participant's loans from all plans of the employer (and certain related employers) exceeds the lesser of:

1) $50,000, or

Half the present value (but not less than $10,000) of the nonforfeitable accrued benefit under the plan, determined without regard to any accumulated deductible employee contributions.

THE SENIOR MARKET

How are senior citizens doing financially? In answering this question, it is a mistake to assume that all senior citizens are wealthy; it is equally wrong to assume that all seniors are poor. Seniors are an economically diverse group, and the incomes received are far from uniform.

In 2014, 11.4% of seniors 65 and older had incomes under $10,000. At the other end of the spectrum, 31.5% of seniors had incomes of $50,000 or more. The median income for all seniors in 2014 was $30,193. This amount is relatively low and may be insufficient for those with substantial additional expenses, such as high or uninsured medical bills, the cost of long-term care in a nursing home, or high property taxes. In addition many seniors live in poverty. In 2014, 10% of senior citizens had incomes below the poverty line. (SSA *Income for the Population 55 and Over, 2014)*

Risk and the Senior Client

Risk is traditionally defined in terms of uncertainty, the uncertainty concerning the occurrence of a loss. The major risk associated with old age is insufficient income during retirement. When workers retire, they lose their normal work earnings. Unless they have accumulated sufficient financial assets on which to draw, or have access to other sources of retirement income, such as Social Security or a private pension, they will be confronted with a serious problem of economic insecurity. Retired persons generally own insufficient financial assets. Financial assets are important since investment income can supplement any retirement income, and the assets provide a cushion for emergencies.

The median net worth in 2013 for households age 65 or older was $202,950 (U.S. Census Bureau Data). Additionally, assets excluding equity in own home for this group is $57,800. Thus, many retired individuals do not receive substantial amounts of investment income from financial assets that would materially enhance their financial security during retirement.

Pre-retirement vs. Post-retirement Planning

The pre-retirement stage of life can cover the years from age 50 to age 65. During this time of life, families become "empty nesters," and their children have moved into adulthood. Beside the feelings wrought by such a change, the reality is that the years have passed quickly and that retirement is on the horizon. For far too working adults, their first serious efforts at financial planning for retirement begin during these years. No matter what the age, there is great truth in the principle that it is "never too early to begin planning your retirement finances." When an individual faces the idea of planning, the following questions should be asked about pre-retirement financial planning.

How Much Money Will be Needed in Retirement? – People need to plan on living on less money in retirement. But the good news is that many expenses may be reduced.

For instance, a person may need to maintain only one car and may have a reduced need for business attire and entertainment obligations. Housing requirements can normally be reduced as well. In these ways, as well as many others, expenses can be reduced significantly. A goal can be set of initially having a minimum of 70 to 75 percent of pre-retirement income coming in at retirement. Adjustments should be made gradually rather than suddenly. Begin living on less 3 to 5 years prior to retirement. Finding corners that can be cut, without reducing the quality of life, can be a challenging, but very rewarding, adventure in pre-retirement planning.

Projecting Retirement Income- Generally, retirement income will consist of Social Security benefits; pension and/or retirement savings plan benefits, interest and dividend income from personal savings, and post-retirement earnings. Institutions that sell or sponsor retirement savings vehicles can help estimate projected benefits from retirement plans. The Social Security Administration provides a Social Security Statement that can assist in estimating future Social Security benefits. It is important to check Social Security income records for accuracy on a regular basis. Errors cannot be corrected after a certain amount of time.

Local Social Security office can assist in estimating future Social Security benefits. The accuracy of Social Security income records should be checked every 3 years. By calling the Social Security Administration number (1-800-772-1213), individuals may request a form to check their records at no charge.

Inflation is a significant problem for anyone on fixed incomes, because purchasing power diminishes as prices rise. Social Security has a built-in cost-of-living factor, its future may be in doubt in light of federal deficits and future Social Security tax increases to support the system. Inflation affects other fixed income sources as well. Long-term inflationary trends are very difficult to project, but cannot be ignored. The best approach is to put aside as much money as possible before retirement. It is also important that the earnings or returns on invested assets be greater than inflation. Otherwise, the real value of the investment declines.

Post-retirement planning has a commonality with pre-retirement planning; husband your money. This is important because the individual has stopped working; there is no stream of income to supplement savings. Many individuals will face a financial emergency in the retirement years. As preparation, attempts should be made to have a sum set aside in an interest-bearing account. A commitment should be made that these emergency funds are only for a *real* emergency. Small consumer loans and credit cards may be convenient sources of emergency funds, but they carry a very high cost. An adequate emergency fund can eliminate the additional expense of interest. The fund is used only as "a last resort" and every effort should be made to replenish it after it has been accessed.

Selling to the Senior Market

The potential of the senior market is huge and growing rapidly. If we include adults age 55 and over, the senior market is projected to exceed 91,000,000 by the year 2030, based on U.S. Census data. This has significant bearing on both for-profit and non-profit marketing efforts. Seniors and pre-retirees who plan now by building the best asset management strategy will reap the greatest benefit from those who market financial products to seniors. Senior-focused selling, active networking and focusing on senior needs, will provide for growth in this market. An understanding the dynamics of this market will benefit the insurance industry. It will also be of assistance to seniors, who will have more information and product choice at their disposal.

Gray hair is appearing at an ever-increasing clip in the workplace. Senior Americans comprise 11.9 percent of the workforce in 1996, increasing to 16.8 percent in 2006 and 22.4 percent in 2016 according to the Bureau of Labor Statistics. Workers aged 55 and over are projected to comprise 24.8 percent of the labor force in 2026. The senior market is as deep as it is wide. One of its more interesting characteristics is its diversity. In 1996, the baby boomer generation of approximately 78 million began turning 50 at the rate of 300,000 per month. In an unprecedented paradigm shift, both parents and their children are now members of the senior population, with ages ranging from 50 to over 100 and experiences ranging from the Great Depression to Woodstock.

Application of basic sales principles to the senior market should play a key role in a thorough marketing plan with the greatest potential for success. Here are ten key points to remember in dealing with the senior market;

1. Never think that the elderly market is “old.” They do not consider themselves old.
2. Never attempt to scare them into buying. Scare tactics turn people off.
3. Always treat them as equals
4. Do not pander or be obsequious. Never talk down; they are not dumb. In fact, they are probably smarter -and richer -than you.
5. Do not hoodwink or con. Seniors are skeptical; they have seen it all before.
6. Do not paint all seniors with a broad brush; they are not all alike. There are several age cohorts above age 50 and numerous niche markets.
7. Guarantees are taken seriously. Seniors fear being taken.
8. Glitz and gaudiness have no place. Seniors are conservative about expenditures as a result of being on fixed incomes.
9. Ads should look like ads. No elaborate *fonts*. Type are recommended to be at least 12 point in an easy to follow format, not condensed or spread.
10. As with any other client, treat seniors with respect.

SALES PRACTICES FOR AGENTS

Appropriate Advertising

Definition of advertisement

An insurance advertisement is defined very broadly in as any communication directly or indirectly related to a policy and intended to result in the eventual sale or solicitation of a policy. Advertisements include but are not limited to:

Printed or published materials	Radio & TV	Prepared sales talks
Newspapers & magazines	Billboards	Websites/E-mail
Representations by agents	Leaflets	Descriptive literature
Circulars	Sales aids	Flyers
Illustrations	Form letters	Direct mail
Business cards	Videos	Faxes

General Guidelines

The following guidelines are applicable to <u>all</u> lines of coverage (CRS §10-1-108 & 109, 10-3-1110).

