



State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Jim Doyle, Governor
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Wisconsin.gov

July 14, 2008

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REPORT ON Sections Ins 3.455, 3.46, 3.465, Wis. Adm. Code,
relating to long-term care plans including the long-term care
partnership program qualifying policies

Clearinghouse Rule No. 08-032
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:

The passage of 2007 Wis. Act 20 created the long-term care Partnership Program and required the Office to implement initial and on-going training requirements for intermediaries and other requirements specific to long-term care insurance products intended to qualify for the Partnership Program. 2007 Wis. Act 20 included reference to the federal Partnership Program contained in the Deficit Reduction Action of 2005 ("DRA"). The National Association of Insurance Commissioners (NAIC) was enlisted to promulgate model language that states could adopt relating to long-term care and the Partnership Program. NAIC developed Long-Term Care Insurance Model Act and Model Laws, pursuant to 42 U.S.C. 1396p (b), the DRA, and adopted the models in 2006.

The Office had not revised its existing long-term care regulations since 2001 and during its last revision the Office did not include the 2000 NAIC model language. The current rule also lacks some consumer protections that were included in the 2006 NAIC models and improved disclosures and definitions to assist consumers in better understanding how the long-term care, home health care or nursing home insurance policy is able to be used and the limitations or exclusions that may be applied by insurers.

One tool to both provide a check on the industry and its intermediaries and better assist consumers with the purchase of long-term care, home health care or nursing home care insurance is through the consolidation and expansion of the marketing requirements. Intermediaries and insurers are required to report on their prior dealings with consumers and state that the policy being sold is an appropriate product for that person. Although similar tools are currently required, the expansion requires additional data reporting to the OCI so

that as the regulator we are provided a clearer picture of what sales are occurring and trends in the marketplace. The information will also highlight for both OCI and the insurers contracting with intermediaries information that may reveal unacceptable practices including high pressure sales tactics or interactions with persons resulting in a higher rate of complaints than other intermediaries. Appropriateness of each sale is to be reviewed and must meet the insurer's guidelines.

Additionally, some of the modifications reflect changes in our society, for instance the recognition and use of the internet or on-line completion of applications. Also, nonforfeiture of benefits provisions reflect the increasing cost of long-term care and the effect those increases have on the insureds. Some seniors, at a time near to when the policy may be most useful are least able to afford premium increases. Nonforfeiture of benefits or contingent nonforfeiture provisions allow those who have paid premiums for many years benefits even after they are no longer able to keep their policy in force. Requirements for monitoring replacement of policies are also expanded to enhance oversight of actions by intermediaries and insurers.

Section Ins 3.46 includes a new provision related to initial and ongoing intermediary training for all long-term care insurance products as delineated within 2007 Wis. Act 20. OCI is required to assure the Department of Health and Family Services that the intermediaries dealing with Wisconsin consumers are aware of the unique programs available in Wisconsin. To achieve this requirement, the proposed rule contains a provision that delineates training requirements related to long-term care and the Wisconsin Partnership Program that is required for all intermediaries offering, selling or negotiating long-term care contracts. Insurers are required to verify compliance with this training to the OCI.

Section Ins 3.465 is newly created to implement the requirements of the Wisconsin Long-Term Care Insurance Partnership Program. This section contains minimum inflation protection percentage increases by age as outlined by the federal government in order for the policies offered by insurers to meet the requirements of the DRA and the Wisconsin Partnership Program. The section also delineates when and how insurers exchange existing long-term care insurance policies for policies that are intended to qualify for the Partnership Program in both the individual and group market. Appendices outline various notices that are to be provided to consumers at the time of solicitation and again at the point

of sale. These are intended to educate the consumer so that the consumer may be better able to make informed decisions.

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

Comment: Susan Linck, NAIFA WI: Modify the increment for agent training from 2-hour increments to 1 8-hour or a 6-hour block plus 2 hour WI specific block for initial training and for on-going training one 4-hour block of time. Also, modify language in 3.46 (26) (b) 1., Wis. Adm. Code, to reflect Legislative change.

Response: Modifications made.

Comment: Connie O'Connell, WCLI: Also requested modification to the increment block for initial and on-going training of agents and stated that she would provide alternative language to the incontestability provision at 3.46 (19), Wis. Adm. Code.

Response: Modification made to the training and incontestability although modified from comments provided.

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

Modification as noted in response to (b), above.

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

Appearances for:

Susan Linck, NAIFA WI

Connie O'Connell, Wisconsin Council of Life Insurers

Appearances against:

None

Appearances for information:

None

Registrations for:

Sarah Buschman, Rep. Pat Strachota

Michael Meulemans, Write Resources, LLC

Registrations against:

None

Registrations neither for nor against:

Vaughn Vance & Marilyn Windschiegl WEA Trust

Letters received:

Testimony of Ms. Linck and Ms. O'Connell+

(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, other than as requested as part of Legislative Council staff's recommendations.

(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:

Section 1 (b): 3.46 (20) (e) follows NAIC model language.

Section 1 (c): Statute was modified

Section 2 e., p., x., mmm., nnn., rrr follow NAIC model language.

(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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