



## **PANEL LEADS THE WAY ON AVERTING COMPLIANCE CONCERNS**

*Inaugural AE event gathers regulators, representative to discuss best ways to protect practices from regulatory risks.*

On May 4, Advisors Excel held the first event in the **Lead The Way** compliance series designed to help producers ensure their practice is properly protected from regulatory risks. This inaugural event was a panel discussion with current and former regulators along with an industry compliance representative.

Topics discussed included product complexity, complaint processes, marketing, suitability and rebating. The program panel included Doug Ommen, deputy commissioner of the Iowa Insurance Division; Jason Lapham, interim director of the Kansas Insurance Department life division; Jim Poolman, of Poolman Consulting, Inc.; and Michael Brennan, former North Dakota insurance commissioner and chief compliance officer and VP of Allianz Life Insurance Company.

### **Topics of discussion:**

#### **Product Complexity**

The panelists first focused on the growing complexity of insurance products that are being sold. Lapham and Ommen pointed out the products are becoming more complex and that it is the responsibility of the producers and the companies to ensure the consumers buying the products know what they are receiving. This knowledge is based in proper advertising along with thorough explanations of the products to consumers. The more thoroughly a product is understood by the producer, the better it can be explained to the client alleviating misunderstanding and miscommunication and, ultimately, preventing problems on the back end for the client and producer.

#### **Complaint Process**

The current regulators on the panel were asked to describe the complaint process

within their departments. Lapham indicated there is no typical complaint but said producers who can provide documentation and a narrative regarding the sale are helpful to the regulator. He cautioned against being defensive and stressed the need to respond to the complaint without withholding information. Poolman discussed the importance of documentation on replacements. His general standard was whether the regulator could look at the producer's file and recreate the story of the sale. Ommen added that it is a good practice to document how a product is achieving the client's needs and objectives. Brennan suggested it is a good practice to have copies of all carrier requirements for replacements on file for reference. All panelists encouraged producers to maintain strong documentation in all sales.

### **Marketing**

The panelists' discussion then delved into market practices by producers. Ommen stated the Iowa department looks to ensure the product you are offering matches what the consumer is looking for in the transaction. Further, Ommen pointed out the standard for whether a potential piece of marketing material is misleading is judged from a consumer standpoint. [Editor's Note: A good standard to apply is whether your mother would understand the product you are selling. If not, additional information should be provided to adequately explain the product.] Lapham pointed out there was an ongoing attempt by regulators to develop consistency in their approach to marketing but that standard is not currently uniform across the board. Ommen stated Iowa does not necessarily investigate specific complaints related to marketing; rather they watch for indications of trends. Kansas, according to Lapham, does pay attention to individual complaints and encouraged producers to tell the complete story to their clients.

### **Suitability**

Considerable discussion was held on the issue of suitability. Brennan stated the bar for suitability is being raised and that producers should carefully consider replacements and ensure those replacements are meeting the objectives of the client. Brennan also indicated providing complete information to the carriers on replacements is helpful to their analysis. He shared his belief that the suitability form could be used as a conversation piece by walking the client through the materials and building a comfort level that the producer is a trusted financial professional that can be relied upon for advice. Brennan indicated the standard for evaluation of products is whether they were suitable at the time of the sale, and Ommen and Lapham added there are not statutes of limitation per se on the complaint process due to the length of the products. Poolman emphasized the need to have complete documentation on replacements.

### **Rebating**

The final topic addressed during the panel concerned rebating. Ommen stated that while Iowa has no specific limit on gifts, if it is given to influence a consumer to purchase a product, it would likely violate rebating or inducement laws. Further, extraordinary gifts are more likely to influence consumers and should be avoided.

Finally, Ommen pointed out that a pattern of conduct regarding rebating would draw the scrutiny of regulators and that producers should avoid quid pro quo with consumers. Lapham added that regulators would look to the producer for additional information on how the gift was presented to determine whether it would be considered a rebate or an inducement.

### **Key Takeaways**

It is clear from the comments of the panelists that compliance regulation is subject to a spectrum of interpretations and enforcement. While the opinions of the panelists certainly do not represent the view of all insurance regulators, they did provide a good insight into how regulators generally view certain issues. Some of the basic tenants to take away from the panel's comments should help you to establish a compliant and safe practice.

- Be clear with clients. Explain the products fully to them and make sure they are aware of what they are purchasing. Using false or deceptive marketing materials may result in a sale initially but the problems on the back end outweigh the benefits at the outset. Answering all client questions and fully explaining the products prevents problems down the road by ensuring the clients know up front the features of the products they are buying.
- Documentation is the key to keeping your practice safe. A good suggestion from the panel was to ask yourself, "Could a regulator rebuild the transaction from my files?" If the answer is no and there are gaps in your documentation, you need to work hard to fill those gaps. Documentation is especially critical with respect to replacement contracts. Being able to hand a regulator your file and allow them to trace the transaction from start to finish will be beneficial to your practice in the long run.
- Work with the insurance department to resolve complaints. Regulators are not actively seeking to cause problems for producers. Accordingly, if you receive an inquiry from a regulator, cooperation is a key component. Provide timely responses to information requests without being defensive or withholding information. Because your documentation will be in good working order, the regulator will be able to follow the transaction step by step and avoid painful delays for you and your business.

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It is important to note that the opinions of the panelists were generalized in nature and do not necessarily represent the standard in the state where you practice. If you have questions specific to your jurisdiction, please contact us and we can direct you to the rules applicable to your practice. We will continue to host events similar to this panel throughout the year in addition to providing you numerous

compliance resources to help your business. Please feel free to contact us if you have any questions. I can be reached at [zac.anshutz@advisorsexcel.com](mailto:zac.anshutz@advisorsexcel.com) or at 866-363-9595. We look forward to working with you.

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