- Advertisements must be truthful and not misleading either in fact or in implication.
- The format and content of an advertisement must be sufficiently complete and clear to avoid deception or the capacity or tendency to mislead or deceive.
- Whether an advertisement has a capacity or tendency to mislead or deceive is determined from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence within the segment of the public to which it is directed.
- All information required to be disclosed must be set out conspicuously and in close conjunction with the statements to which the information relates or with appropriate captions of such prominence that required information is not minimized, rendered obscure, or presented in an ambiguous fashion, or intermingled with the context of the advertisement so as to be confusing or misleading.
- Words or phrases may not be used which are misleading or deceptive because their meaning is not clear, or is clear only to persons familiar with insurance terminology.
- An advertisement cannot use misleading words or symbols, or come in an envelope that would imply the material is coming from a governmental entity.
- An advertisement may not contain statements that avoid a clear and unequivocal statement that insurance or an annuity or HMO coverage or prepaid legal services coverage is the subject matter of the solicitation.
- An advertisement, other than “institutional” must explicitly and conspicuously disclose the type of product as it is classified or addressed by statute or rule.
- An advertisement that includes an application, and is advertising more than one policy, must clearly disclose the cost and benefit applicable to each separate policy.
- The benefits advertised must match the policy benefits. An advertisement must not imply broader benefits than actually exist.
- No advertisement may omit information or use words, phrases, statements, references, or illustrations, if the omission or use of such information has the capacity, tendency, or effect of misleading or deceiving purchasers or prospective purchasers as to the nature or extent of any loss covered, premium payable, or policy benefit payable.
- Benefits provided by a rider to a policy may not be advertised with greater prominence than the primary policy benefits.
- Endorsements, riders, or other benefits available at an additional cost, are to be so advertised to disclose the fact of additional cost.
- An "invitation to contract" advertisement of endorsements, riders, or other optional benefits which may be added to the policy advertised for which premiums are quoted for such policy, must disclose the additional premium for the endorsements, riders, or optional benefits. If premiums for the policy appear in the advertisement, the premiums for any riders, endorsements, or optional benefits must also separately appear.
- An advertisement may not directly or indirectly unfairly disparage competitors, their policies, services, or business methods, and may not unfairly disparage or minimize competing methods of marketing insurance.
- An advertisement may not contain statements that are untrue in fact or that are misleading by implication in respect of another insurer's assets, corporate structure, financial standing, age, or relative position of the insurer in the insurance business.

- An advertisement may not directly or indirectly make an unfair or incomplete comparison of policies, benefits, dividends, or rates, or compare non-comparable policies, e.g., whole life vs. term life, major medical vs. indemnity policy, group vs. individual.

No advertisement can employ words, letters, initials, symbols, or other devices that are so similar to those used by governmental agencies, a nonprofit or charitable institution, senior organization, or other insurer that they could have the capacity or tendency to mislead the public. Examples of misleading materials, include, but are not limited to, those which imply any of the following:

- The advertised coverages are somehow provided by or are endorsed by any governmental agencies, nonprofit or charitable institution or senior organizations.
- The advertiser is the same as, is connected with, or is endorsed by governmental agencies, nonprofit or charitable institutions or senior organizations.

Advertisements used by agents, producers, brokers, solicitors, or other persons for a policy of an insurer must have the written approval of the insurer before they may be used. These ads must contain the agent's name, business address, telephone number, and any insurance license number.

Ads used by insurers or their representatives cannot solicit a particular class by stating or implying that the occupational or other status as members of the class entitles them to reduced rates on a group or other basis when, in fact, the policy or certificate being advertised is sold on an individual basis at regular rates.

Seminars, Classes, Informational Meetings

An advertisement may include an invitation to an event or group meeting where information will be disseminated regarding insurance products, insurance products will be offered for sale, or individuals will be enrolled, educated or assisted with the selection of insurance products. Such advertising may only use the terms "seminar," "class," "informational meeting," "retirement," "estate planning," "financial planning," "living trust," or substantially equivalent terms to characterize the purpose of the gathering/event if it adds the words "and insurance sales presentation" immediately following those terms in the same type size and font as those terms.

Advertising Prohibitions

The words "savings," "investment," "deposit," "investment plan" and similar terms cannot be used to refer to the premium or to the interest to be credited to the contract in a context or under such circumstances or conditions that have the capacity or tendency to confuse or mislead the proposed purchaser as to the nature and limitations of the product or to any benefits received from it (3 CCR 702-4 Amended Reg. 4-1-2).

- An advertisement must not use the phrase "low cost" or "low cost plan" without providing a demonstration that a composite of lower production, administrative, and claim cost resulting in a low premium rate to the public.
- An advertisement may not imply that there are advantages that usually apply to group coverage, and/or uses words such as certificate or enrollment, when the policy offered is actually an individual policy. (There are some individual policies that have discounted rates for minimum levels of participation; ads for such policies may describe those discounts.) Neither may an advertisement imply that prospective policyholders would become part of a group or other relationship that does not, in fact, exist.

- An advertisement for life, accident and health, or annuities may not use the existence of the Guaranty Association (fund) as an inducement to purchase coverage.

Not Considered Advertising

The following materials are not considered to be advertising provided they are not used to urge the purchase, increase, modification, or retention of a policy of insurance (3 CCR 702-4; Amended Reg. 4-1-2):

- Materials used by an insurance company within its own organization and not for public distribution;
- Communications with policyholders;
- A general announcement sent by a group policyholder to members of the eligible group that a policy has been written or arranged; or
- Correspondence between a prospective group policyholder and an insurer in the course of negotiating a group contract.
- Agent recruitment/training materials, i.e., materials used solely for the training, recruitment, and education of an insurer's personnel, and agents. Statements in such materials that are intended to be used, or that *may* be used, in consumer sales presentations are *not* exempt. We do not assume that *all* agent training material is exempt.

Note: The company may not misrepresent products to its own agents.

Replacement of Certain Life and Annuity Policies; Requirements

Definitions in this section;

Annuity means a fixed annuity or variable annuity that is individually solicited, whether the product is classified as an individual or group annuity.

Continuing education credit or “CE credit” means one continuing education credit as defined in Colorado Insurance Regulation 1-2-4 Section (4)(C).

Continuing education provider or “CE provider” means an individual or entity that is offering continuing education courses pursuant to Colorado Insurance Regulation 1-2-4 Section (5)(C).D.

FINRA means the Financial Industry Regulatory Authority or a succeeding agency.

Insurer means a company required to be licensed under the laws of this state to provide insurance products, including annuities.

Insurance producer means a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance, including annuities.

Recommendation means advice provided by an insurance producer, or an insurer where no producer is involved, to an individual consumer that results in a purchase or exchange of an annuity in accordance with that advice.

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 to the proposing insurer if there is no producer, that by reason of the transaction, an existing policy or contract has been or 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 a reduction in benefits or in terms for which coverage would otherwise remain in force or for which benefits would be paid

- Reissued with any reduction in cash value
- Used in financed purchase.

Definition of Policy Summary

For a policy or contract other than a universal life insurance policy, "policy summary" means a written statement regarding the policy or contract that at minimum contains, to the extent applicable, the following information:

- the current death benefit;
- the annual contract premium;
- the current cash surrender value;
- the current dividend;
- the application of the current dividend; and
- the amount of any outstanding loan.

For a universal life insurance policy, "policy summary" means a written statement that contains, at minimum, the following information:

- the beginning and ending date of the current reporting period;
- the policy value at the end of the previous reporting period and at the end of the current reporting period;
- the total amounts that have been credited or debited to the policy value during the current reporting period, identifying each by type, including interest, mortality, expense, and riders;
- the current death benefit at the end of the current reporting period on each life covered by the policy;
- the net cash surrender value of the policy as of the end of the current reporting period; and
- the amount of any outstanding loans as of the end of the current reporting period.

Applicability and Exemptions

Except as otherwise specifically provided, replacement regulations do not apply to transactions involving:

- credit life insurance;
- group life insurance or group annuities for which there is no direct solicitation of individuals by an agent;
- group life insurance and annuities used to fund prepaid funeral benefits contracts

It does not apply to an application to:

- exercise a contractual change or a conversion privilege made to the insurer that issued the existing policy or contract;
- replace an existing policy or contract by the insurer that issued the existing policy or contract under a program filed with and approved by the commissioner; or
- exercise a term conversion privilege among corporate affiliates;
- life insurance proposed to replace life insurance under a binding or conditional receipt issued by the same insurer;

Nor does it apply to a policy or contract used to fund:

- employee pension benefit plans or employee welfare benefit plans covered by ERISA

- plans described by Section 401(a), 401(k), or 403(b) established or maintained by an employer government or church plan
- employer/sponsor nonqualified deferred compensation arrangements
- new coverage provided under a life insurance policy or contract if the cost is borne wholly by the insured’s employer or association
- existing nonconvertible term life insurance policy scheduled to expire in five years or less and that cannot be renewed
- immediate annuities purchased with proceeds from an existing contract
- structured settlements

The regulations apply to policies or contracts used to fund any plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pre-tax or after-tax basis. That is if the insurer has been notified that plan participants may choose from among two or more insurers and there is a direct solicitation of an individual employee by an insurance agent for the purchase of a contract or policy. Group life insurance or group annuity certificates marketed through direct response solicitation are subject to regulation. Immediate annuities purchased with proceeds from an existing policy are not exempted from these requirements.

