REVISED AMENDMENTS TO REGULATION 187

SUMMARY OF REVISIONS

1. Exemptions (224.2)
   a) More specifically defines the “direct response solicitation” exemption to apply to “purchase of a policy where the application is solicited without producer involvement and where there is no recommendation made;”
   b) Adds exemptions for terminating employee pension plans, corporate or bank owned policies, credit life insurance and life settlement contracts.

2. Definitions (224.3)
   a) The definition of “recommendation” is amended to add the sentence “A recommendation does not include general factual information to the public, such as advertisements, marketing materials, general education information regarding insurance or other financial products and general administrative services to the consumer.”
   b) The list of suitability information is broken up into two parts, one set of suitability factors for term life and a more extensive set for all other products.
   c) The definition of “transaction” now contains two parts, one for a “sales transaction” which means “the purchase or issuance of a policy, any replacement..., conversion, or any modification or election of a contractual provision with respect to an in-force policy that generates new sales compensation.” The other part is for an “in-force transaction”, which means “any modification or election of a contractual provision with respect to an in-force policy that does not generate new sales compensation.”
   d) The definition of suitable is amended to reflect all products, services, and transactions “available to the producer” which is different from “all available products” in the original.

3. Duties of insurers and producers with respect to sales transactions. (224.4)
   a) This is the best interest provision which is now applicable to “sales transactions”. The following language is added to the list of features about which a consumer must be informed, “any differences in features among fee-based and commission-based versions of the policy...”
b) When a consumer refuses to provide suitability information or does not choose to follow a producer’s recommendation the producer must “obtain a consumer signed statement documenting” the situation. This requirement of a signed statement is a new addition.

c) The producer “certification” requirement is the same except the following sentence was added; “A producer shall not use a title or designation of financial planner, financial advisor or similar title unless the producer is properly licensed or certified and actually provides securities or other non-insurance financial services.”

d) The provision making the regulation applicable to every producer who participated in the making of a recommendation has been amended to apply only to those producers in the chain that receive compensation as a result of the sales transaction.

e) With respect to the issue of the limitation of policy offerings by “captive” or “affiliated” producers, the DFS has added a provision requiring disclosure “on a form acceptable to the superintendent” the nature of the affiliation agreement and the circumstances under which the producer will and will not limit the recommendation. Those circumstances “may” include where a producer primarily recommends policies of a particular insurer and secondarily recommends policies from one or more other insurers when:

   (i) The primary insurer does not offer a policy that meets the consumer’s needs or objectives;

   (ii) The type of policy in the best interest of the consumer is not available from the primary insurer;

   (iii) The underwriting criteria of the primary insurer are not favorable for the consumer;

   (iv) The offer made by the primary insurer is not acceptable to the consumer.

The disclosure is not sufficient if it merely states that the producer may limit recommendations without specific disclosure of the extent to which recommendations are, in fact, limited.

4. Duties of insurers and producers with respect to in-force transactions (new 224.5)
REVISIONS TO PROPOSED AMENDMENTS TO REGULATION 187

a) This new section sets an ostensibly lower regulatory standard for those in-force transactions that generate no compensation for the producer.

b) The producer must still act in the best interest of the consumer without regard to the producer’s financial interest.

c) Producer must have a reasonable basis to believe the consumer has been reasonably informed of the relevant features and consequences.

d) Still cannot state or imply that recommendation is financial planning, financial advice, investment management or related services without the specific certification in that area.

e) Requirement applies to every producer who participates in the making of the recommendation.

f) Other regulatory requirements applicable to “sales transactions” are omitted.

5. Insurer responsibility and supervision (224.6)

a) Insurer oversight is somewhat reduced and can be based upon an audit system that is “reasonably” designed to achieve producer, insurer compliance. The original draft held the insurer more strictly responsible.

b) Insurer still responsible to ensure that producers are adequately trained.

c) Insurer must still establish procedures designed to prevent financial abuse and exploitation of an adult’s funds

6. Effective date (224.9)

For annuities the effective date is March 1, 2019. For life products the effective date is six months thereafter.