

REGIONAL TRAINING SEMINAR FOR INSURANCE  
SUPERVISORS OF LATIN AMERICA

**Session 5. – Fair Treatment for the Insured: A Preventative Approach for Market Conduct Supervision. ICP N° 19: Conduct of Business**

**Deputy Commissioner Lindley-Myers  
Tennessee Dept. of Commerce and Insurance**

# **PUBLIC POLICY REASONS FOR INSURANCE REGULATION**

- Insurance impacts the public welfare
- The cost of insurance is a large consumer expenditure
- Consumers may have limited knowledge
- Consumer actions alone may not correct inappropriate market practices

# CONTRACTUAL NATURE OF INSURANCE POLICIES

- Insurance policies are complicated contracts
- Insurance policies are aleatory contracts
- Insurance policies are contracts of adhesion

# GOAL OF MARKET REGULATION

The goal of market regulation is to protect consumers by identifying and correcting insurer operating practices that are in conflict with contract provisions, state laws, rules, regulations, or orders of the Commissioner.

# REGULATOR ACTIVITY BEFORE THE SALE

- Company licensing
- Producer licensing
- Rate and form review

# REGULATOR ACTIVITY AFTER THE SALE

- Consumer Inquiries and Complaints
- Investigations
- Market Analysis
- Market Conduct Examinations
- Enforcement

# STANDARDS OF COMPANY CONDUCT

- Company Operations/Management
- Marketing & Sales
- Underwriting & Rating
- Policyholder Service
- Claim Handling
- Complaints
- Producer Licensing

# COMPANY OPERATIONS

- Company is licensed for the lines of business being written.
- Company has audit program, antifraud plan and disaster recovery plans.
- Company monitors the activities of MGAs, GAs, TPAs and independent adjusters.
- Company records comply with state record retention requirements.

# MARKETING AND SALES

- Misrepresentation of policy benefits is prohibited.
- Failing to disclose limitations is prohibited.
- Making unfair or incomplete comparisons with other products is prohibited.

# UNDERWRITING AND RATING

- Company underwriting practices are not unfairly discriminatory.
- Rates charged for the policy coverage are in accordance with filed rates (if applicable) or the company rating plan.
- Company does not permit illegal rebating, commission cutting, or inducements.
- Cancellations/non-renewal notices comply with policy provisions and state laws.

# **POLICYHOLDER SERVICE**

- Policy issuance and insured-requested cancellations are timely.
- All correspondence directed to the company is answered in a timely and responsive manner.
- Company makes reasonable attempts to locate missing policyholders and beneficiaries.

# CLAIMS HANDLING

- Company conducts reasonable and timely investigations.
- Company processes claims in accordance with policy provisions.
- Claim files are adequately documented.

# COMPLAINT HANDLING

- Company records complaints in the required format on the company complaint register.
- The company responds to complaints in a timely fashion.

# PRODUCER LICENSING

- Producers are properly licensed and appointed (if required).
- Producers complete necessary continuing education requirements.
- Records of terminated producers adequately document reasons for terminations.

# KEY CONSUMER PROTECTION LAWS

- Unfair Trade Practices Act
- Unfair Claims Settlement Practices Act
- Improper Termination Practices Act
- Suitability in Annuity Transactions Model Regulation

# UNFAIR TRADE PRACTICES ACT

- Misrepresentation and False Advertising
- Defamation
- False Statements
- Misrepresentation in Insurance Application
- Unfair Financial Planning

# UNFAIR TRADE PRACTICES

- Boycott, Coercion and Intimidation
- Inducements and Rebates
- Failure to Maintain Marketing Records
- Failure to Maintain Complaint Handling Procedures
- Failure to Provide Claims History

# UNFAIR DISCRIMINATION

- Individuals of the Same Class
- Gender, Marital Status, Race, Religion, National Origin
- Property and Casualty Insurance
  - Geographic Location of Property
  - Age of Property
  - Mental or Physical Impairment
- Refusal to Insure without Assessment

# **SPECIAL CONSIDERATIONS FOR DEPOSITORY INSTITUTIONS**

- Required Affiliation
- Unreasonable Rejection
- Payment of Separate Charge
- Confusion on Government Involvement
- Unlicensed Intermediary
- Commissions to Unlicensed Intermediary
- Credit and Insurance Document Comingling

# POWERS OF SUPERVISOR

- Examine and Investigate
- Service of Process
- Hold Hearing
- Compel Attendance
- Examine Witnesses
- Suspension and Revocations
- Monetary Penalties

# UNFAIR CLAIMS SETTLEMENT PRACTICES

- Misrepresentation
- Failure to Acknowledge
- Failure to Promptly Investigate
- Failure to Act in Good Faith
- Compelling Litigation
- Failure to Affirm or Deny Coverage
- Failure to Provide Forms

# IMPROPER TERMINATION PRACTICES

- Termination based on race, color, creed, national origin, ancestry, gender, sexual orientation or marital status
- Termination based on age, disability or geographic location
- Failure to provide termination provisions

# POLICY CANCELLATIONS & NONRENEWALS

- Notice must be provided
- Timing of Notice
- Reasons for Cancellation
  - Change in Risk
  - Nonpayment of Premium
  - Misrepresentation of Material Fact
  - Fraud

# **SPECIAL PROTECTIONS FOR ANNUITIES**

- Reasonable Grounds Product is Suitable
  - Understand Consumer Needs
  - Explain Product Features
- Supervisory System
  - Procedures for Recommendation Review
  - Annual Report to Senior Management
- Intermediary Training

# QUESTIONS/COMMENTS