The term "direct solicitation" does not include a group meeting held by an insurance agent solely for the purpose of educating or enrolling individuals or initiated by an individual member of the group, assisting with the selection of investment options offered by a single insurer in connection with enrolling that individual.

Financed Purchase

If a withdrawal, surrender, or borrowing involving the policy values of an existing policy is used to pay premiums on a new policy that is owned by the same policyholder and is issued by the same insurer not earlier than four months before the effective date of the new policy or 13 months after the effective date of the new policy, it is deemed prima facie evidence of the policyholder’s intent to finance the purchase of the new policy with existing policy values.

Duties of Insurers and Agents

Agents who initiate an application for a life insurance policy or annuity contract will submit to the insurer, with or as part of the application, a statement signed by both the applicant and the agent as to whether the applicant has existing policies or contracts. If the applicant states that the applicant does not have existing policies or contracts, the agent’s duties, after compliance with regulations regarding replacement are complete. If the applicant states that the applicant does have existing policies or contracts, the agent presents and reads the notice about replacements to the applicant.

Approved Notice Form

The notice required section must be given in an approved form. The notice is to be signed by both the applicant and the agent attesting that the notice has been read aloud by the agent or that the applicant did not wish the notice to be read aloud. The notice must be presented and read no later than at the time of taking the application. The agent is to leave the notice with the applicant.

If the notice is presented to the applicant by electronic means and signed electronically, in which case the insurer mails the applicant a copy of the notice not later than the third business day after the date the application is received by the insurer. The notice must list all life insurance policies or annuities proposed to be replaced, properly identified by the name of the insurer, the name of the insured or annuitant, and the policy or contract number if available, and include a statement as to whether each policy or contract will be replaced or whether a policy will be used as a source of financing for the new policy or contract. If a policy or contract number has not been issued by the existing insurer, alternative identification, such as an application or receipt number, must be listed.

In connection with a replacement transaction, the agent must leave with the applicant all sales material. Electronically presented sales material must be provided to the policy or contract owner in printed form not later than the date that the policy or contract is delivered. If doing a policy replacement, the agent submits the following to the insurer;

- copy of each required document
- statement identifying any preprinted or electronically presented insurer-approved sales materials used
- copies of any individualized sales materials, including any illustrations related to the specific policy or contract purchased

Insurer Duties

Insurers are to maintain a system of supervision and control to ensure compliance with the annuity sales requirements. Under the system, the insurer must, at minimum:

- inform its agents of the requirements of the regulations and incorporate the requirements into all relevant agent training manuals prepared by the insurer
- provide each agent a written statement of the insurer’s position with respect to the acceptability of replacements and provide guidance to the agent as to the appropriateness of these transactions;
- review the appropriateness of each replacement transaction that the agent does not indicate is in accord with the regulations.
- implement procedures to confirm that sales/replacement requirements are met
- implement procedures to detect transactions that are replacements of existing policies or contracts by the existing insurer but that have not been reported as such

Compliance steps can include systematic customer surveys, interviews, confirmation letters, or programs of internal monitoring. Each insurer must have the capacity to monitor each agent’s life insurance policy and annuity contract replacements for that insurer. The insurer is to maintain records regarding the monitoring and must produce records for the DOI on request. The capacity to monitor the aspects of annuity sales must include the ability to produce records for:

- each agent’s life insurance replacements, including financed purchases, as a percentage of the agent’s total annual sales for life insurance;
- the number of lapses of policies by the agent as a percentage of the agent’s total annual sales for life insurance;
- each agent’s annuity contract replacements as a percentage of the agent’s total annual annuity contract sales
- the number of transactions that are unreported replacements of existing policies or contracts by the existing insurer detected by the insurer’s monitoring system
- replacements, indexed by replacing agent and existing insurer.

Each insurer will include, with or as a part of each application for life insurance or an annuity, a signed statement by both the applicant and the agent as to whether the applicant has existing policies or contracts. Each insurer is to require, with each application for life insurance or an annuity that indicates an existing policy or contract, a completed notice regarding replacements. If the applicant has existing policies or contracts, each insurer must be able to produce, for at least five years after the date of termination or expiration of the proposed policy or contract, copies of any sales material required to be retained along with, the basic illustration and any supplemental illustrations related to the specific policy or contract that is purchased, and the agent's and applicant's signed statements with respect to financing and replacement. The insurer has to ascertain that the required sales material and illustrations meet the requirements of the regulations and are complete and accurate for the proposed policy or contract. If an application does not meet requirements, the insurer notifies the agent and applicant and fulfills the outstanding requirements. The insurer is to maintain records required for annuity sales/replacement in paper, photographic, microprocess, magnetic, mechanical, or electronic media or by any process that accurately reproduces the actual document.

Duties of Replacing Insurers that Use Agents

If a transaction involves a policy replacement as defined above, these steps must be followed;

- The replacing insurer verifies the required complying forms are received
- The replacing insurer will notify any existing insurer that may be affected by the proposed replacement not later than the fifth business day after the date of receipt of a completed application indicating replacement; or the date that replacement is identified if it is not indicated on the application; and mail a copy of the available illustration or policy summary for the proposed policy or available disclosure document for the proposed contract to the existing insurer not later than the fifth business day after the date of a request from the existing insurer.
- The replacing insurer must be able to produce copies of the notification regarding replacement required, indexed by agent, until the later of the fifth anniversary of the date of the notification; or the date of the replacing insurer's next regular examination by the insurance regulatory authority.
- The replacing insurer provides to the policy or contract owner notice of the owner's right to return the policy or contract within 30 days of the delivery of the policy or contract and to receive an unconditional full refund of all premiums or considerations paid on the policy or contract, including any policy fees or charges or, in the case of a variable or market value adjustment policy or contract, a payment of the cash surrender value provided under the policy or contract plus the fees and other charges deducted from the gross premiums or considerations or imposed under the policy or contract. The notice may be combined with other notices required under the regulations in accordance with rules of the commissioner.

In transactions in which the replacing insurer and the existing insurer are the same or are subsidiaries or affiliates under common ownership or control, the replacing insurer allows credit for the period that has elapsed under the replaced policy's or contract's incontestability and suicide period up to the face amount of the existing policy or contract. With regard to financed purchases, the credit may be limited to the amount that the face amount of the existing policy is reduced by the use of existing policy values to fund the new policy or contract. If an insurer prohibits the use of sales material other than that approved by the insurer, as an alternative to these requirements, the insurer must:

- require with each application a statement signed by the agent that represents that the agent used only insurer-approved sales material and states that copies of all sales material were left with the applicant not later than the 10th day after the date of issuance of the policy or contract
- notify the applicant by sending a letter, or by verbal communication with the applicant by a person whose duties are separate from the marketing area of the insurer, that the agent has represented that copies of all sales material have been left with the applicant in accordance with regulations
- provide the applicant with a toll-free telephone number to contact the insurer's personnel involved in the compliance function if copies of all sales material have not been
- left with the applicant
- stress the importance of retaining copies of the sales material for future reference
- be able to produce a copy of the letter or other verification in the policy file until the fifth anniversary of the date of termination or expiration of the policy or contract.

Duties of Existing Insurer

For transactions involving a replacement the existing insurer is to retain and be able to produce all replacement notifications received, indexed by the replacing insurer, until the later of the fifth anniversary of the date of receipt of the notification or the date of conclusion of the next regular examination conducted by the regulator. The existing insurer must send a letter to the policy or contract owner regarding the owner's right to receive information regarding the existing policy or contract values. The letter must include, if available, an in force illustration or, if an in force illustration cannot be produced not later than the fifth business day after the date of receipt of a notice that an existing policy or contract is being replaced, a policy summary. The information must be provided not later than the fifth business day after the date of receipt of the request from the policy or contract owner. On receipt of a request to borrow, surrender, or withdraw any policy values, the existing insurer will send a notice advising the policy owner that the release of policy values may affect the guaranteed elements, nonguaranteed elements, face amount, or surrender value of the policy from which the values are released. The notice must be sent separately from the payment if the payment is sent to any person other than the policy owner. In the case of consecutive automatic premium loans, the insurer is only required to send the notice at the time of the first loan.

