



State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Jim Doyle, Governor
Sean Dilweg, Commissioner

Wisconsin.gov

March 27, 2009

Legal Unit
125 South Webster Street • P.O. Box 7873
Madison, Wisconsin 53707-7873
Phone: (608) 267-9586 • Fax: (608) 264-6228
Web Address: oci.wi.gov

REPORT ON Section Ins 2.07, Wis. Adm. Code, relating to
replacement of life insurance or annuity contracts;
disclosure requirements.

Clearinghouse Rule No. CR 08-107
Submitted Under s. 227.19 (3), Stats.

(The proposed rule-making order is attached.)

**(a) A detailed statement of basis for the proposed rule and how the rule
advances relevant statutory goals or purposes:**

OCI has established minimum standards of conduct to be observed by insurers and producers in life insurance and annuity replacement or financed purchase transactions to assure disclosure of material information to purchasers and to reduce opportunities for misrepresentation and unfair business practices. The proposed rule expands and clarifies the information that must be communicated by a producer to a purchaser at the time an application is completed. The rule provides notice formats to assure uniform disclosures. The rule requires that certification of the disclosure be obtained from the purchaser and the producer, and that a copy of the certification along with a copy of all sales materials be provided to the purchaser and submitted to the insurer with the completed application. The rule defines and includes financed purchases in the replacement disclosure and reporting requirements. Under the proposed rule insurers who use producers are required to maintain a system of supervision, control and monitoring to assure compliance, which at a minimum must provide training, guidance, review and detection procedures. Insurers must have the capacity to monitor each producer's replacement activity and maintain and produce transactional records on request of the commissioner. A replacing insurer must provide notification to an existing insurer, who in turn must notify the existing policyholder of the right to receive information regarding the existing policy or contract and of the potential effect of release of policy values. Insurers engaged in direct response solicitation are required to make inquiries and provide disclosures to an applicant in any transaction that may involve a replacement

(b) Summary of the public comments and the agency's responses to those comments:

Comment: The Elder Law Section Board of the State Bar of Wisconsin submitted a written comment in support of the proposed rule noting that life insurance and annuity products are important to individuals and families, but that cases of inappropriate replacements have been observed. The proposed rule is an improvement over the existing rule, providing better disclosure and requiring internal monitoring and record keeping.

The proposed rule protects purchasers and helps to ensure that sales of products are appropriate for the consumer's needs.

Comment: The ACLI submitted a written comment in support of the proposed rule, noting it will provide additional protection for Wisconsin residents that purchase life insurance and annuities. The proposed rule appears to be consistent with the NAIC model which is important for uniformity of state laws will allow companies to better serve consumers by providing efficiency in compliance and implementation of a compliance program. ACLI suggests extension of the effective date of the changes to three to four months. Mr. John P. Gerni, representing the ACLI testified in support of the proposed rule.

Response: The date of initial applicability of the proposed rule is set to be the first day of the fourth month after the effective date of the rule set by statute.

Comment: The WCLI submitted a written comment in support of the proposed rule, noting it will provide additional protection for life insurance and annuity purchasers. The proposed rule is largely consistent with the NAIC model which will provide for greater compliance and efficiency in implementation. The WCLI made several specific suggestions, including expressing the insurer's obligation in subsection (5)(a) of the proposed rule to "establish and maintain" rather than to "provide" for greater clarity, and to extend the effective date to three or four months after the final adoption of the rule. Clarification of the "addition" of subsection (9)(d) was requested. Ms. Connie L. O'Connell, representing the WCLI testified in support of the proposed rule.

Response: Substitution of the suggested wording of "establish and maintain" in subsection (5)(a) has been made. The date of initial applicability of the proposed rule is set to be the first day of the fourth month after the effective date of the rule set by statute. Subsection (9)(d) is not an addition to the replacement rule, but is carried over from the existing rule with the intent that failure to comply with the replacement rule is not ground for an insurer to declare a contract void and thus avoid a claim.

Comment: Ms. Susan Linck, representing NAIFA-WI, testified in general support of the proposed rule.

(c) An explanation of any modifications made in proposed rule as a result of public comments or testimony received at a public hearing:

1. The date of the initial applicability of the proposed rule is set to be the first day of the fourth month after the effective date of the rule set by statute.

2. In subsection (5)(a) of the proposed rule the words “establish and maintain” have been substituted for the word “provide” to provide greater clarity as to an insurer’s duty.

(d) Persons who appeared or registered regarding the proposed rule:

Appearances for:

John P. Gerni, 101 Constitution Ave. NW, Ste. 700, Washington, DC 2001
ACLI

Connie L. O’Connell, 10 E. Doty St., Ste. 621, Madison, WI 53703
Wisconsin Council of Life Insurers

Susan Linck, 2702 International Lane, Madison, WI
NAIFA-WI

Appearances against:

None

Appearances for information:

None

Registrations for:

Sharon Brosnan, 4321 N. Ballard Rd., Appleton, WI 54919
Thrivent Financial For Lutherans

Susan Callanan, 720 E. Wisconsin Ave., Milwaukee, WI 53211
Northwestern Mutual Life Insurance Company

Registrations against:

None

Registrations neither for nor against:

None

Letters received:

John P. Gerni, 101 Constitution Ave. NW, Ste. 700, Washington, DC 2001
ACLI

Connie L. O’Connell, 10 E. Doty St., Ste. 621, Madison, WI 53703
Wisconsin Council of Life Insurers

Sandy Lonergan, Government Relations Coordinator, 5302 Eastpark Blvd.,
Madison, WI 53707
Elder Law Section Board, State Bar of Wisconsin

(e) An explanation of any changes made to the plain language analysis of the rule under s. 227.14 (2), Stats., or to any fiscal estimate prepared under s. 227.14 (4), Stats.

None

(f) The response to the Legislative Council staff recommendations indicating acceptance of the recommendations and a specific reason for rejecting any recommendation:

All comments were complied with and corrected except the following:

Comment 2.j. The proposed rule adopts the NAIC model containing the definition of "Policy summary." In the interest of uniformity among the states the proposed definition is retained.

Comment 3.a. The recommendation that references in Ins 6.80 (2) (b) 2. be corrected is taken under consideration, but is beyond the scope of this proposed rule.

Comment 3.b. The difference in document retention periods in Ins. 2.07 (5) (e), 2.07 (6) (a) 3. and (c) 2. for insurers, and Ins 6.61 (10) for producers is noted and understood.

Comment 4.b. The interplay of Appendices I, II and III is noted. The language is adopted directly from the NAIC model, and the references are correct as set forth. The references to the Appendices should be read in conjunction with one another to determine the circumstances in which each should be used.

(g) The response to the report prepared by the small business regulatory review board:

The small business regulatory review board did not prepare a report.

(h) Final Regulatory Flexibility Analysis

A Final Regulatory Flexibility Analysis is Not Required because the rule will not have a significant economic impact on a substantial number of small businesses.

(i) Fiscal Effect

See fiscal estimate attached to proposed rule.

Attachment: Legislative Council Staff Recommendations

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