Duties of Insurers Regarding Direct Response

In the case of an application initiated as a result of a direct response solicitation, the insurer will require submission of a statement asking whether the applicant, by applying for the proposed policy or contract, intends to replace, discontinue, or change an existing policy or contract. The statement may be included with, or submitted as part of, each completed application for a policy or contract. If the applicant indicates a replacement or change is not intended or if the applicant fails to respond to the statement, the insurer is obligated to send the applicant, with the policy or contract, a notice, in a form adopted or approved by the commissioner, regarding replacement. If the insurer has proposed the replacement or if the applicant indicates a replacement is intended and the insurer continues with the replacement, the insurer is to provide to the applicant or prospective applicant, with the policy or contract, a notice adopted or approved by the commissioner. Other specific regulations may apply.

In a the situation above, the insurer may use a notice that deletes references to the agent, including the agent's signature, and references not applicable to the product being sold or replaced, without having to obtain prior approval of the notice from the commissioner. The insurer's obligation to obtain the applicant's signature is satisfied if the insurer can demonstrate that the insurer has made a diligent effort to secure a signed copy of the notice. The requirement to make a diligent effort is deemed satisfied if the insurer includes in the mailing a self-addressed postage prepaid envelope with instructions for the return of the signed notice.

Unfair Method of Competition and Unfair or Deceptive Acts or Practices

Failure of an insurer or agent to comply with the appropriate rules and regulations only invites trouble. Here are some of the activities that are considered unacceptable per §§10-3-1104(1) through 10-3-1104(1)(a)(I), C.R.S.;

- deceptive or misleading information set forth in any sales material;
- failing to ask the applicant in completing the application the pertinent questions regarding the possibility of financing or replacement;
- intentionally recording an answer incorrectly;
- advising an applicant to respond negatively to any question regarding replacement in order to prevent notice to the existing insurer
- advising a policy or contract owner to contact the insurer directly in such a way as to attempt to obscure the identity of the replacing agent or insurer.

A policy or contract owner has the right to replace an existing life insurance policy or annuity contract after indicating in or as a part of applications for new coverage that replacement is not the intention. However, patterns of that action by policy or contract owners of the same agent is be deemed prima facie evidence of the agent's knowledge that replacement was intended in connection with the identified transactions, and those patterns of action will be deemed prima facie evidence of the agent's intent to violate the rules. If it is determined that the requirements discussed here have not been met, the replacing insurer is to provide the policy owner an in force illustration. If an in force illustration is not available, a policy summary for the replacement policy or an available disclosure document for the replacement contract; and the appropriate notice regarding replacements.

Additional Sanctions

In addition to sanctions and penalties, an insurer or agent that misrepresents insurance products is subject to sanctions which may include:

- the revocation or suspension of the agent's license or the insurer's certificate of authority
- administrative penalties
- forfeiture of any commissions or other compensation paid to an agent as a result of the transaction in connection with which the violations occurred.

If it is determined that the violations of the regulations were material to the sale, the insurer may be required to make restitution, restore policy or contract values; and pay interest at the rate set by statute on the amount refunded in cash.

SUITABILITY

Suitability of Certain Annuity Transactions

One of the purposes of Colorado insurance regulation is to establish standards and procedures regarding recommendations made to a consumer that result in a transaction involving annuity products to ensure that the insurance needs and financial objectives of the consumer as of the time of the transaction are appropriately addressed (3 CCR 702-4 Amended Reg. 4-1-11).

Suitability information means that it is reasonably appropriate to determine the suitability of a recommendation, including the following;

- 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

Applicability, Exemptions

The regulations apply to any recommendation to purchase or exchange an annuity that is made to a consumer by an agent or insurer; and results in the recommended purchase or exchange. Unless otherwise specifically included, the regulations do not apply to recommendations involving:

- direct response solicitations if there is no recommendation based on information collected from the consumer under the regulations
- contracts used to fund employee pension benefit plans or employee covered by ERISA
    - a Section 401 or 408 plan
    - a Section 457 government or church plan
    - a nonqualified deferred compensation arrangement
    - settlements of or assumptions of liabilities for personal injury/dispute or claim resolution
    - prepaid funeral benefits contracts

These regulations are not to be construed to create or imply a private cause of action for a violation of the regulations. The commissioner may adopt reasonable rules in the manner prescribed by Insurance Code of Colorado

Insurer and Agent Duties Annuity Suitability

Before the execution of a purchase or exchange of an annuity resulting from a recommendation, an agent, or the insurer if an agent is not involved, must make reasonable efforts to obtain: information from the consumer concerning:

- the consumer's financial status;
- the consumer's tax status; and
- the consumer's investment objectives
- other relevant information used or considered to be reasonable by the agent or that insurer in making recommendations to consumers.

In a recommendation to a consumer regarding the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, an agent or the insurer, if an agent is not involved, has reasonable grounds for believing that the recommendation is suitable for that consumer based on the facts disclosed by the consumer regarding the consumer's investments and other insurance products; and financial situation and needs.

An agent, or an insurer if an agent is not involved, has no obligation to a consumer related to a recommendation if the consumer:

- refuses to provide relevant information requested by the agent or insurer;
- fails to provide complete or accurate information on the request of the agent or insurer
- decides to enter into a transaction that is not based on a recommendation of the agent or insurer.

An agent's or insurer's recommendation must be reasonable under all the circumstances actually known to the agent or insurer at the time of the recommendation.

Compliance System

It is the duty of each insurer to operate a system that is reasonably designed to achieve compliance regulatory goals; to supervise recommendations. An insurer may comply with DOI requirements by establishing and maintaining the insurer's own compliance system. Each agent and independent agency is to adopt an insurer's compliance system or establish and maintain such a system. A compliance system must include:

- maintenance of written procedures
- periodic reviews of the insurer's or agent's records in a manner reasonably designed to assist in detecting and preventing violations of these regulations.

An agent or insurer may contract with a third party, including an agent or independent agency, to establish and maintain a compliance system with respect to agents under contract with or employed by the third party. The agent or insurer must make reasonable inquiries sufficient to ensure that the third party is following compliance procedures, and will take any action reasonable under the circumstances to enforce the contractual obligation to perform those functions. An agent or insurer may comply with the obligation to make reasonable inquiries by:

- annually obtaining certification from a senior manager of the third party that the third party is performing the required functions
- periodically selecting third parties, based on reasonable selection criteria, for a review to determine whether the third parties are performing the required functions.

An agent or insurer need to adopt procedures for conducting compliance reviews that are reasonable under the circumstances. An insurer that contracts with a third party and that complies with the requirements to supervise is deemed to have complied with the insurer's responsibilities mentioned above.

An insurer, agent, or independent agency is not required by this section to:
review, or provide for review of, all agent-solicited transactions; or
include in the compliance system an agent's recommendations to consumers of products other than the annuities offered by the insurer, agent, or independent agency.

Certification Requirements

On request by an insurer, an agent or independent agency that contracts with an insurer in operation of a compliance system must promptly obtain a certification as described above in 'Compliance System' or give a clear statement that it is unable to meet the certification criteria. A person may not provide a certification unless the person is a senior manager with responsibility for the delegated functions and has a reasonable basis for making the certification.

Compliance with Certain National Standards

Compliance with the conduct rules of the National Association of Securities Dealers relating to suitability, or the rules of another national organization recognized by the Colorado DOI satisfies the requirements for the recommendation of variable annuities. This reliance on a third party does not affect or limit the Department's ability to enforce regulations.

Recordkeeping Requirements

Each agent, independent agency, and insurer is to maintain, or otherwise be able to make available to the commissioner, records of the information collected from the consumer and other information used in making a recommendation that was the basis for a transaction (subject to the regulations spelled out here) until the fifth anniversary of the date on which the transaction is completed by the insurer. An insurer may, but is not required to, maintain documentation on behalf of an agent. Records may be maintained in paper, photographic, microprocess, magnetic, mechanical, or electronic media by any process that accurately reproduces the actual document.

Enforcement

Mitigation The Department may order:

- an insurer to take reasonable appropriate corrective action for any consumer harmed by the insurer or by the insurer's agent because of a violation of regulations
- an agent to take reasonably appropriate corrective action for any consumer harmed by the agent's violation of these rules and regulations
- a managing general agent or independent agency that employs or contracts with an agent to sell, or solicit the sale of, annuities to consumers to take reasonably appropriate

- corrective action for any consumer harmed by the agent's violations

Sanctions The Department may impose sanctions for violations. The commissioner may reduce or eliminate a sanction for violation of these regulations otherwise applicable if corrective action for the consumer was taken promptly by the agent or insurer after discovery of a violation.

REPLACEMENT NOTIFICATION REQUIREMENTS

The information in this section is from the Colorado Division of Insurance, 3 CCR 702-4 Amended Regulation 4-1-4, and consists of the following;

Purpose
Definitions
Consumer Notice Content and Format Requirements
Consumer Notice Regarding Replacement for Insurers Using Agents
Direct Response Consumer Notices
Filing Procedures for Substantially Similar Consumer Notices

Purpose The purpose of this section is to specify the content and procedural requirements for consumer notices for life insurance policy and annuity contract replacements as required by the Regulation.

Definitions When used in this section, the words "agent" and "producer" means, unless the context clearly indicates otherwise, an individual who holds a license under Insurance Code and who sells, solicits, or negotiates life insurance or annuities in this state.

Consumer Notice Content and Format Requirements
(a) The text contained in each of the three Notices;
Figure A Important Notice Regarding Replacements
Figure B Notice Regarding Replacements for Direct Response Insurers
Figure C Important Notice Regarding Replacements for Direct Response Insurers;

must be in at least 10 point type and presented in the same order as indicated in each figure and without any change to the specified text, including bolding effects, except as provided in subsections (b), (c), and (d) of this section.
(b) Pursuant to the 'Substantially Similar' notice information of this regulation (relating to Filing Procedures for Substantially Similar Consumer Notices), in lieu of using the notices contained in Figure A or Figure B, an insurer may file a notice with the department that is substantially similar to the text contained in Figure A or Figure B for review and approval by the commissioner. The commissioner will then approve the notice if, in the commissioner's opinion, the notice protects the rights and interests of applicants to at least the same extent as the notices adopted in Figure A or Figure B. An insurer required to send the notice specified in Figure B may not file a notice that is substantially similar to that figure for review and approval by the commissioner.
(c) Commissioner approval of a notice is not required if a notice promulgated or approved under this section is used and amendments to that notice are limited to the omission of references not applicable to the product being sold or replaced. For

purposes of this section, a reference in any notice required under this section to a product that is being sold or replaced is applicable if the reference could be applicable under any possible circumstances and therefore may not be omitted from the required notice.
(d) An insurer may add a company name and identifying form number to notices specified under this section without obtaining commissioner approval.

Consumer Notice Regarding Replacement for Insurers Using Agents

(a) An agent who initiates an application for a life insurance policy or annuity contract submits to the insurer, with or as part of the application, a statement signed by both the applicant and the agent as to whether the applicant has existing life insurance policies or annuity contracts.
(b) If the applicant states that the applicant does have existing policies or contracts, the agent is required to present and read to the applicant, not later than at the time of taking the application, a notice regarding replacement that contains the text contained in Figure A, or substantially similar notice filed with the department and approved under this section. The notice is signed by both the applicant and the agent attesting that the notice has been read aloud by the agent or that the applicant did not wish the notice to be read aloud, in which case the agent is not required to read the notice aloud.

Attached Graphic Example

Figure A

IMPORTANT NOTICE:
REPLACEMENT OF LIFE INSURANCE OR ANNUITIES

This document must be signed by the applicant and the agent and a copy left with the applicant.

You are contemplating the purchase of a life insurance policy or annuity contract. In some cases this purchase may involve discontinuing or changing an existing policy or contract. If so, a replacement is occurring. Financed purchases are also considered replacements.

A replacement occurs when a new policy or contract is purchased and, in connection with the sale, you discontinue making premium payments on the existing policy or contract, or an existing policy or contract is surrendered, forfeited, assigned to the replacing insurer, or otherwise terminated or used in a financed purchase.

A financed purchase occurs when the purchase of a new life insurance policy involves the use of funds obtained by the withdrawal or surrender of or by borrowing some or all of the policy values, including accumulated dividends, of an existing policy to pay all or part of any premium or payment due on the new policy. A financed purchase is a replacement.

You should carefully consider whether a replacement is in your best interests. You will pay acquisition costs and there may be surrender costs deducted from your policy or

contract. You may be able to make changes to your existing policy or contract to meet your insurance needs at less cost. A financed purchase will reduce the value of your existing policy and may reduce the amount paid upon the death of the insured.
We want you to understand the effects of replacements before you make your purchase decision and ask that you answer the following questions and consider the questions on the back of this form.

1. Are you considering discontinuing making premium payments, surrendering, forfeiting, assigning to the insurer, or otherwise terminating your existing policy or contract? ___ YES ___ NO

2. Are you considering using funds from your existing policies or contracts to pay premiums due on the new policy or contract? ___ YES ___ NO

If you answered "yes" to either of the above questions, list each existing policy or contract you are contemplating replacing (include the name of the insurer, the insured or annuitant, and the policy or contract number if available) and whether each policy or contract will be replaced or used as a source of financing:

INSURER NAME	CONTRACT OR POLICY#	INSURED OR ANNUITANT	REPLACED (R) OR FINANCING (F
1. 2. 3.			

Make sure you know the facts. Contact your existing company or its agent for information about the old policy or contract. If you request one, an in force illustration, policy summary or available disclosure documents must be sent to you by the existing insurer. Ask for and retain all sales material used by the agent in the sales presentation. Be sure that you are making an informed decision.

The existing policy or contract is being replaced because

____.

I certify that the responses herein are, to the best of my knowledge, accurate:

_________________________________ ________________________
Applicant's Signature and Printed Name Date

_____________________________________ ________________________
Agent's Signature and Printed Name Date

I do not want this notice read aloud to me. ____ (Applicants must initial only if they do not want the notice read aloud.)

A replacement may not be in your best interest, or your decision could be a good one.

You should make a careful comparison of the costs and benefits of your existing policy or contract and the proposed policy or contract. One way to do this is to ask the company or agent that sold you your existing policy or contract to provide you with information concerning your existing policy or contract. This may include an illustration of how your existing policy or contract is working now and how it would perform in the future based on certain assumptions. Illustrations should not, however, be used as a sole basis to compare policies or contracts. You should discuss the following with your agent to determine whether replacement or financing your purchase makes sense:

PREMIUMS:
Are they affordable?
Could they change?
You're older--are premiums higher for the proposed new policy?
How long will you have to pay premiums on the new policy?
On the old policy?

POLICY VALUES:
New policies usually take longer to build cash values and to pay dividends.
Acquisition costs for the old policy may have been paid, you will incur costs for the new one.
What surrender charges do the policies have?
What expense and sales charges will you pay on the new policy?
Does the new policy provide more insurance coverage?

INSURABILITY:
If your health has changed since you bought your old policy, the new one could cost you more, or you could be turned down.
You may need a medical exam for a new policy.
Claims on most new policies for up to the first two years can be denied based on inaccurate statements.
Suicide limitations may begin anew on the new coverage.

IF YOU ARE KEEPING THE OLD POLICY AS WELL AS THE NEW POLICY:
How are premiums for both policies being paid?
How will the premiums on your existing policy be affected?
Will a loan be deducted from death benefits?
What values from the old policy are being used to pay premiums?

IF YOU ARE SURRENDERING AN ANNUITY OR INTEREST SENSITIVE LIFE PRODUCT:
Will you pay surrender charges on your old contract?
What are the interest rate guarantees for the new contract?
Have you compared the contract charges or other policy expenses?

OTHER ISSUES TO CONSIDER FOR ALL TRANSACTIONS:

What are the tax consequences of buying the new policy?
Is this a tax free exchange? (See your tax advisor.)
Is there a benefit from favorable “grandfathered” treatment of the old policy under the federal tax code?
Will the existing insurer be willing to modify the old policy?
How does the quality and financial stability of the new Company compare with your existing company?

Replacement Not Intended or Failure to Respond

If the applicant indicates a replacement or change is not intended or if the applicant fails to respond to the statement, the insurer must send the applicant, with the policy or contract, a new policy or contract notice that contains the statements in Figure B. Attached Graphic example

Figure B

NOTICE REGARDING REPLACEMENT
REPLACING YOUR LIFE INSURANCE POLICY OR ANNUITY?

Are you thinking about buying a new life insurance policy or annuity and discontinuing or changing an existing one? If you are, your decision could be a good one--or a mistake. You will not know for sure unless you make a careful comparison of your existing benefits and the proposed policy or contract’s benefits.

Make sure you understand the facts. You should ask the company or agent that sold you your existing policy or contract to give you information about it.

Hear both sides before you decide. This way you can be sure you are making a decision that is in your best interest.

Direct Response Consumer Notices

In the case of a life insurance or annuity application initiated as a result of a direct response solicitation, the insurer inquires whether the applicant, by applying for the proposed policy or contract, intends to replace, discontinue, or change an existing life insurance policy or annuity contract. The inquiry may be included with, or submitted as a part of, each completed application for such policy or contract.
(1) If the insurer has proposed the replacement or if the applicant indicates a replacement is intended and the insurer continues with the replacement, the insurer must send a notice that contains the text in Figure C, or a substantially similar notice filed with the department and approved under this section.

Figure C

IMPORTANT NOTICE:
REPLACEMENT OF LIFE INSURANCE OR ANNUITIES

You are contemplating the purchase of a life insurance policy or annuity contract. In some cases this purchase may involve discontinuing or changing an existing policy or contract. If so, a replacement is occurring. Financed purchases are also considered replacements.

A replacement occurs when a new policy or contract is purchased and, in connection with the sale, you discontinue making premium payments on the existing policy or contract, or an existing policy or contract is surrendered, forfeited, assigned to the replacing insurer, or otherwise terminated or used in a financed purchase.

A financed purchase occurs when the purchase of a new life insurance policy involves the use of funds obtained by the withdrawal or surrender of or by borrowing some or all of the policy values, including accumulated dividends, of an existing policy, to pay all or part of any premium or payment due on the new policy. A financed purchase is a replacement.

You should carefully consider whether a replacement is in your best interests. You will pay acquisition costs and there may be surrender costs deducted from your policy or contract. You may be able to make changes to your existing policy or contract to meet your insurance needs at less cost. A financed purchase will reduce the value of your existing policy and may reduce the amount paid upon the death of the insured.

We want you to understand the effects of replacements and ask that you answer the following questions and consider the questions on the back of this form.

1. Are you considering discontinuing making premium payments, surrendering, forfeiting, assigning to the insurer, or otherwise terminating your existing policy or contract?
   ____ YES ___ NO

2. Are you considering using funds from your existing policies or contracts to pay premiums
   due on the new policy or contract? ___ YES ___ NO

Please list each existing policy or contract you are contemplating replacing (include the name of the insurer, the insured, and the policy or contract number if available) and whether each policy or contract will be replaced or used as a source of financing:

INSURER NAME	CONTRACT OR POLICY #	INSURED OR ANNUITANT	REPLACED (R) OR FINANCING (F)
1.			
2.			
3.			

Make sure you know the facts. Contact your existing company or its agent for information about the old policy or contract. If you request one, an in force illustration, policy summary or available disclosure documents must be sent to you by the existing insurer. Ask for and retain all sales material used by the agent in the sales presentation. Be sure that you are making an informed decision.

I certify that the responses herein are, to the best of my knowledge, accurate:

______________________________________ ____________

Applicant's Signature and Printed Name Date

A replacement may not be in your best interest, or your decision could be a good one. You should make a careful comparison of the costs and benefits of your existing policy or contract and the proposed policy or contract. One way to do this is to ask the company or agent that sold you your existing policy or contract to provide you with information concerning your existing policy or contract. This may include an illustration of how your existing policy or contract is working now and how it would perform in the future based on certain assumptions. Illustrations should not, however, be used as a sole basis to compare policies or contracts. You should discuss the following with your agent to determine whether replacement or financing your purchase makes sense:

PREMIUMS:	Are they affordable? Could they change? You're older--are premiums higher for the proposed new policy? How long will you have to pay premiums on the new policy? On the old policy?
POLICY VALUES:	New policies usually take longer to build cash values and to pay dividends. Acquisition costs for the old policy may have been paid, you will Incur costs for the new one. What surrender charges do the policies have? What expense and sales charges will you pay on the new policy? Does the new policy provide more insurance coverage?
INSURABILITY:	If your health has changed since you bought your old policy, the new one could cost you more, or you could be turned down. You may need a medical exam for a new policy. Claims on most new policies for up to the first two years can be denied based on inaccurate statements. Suicide limitations may begin anew on the new coverage.

IF YOU ARE KEEPING THE OLD POLICY AS WELL AS THE NEW POLICY:

How are premiums for both policies being paid?
How will the premiums on your existing policy be affected?
Will a loan be deducted from death benefits?
What values from the old policy are being used to pay premiums?

IF YOU ARE SURRENDERING AN ANNUITY OR INTEREST SENSITIVE LIFE PRODUCT:

Will you pay surrender charges on your old contract?
What are the interest rate guarantees for the new contract?
Have you compared the contract charges or other policy expenses?

OTHER ISSUES TO CONSIDER FOR ALL TRANSACTIONS:

What are the tax consequences of buying the new policy?
Is this a tax free exchange? (See your tax advisor.)
Is there a benefit from favorable “grandfathered” treatment of the old policy under the federal tax code?
Will the existing insurer be willing to modify the old policy?
How does the quality and financial stability of the new company compare with your existing company?

Filing Procedures for Substantially Similar Consumer Notices (a) Beginning with the effective date of this regulation, an insurer subject to the regulations may use a consumer notice that is substantially similar to the text promulgated in Figure A or Figure C immediately after filing the consumer notice with the department. During the transition period for consumer notices an insurer who filed a consumer notice that was substantially similar to the text promulgated in Figure A or Figure C in the period of time beginning with the effective date of this section and ending on January 31, 2008, received a notice of approval or disapproval of the consumer notice from the commissioner. The ’substantially similar’ rule was subject to several conditions.

MISREPRESENTATION AND DECEPTIVE PRACTICES

An insurer or agent must not misrepresent the terms of a policy issued by the insurer or promised to be issued, the benefits or privileges agreed to in the policy, or the future dividends payable under the policy. Insurers or their representatives cannot make any misrepresentation as an inducement to purchase a policy. Agents must not use falsehood or misrepresentation to persuade a policyholder to lapse, forfeit or surrender his or her insurance. Conversely, insurers and their agents may not use any representation or comparison of insurers or policies to an insured which is misleading, for the purpose of inducing or tending to induce him to lapse, forfeit, change or surrender his insurance, whether on a temporary or permanent plan.

The following information comes from 3 CCR 702-4 Amended Regulations 10-3-1101 and 10-3-1104.

Misrepresentation Regarding Policy or Insurer

It is an unfair method of competition or an unfair or deceptive act or practice in the business of insurance to:

- make, issue, or circulate or cause to be made, issued, or circulated an estimate, illustration, circular, or statement misrepresenting with respect to a policy issued or to be issued the terms of the policy, the benefits or advantages promised by the policy, or the dividends or share of surplus to be received on the policy
- make a false or misleading statement regarding the dividends or share of surplus previously paid on a similar policy
- make a misleading representation or misrepresentation regarding the financial condition of an insurer or the legal reserve system on which a life insurer operates
- use a name or title of a policy or class of policies that misrepresents the true nature of the policy or class of policies
- make a misrepresentation to a policyholder insured by any insurer for the purpose of inducing or that tends to induce the policyholder to allow an existing policy to lapse or to forfeit or surrender the policy.

Information, Defamation, Intimidation

False Information and Advertising It is an unfair method of competition or an unfair or deceptive act or practice in the business of insurance to make, publish, disseminate, circulate, or place before the public or directly or indirectly cause to be made, published, disseminated, circulated, or placed before the public an advertisement, announcement, or statement containing an untrue, deceptive, or misleading assertion, representation, or statement regarding the business of insurance or a person in the conduct of the person's insurance business. These prohibitions apply to any advertisement, announcement, or statement made, published, disseminated, circulated, or placed before the public a newspaper, magazine, or other publication; in a notice, circular, pamphlet, letter, or poster; over a radio or television station; through the Internet; or in any other manner.

Defamation of Insurer It is an unfair method of competition or an unfair or deceptive act or practice in the business of insurance to directly or indirectly make, publish, disseminate, or circulate or to aid, abet, or encourage the making, publication, dissemination, or circulation of a statement that is false, maliciously critical of, or derogatory to the financial condition of an insurer and is calculated to injure a person engaged in the business of insurance. This rule applies to any oral or written statement, including a statement in any pamphlet, circular, article, or literature.

Boycott, Coercion or Intimidation It is an unfair method of competition or an unfair or deceptive act or practice in the business of insurance to commit through concerted action or to enter into an agreement to commit an act of boycott, coercion, or intimidation that results in or tends to result in the unreasonable restraint of or a monopoly in the business of insurance.

False Financial Statement

It is an unfair method of competition or an unfair or deceptive act or practice in the business of insurance to, with intent to deceive:

- file with a supervisory or other public official a false statement of financial condition of an insurer
- make, publish, disseminate, circulate, deliver to any person, or place before the public or directly or indirectly cause to be made, published, disseminated, circulated, delivered to any person, or placed before the public a false statement of financial condition of an insurer.

It is an unfair method of competition or an unfair or deceptive act or practice in the business of insurance to make a false entry in an insurer's book, report, or statement or willfully omit to make a true entry of a material fact relating to the insurer's business in the insurer's book, report, or statement with intent to deceive:

- an agent or examiner lawfully appointed to examine the insurer's condition or affairs
- a public official to whom the insurer is required by law to report or who has authority by law to examine the insurer's condition or affairs.

Prohibited Rebates and Inducements

Except as otherwise expressly provided by law, it is an unfair method of competition or an unfair or deceptive act or practice in the business of insurance to knowingly permit the making of, offer to make, or make a life insurance contract, life annuity contract, or accident and health insurance contract or an agreement regarding the contract, other than as plainly expressed in the issued contract, or directly or indirectly pay, give, or allow or offer to pay, give, or allow as inducement to enter into a life insurance contract, life annuity contract, or accident and health insurance contract a rebate of premiums payable on the contract, a special favor or advantage in the dividends or other benefits of the contract, or a valuable consideration or inducement not specified in the contract, or give, sell, or purchase or offer to give, sell, or purchase in connection with a life insurance, life annuity, or accident and health insurance contract or as inducement to enter into the contract stocks, bonds, or other securities of an insurer or other corporation, association, or partnership, dividends or profits accrued from the stocks, bonds, or securities, or anything of value not specified in the contract.

Stock Benefits

It is an unfair method of competition or an unfair or deceptive act or practice in the business of insurance to issue or deliver or to permit an agent, officer, or employee to issue or deliver as an inducement to insurance:

- company stock or other capital stock
- a benefit certificate or share in a corporation
- securities
- a special or advisory board contract or any other contract promising returns or profits.

These prohibitions above do not prohibit issuing or delivering a participating insurance policy otherwise authorized by law.

Unfair Discrimination in Life Insurance and Annuity Contracts

It is an unfair method of competition or an unfair or deceptive act or practice in the business of insurance to make or permit with respect to a life insurance or life annuity contract an unfair discrimination between individuals of the same class and equal life expectancy regarding the rates charged, the dividends or other benefits payable, or any of the other terms and conditions of the contract.

Certain Practices Not Discrimination or Inducement

In the context of this sub-heading:

Health-related services This means services that are available in connection with an accident and health insurance policy or certificate or an evidence of coverage and that are directed to an individual's health improvement or maintenance.

Health-related information This means information directed to an individual's health improvement or maintenance or to costs associated with particular options available in connection with an accident and health insurance policy or certificate or an evidence of coverage.

It is not a rebate or discrimination prohibited by any of the proscriptions mentioned above:

- for a life insurance or life annuity contract, to pay a bonus to a policyholder or otherwise abate the policyholder's premiums in whole or in part out of surplus accumulated from nonparticipating insurance policies if the bonus or abatement is fair and equitable to policyholders and is in the best interests of the insurer and its policyholders
- for a life insurance policy issued on the industrial debit plan, to make to a policyholder who has continuously for a specified period made premium payments directly to the insurer's office an allowance in an amount that fairly represents the saving in collection expenses
- for a group insurance policy, to readjust the rate of premium based on the loss or expense experience under the policy at the end of a policy year if the adjustment is retroactive for only that policy year
- for a life annuity contract, to waive surrender charges under the contract when the contract holder exchanges that contract for another annuity contract issued by the same insurer if the waiver and the exchange are fully, fairly, and accurately explained to the contract holder in a manner that is not deceptive or misleading
- in connection with an accident and health insurance policy, to provide to policy or certificate holders, in addition to benefits under the terms of the insurance contract, health-related services or health-related information, or to disclose the availability of those additional services and information to prospective policy or certificate holders
- in connection with a health maintenance organization evidence of coverage, to provide to enrollees, in addition to benefits under the evidence of coverage, health-related services or health-related information, or to disclose the availability of those additional services and information to prospective enrollees or contract holders.

Deceptive Name, Word, Symbol, Device or Slogan

It is generally an unfair method of competition or an unfair or deceptive act or practice in the business of insurance to use, display, publish, circulate, distribute, or cause to be used, displayed, published, circulated, or distributed in a letter, pamphlet, circular, contract, policy, evidence of coverage, article, poster, or other document, literature, or public media:

- a name as the corporate or business name of a person or entity engaged in the business of insurance or in an insurance-related business in this state that is the same as or deceptively similar to the name adopted and used by an insurance entity, health maintenance organization, third-party administrator, or group hospital service corporation authorized to engage in business under the laws of this state
- a word, symbol, device, or slogan, either alone or in combination and regardless of whether registered, and including the titles, designations, character names, and distinctive features of broadcast or other advertising, that is the same as or deceptively

similar to a word, symbol, device, or slogan adopted and used by an insurance entity, health maintenance organization, third-party administrator, or group hospital service corporation to distinguish the entity or the entity's products or services from another entity.

If more than one person or entity uses names, words, symbols, devices, or slogans, either alone or in combination, that are the same or deceptively similar and are likely to cause confusion or mistake, the person or entity that demonstrates the first continuous actual use of the name, word, symbol, device, slogan, or combination has not engaged in an unfair method of competition or deceptive act or practice under this section.

Unfair Settlement Practices

It is an unfair method of competition or an unfair or deceptive act or practice in the business of insurance to engage in the following unfair settlement practices with respect to a claim by an insured or beneficiary:

- misrepresenting to a claimant a material fact or policy provision relating to coverage at issue
- failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of; i) a claim with respect to which the insurer's liability has become reasonably clear, or ii.) a claim under one portion of a policy with respect to which the insurer's liability has become reasonably clear to influence the claimant to settle another claim under another portion of the coverage unless payment under one portion of the coverage constitutes evidence of liability under another portion;
- failing to promptly provide to a policyholder a reasonable explanation of the basis in the policy, in relation to the facts or applicable law, for the insurer's denial of a claim or offer of a compromise settlement of a claim
- failing within a reasonable time to:
    i. affirm or deny coverage of a claim to a policyholder
    ii. submit a reservation of rights to a policyholder;
- refusing, failing, or unreasonably delaying a settlement offer under applicable first-party coverage on the basis that other coverage may be available or that third parties are responsible for the damages suffered, except as may be specifically provided in the policy
- undertaking to enforce a full and final release of a claim from a policyholder when only a partial payment has been made, unless the payment is a compromise settlement of a doubtful or
- disputed claim
- refusing to pay a claim without conducting a reasonable investigation with respect to the claim
- with respect to a Colorado personal automobile insurance policy, delaying or refusing settlement of a claim solely because there is other insurance of a different kind available to satisfy all or part of the loss forming the basis of that claim
- requiring a claimant as a condition of settling a claim to produce the claimant's federal income tax returns for examination or investigation by the person unless:
    i. a court orders the claimant to produce those tax returns
    ii. the claim involves a fire loss
    iii. the claim involves lost profits or income.

The prohibitions in the section above do not provide a cause of action to a third party asserting one or more claims against an insured covered under a liability insurance policy.

Misrepresentation of Insurance Polciy

It is an unfair method of competition or an unfair or deceptive act or practice in the business of insurance to misrepresent an insurance policy by:

- making an untrue statement of material fact
- failing to state a material fact necessary to make other statements made not misleading, considering the circumstances under which the statements were made
- making a statement in a manner that would mislead a reasonably prudent person to a false conclusion of a material fact
- making a material misstatement of law
- failing to disclose a matter required by law to be disclosed, including failing to make a disclosure in accordance with another provision of this code.

ISSUE OF BUYER COMPETENCE

One of the requirements concerning suitability in annuity transactions is to discuss recognition of indicators that a prospective insured may lack the short-term memory or judgment to knowingly purchase an annuity. The issue of legal capacity often arises in cases involving senior consumers. Legal capacity is the term used to define a person who is able to understand and appreciate the consequences of his actions.

Short term memory/judgment

Agents are to develop ways to recognize that a senior may lack the short-term memory and judgment needed to assess a policy or annuity. The brain's ability to learn and remember recent events can change over time due to any number of reasons. Researchers and doctors working with diseases like bipolar depression and Alzheimer's are finding out that the brain of a disease victim suffers decrements (reductions) in its short-term memory and learning capacities.

Insurance agents are now charged by the legislature to make objective evaluations as to the ability of an individual to contract. Examples of short-term memory capability test indicators include the following;

- Count backwards from 100 by sevens- Thus, 93, 86, 79, 72, 65, … and so on.
- “I am going to say three words- bacon, brown, skillet.” (Any three words will do, but associated words are acceptable.) “We will discuss other matters for a few minutes, then you will need to recite the words back to me.”

These short-term memory test indicators are for illustrative purposes only. Any tests or indicators should be previewed and probably approved by a representative of the insurance company the agent is representing.

Below is a list of several indicators of diminished mental capacity of which producers should be aware. It may be difficult for an insurance professional to apprehend deficiencies in a short meeting with a client. Some of the indicators require prior knowledge of the senior in order to determine if deterioration has taken place in a particular aspect of the senior's behavior over time.

Memory loss: The senior is repeating questions, forgetting details, forgetting appointments, misplacing items or losing track of time

Disorientation: The senior is confused about time, place, or simple concepts OR the senior appears to be disoriented with surroundings or social settings

Difficulty performing simple tasks: The senior lacks the ability to remember the order of performance of the steps necessary to complete a simple task such as tying one's shoes.

Difficulty speaking: The senior uses words that do not fit the context of their use.

Difficulty understanding consequences: The senior appears unable to appreciate the consequences of decisions.

Difficulty with decision-making: The senior makes decisions that are inconsistent with his or her current long-term goals or commitments.

Attitude: The senior seems overly optimistic.

Difficulty following simple directions: The senior has difficulty with directions, particularly when they include multiple steps that must be performed in sequence

Deterioration of handwriting and signature: The senior appears unable to accurately write the letters of the alphabet or the letters are written backwards

Drastic mood swings: The senior may exhibit a swift change in mood within a short period of time with no obvious reason for the mood change

Difficulty with finances: The senior does not remember or understand recently completed financial transactions.

Lack of attention to personal hygiene: The senior appears uncharacteristically unkempt

Confusion as to date and time: The senior may be confused as to the season, the current month, the day of the week, or the time of the day.

Knowingly Purchase an Annuity

Consider the case where the 'indicators' show "…that a prospective insured may lack the short-term memory or judgment to knowingly purchase an insurance product…" What is the agent to do?

Someone who completely lacks the powers of understanding is not capable of making a contract, except that the individual is statutorily liable for the value of necessities furnished under a contract. Necessities mean such things as groceries and rent, not insurance. Substantial inability may not be proved solely by isolated incidents of negligence or improvidence.

Subject to Rescission

A senior who may exhibit short-term memory loss would not seem to fall into the *non compos* class. However, an insurance contract made by a person of unsound mind before a judicial determination of incapacity has been determined, is subject to rescission. Bolstering the case for such a rescission would be proof that a person is substantially unable to manage their financial affairs or resist fraud or undue influence. A person lacking sufficient mental capacity to enter into a contract is not held competent even if he has not been judged insane by a court. He or she is one who is unable to understand the effect and nature of their act in making the agreement. An insane person's voidable contract can be ratified or disaffirmed when he or she is again sane, or by the guardian during insanity or his or her representative after death.

ENFORCEMENT

If a licensee violates proper sales practices both civil and criminal penalties can apply. Regarding mitigation of responsibility, the Commissioner may order:

- An insurer to take reasonable appropriate corrective action for any consumer harmed by the insurers, or by its insurance producer's, violation of this regulation
- An insurance producer to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of this regulation
- A general agency or independent agency that employs or contracts with an insurance producer to sell, or solicit the sale, of annuities to consumers, to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of this regulation

Materiality

A statement is material for the purposes of this chapter, regardless of the admissibility of the statement at trial, if the statement could have affected:

- the eligibility for coverage or amount of the payment on a claim for payment under an insurance policy
- the decision of an insurer whether to issue an insurance policy.

Insurance Fraud

A person commits an offense if, with intent to defraud or deceive an insurer, the person, in support of a claim for payment under an insurance policy:

- prepares or causes to be prepared a statement that:
    i. the person knows contains false or misleading material information; and
    ii. is presented to an insurer; or
- presents or causes to be presented to an insurer a statement that the person knows contains false or misleading material information.

It is also an offense if this is done in support of an application for an insurance policy. Along the same lines, a person commits an offense if, with intent to defraud or deceive an insurer, the person solicits, offers, pays, or receives a benefit in connection with the furnishing of goods or services for which a claim for payment is submitted under an insurance policy.

The court will order a defendant convicted of an offense under this section to pay restitution, including court costs and attorney's fees, to an affected insurer. If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both. For purposes of this section, if the actor proves by a preponderance of the evidence that a portion of the claim for payment under an insurance policy resulted from a valid loss, injury, expense, or service covered by the policy, the value of the claim is equal to the difference between the total claim amount and the amount of the valid portion of the claim. If it is shown on the trial of an offense under this section that the actor submitted a bill for goods or services in support of a claim for payment under an insurance policy to the insurer issuing the policy, a rebuttable presumption exists that the actor caused the claim for payment to be prepared or presented.

Value of Claim

Except as noted in the preceding section, if the value of a claim is not readily ascertainable, the value of the claim is:

- the fair market value, at the time and place of the offense, of the goods or services that are the subject of the claim; or
- the cost of replacing the goods or services that are the subject of the claim within a reasonable time after the claim.

If goods or services that are the subject of a claim cannot be reasonably ascertained under the procedures as outlined above, the goods or services are considered to have a value as determined by statute. If the actor proves by a preponderance of the evidence that a portion of the claim for payment under an insurance policy resulted from a valid loss, injury, expense, or service covered by the policy, the value of the claim is equal to the difference between the total claim amount and the amount of the valid portion of the claim.

Aggregation and Multiple Offenses

When separate claims in violation of this chapter are communicated to an insurer or group of insurers pursuant to one scheme or continuing course of conduct, the conduct may be considered as one offense and the value of the claims aggregated in determining the classification of the offense. When three or more separate claims in violation of this chapter are communicated to an insurer or group of insurers pursuant to one scheme or continuing course of conduct, the conduct may be considered as one offense, and the classification of the offense is one category higher than the most serious single offense proven from the separate claims, except that if the most serious offense is a felony of the first degree, the offense is a felony of the first degree.

Jurisdiction of Attorney General

The attorney general may offer to an attorney representing the state in the prosecution of an offense as outlined above. The investigative, technical, and litigation assistance skills of the attorney general's office can be utilized. The attorney general may prosecute or assist in the prosecution of an offense listed above on the request of the attorney representing the state.

Corrective Action

Any applicable penalty under the enforcement section for a violation of the regulation in question may be reduced or eliminated if corrective action for the consumer was taken promptly after a violation was discovered. Noncompliance with the regulation may result, after proper notice, in the imposition of any of the sanctions made available in the Colorado statutes pertaining to the business of insurance or other laws, which include the imposition of fines, issuance of Cease & Desist Orders, and/or suspensions or revocations of license.