

# Chapter 284-23 WAC

## WASHINGTON LIFE INSURANCE REGULATIONS

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284-23-530, filed 5/2/80, effective 10/1/80.] Repealed by WSR 87-14-015 (Order R 87-6), filed 6/23/87, effective 9/1/87. Statutory Authority: RCW 48.02.060.

284-23-645

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## ADVERTISING REGULATION

**WAC 284-23-010 Title and purpose.** (1) This regulation, WAC 284-23-010 through 284-23-130, shall be known and may be cited as the "Washington life insurance advertising regulation."

(2) The purpose of this regulation is to set forth minimum standards and guidelines to assure a full and truthful disclosure to the public of all material and relevant information in the advertising of life insurance policies and annuity contracts.

[Order R-75-3, § 284-23-010, filed 8/22/75, effective 11/1/75.]

**WAC 284-23-020 Definitions.** (1) For the purpose of this regulation:

(a) "Policy" shall include any policy, plan, certificate, contract, agreement, statement of coverage, rider, or endorsement which provides for life insurance or annuity benefits.

(b) "Insurer" shall include any organization or person which issues life insurance or annuities in this State and is engaged in the advertisement of a policy.

(c) "Advertisement" shall be material designed to create public interest in life insurance or annuities or in an insurer, or to induce the public to purchase, increase, modify, reinstate, or retain a policy including:

(i) Printed and published material, audiovisual material, and descriptive literature of an insurer used in direct mail, newspapers, magazines, radio and television scripts, billboards and similar displays;

(ii) Descriptive literature and sales aids of all kinds issued by an insurer or insurance producer, including but not limited to circulars, leaflets, booklets, depictions, illustrations and form letters;

(iii) Material used for the recruitment, training and education of an insurer's sales personnel and insurance producers, which is designed to be used or is used to induce the public to purchase, increase, modify, reinstate or retain a policy;

(iv) Prepared sales talks, presentations and material for use by sales personnel and insurance producers.

(2) "Advertisement" for the purpose of this regulation shall not include:

(a) Communications or materials used within an insurer's own organization and not intended for dissemination to the public;

(b) Communications with policyholders other than material urging policyholders to purchase, increase, modify, reinstate or retain a policy;

(c) A general announcement from a group or blanket policyholder to eligible individuals on an employment or membership list that a policy or program has been written or arranged, provided the announcement clearly indicates that it

is preliminary to the issuance of a booklet explaining the proposed coverage.

[Statutory Authority: RCW 48.02.060 (3)(a) and 48.17.010(5). WSR 11-01-159 (Matter No. R 2010-09), § 284-23-020, filed 12/22/10, effective 1/22/11; Order R-75-3, § 284-23-020, filed 8/22/75, effective 11/1/75.]

**WAC 284-23-030 Applicability.** (1) This regulation shall apply to any life insurance or annuity advertisement intended for dissemination in this state.

(2) Every insurer shall establish and at all times maintain a system of control over the content, form and method of dissemination of all advertisements of its policies. All such advertisements, regardless of by whom written, created, designed or presented, shall be the responsibility of the insurer for whom such advertisements are prepared.

[Order R-75-3, § 284-23-030, filed 8/22/75, effective 11/1/75.]

**WAC 284-23-040 Form and content of advertisements.** (1) Advertisements shall be truthful and not misleading in fact or by implication. The form and content of an advertisement of a policy shall be sufficiently complete and clear so as to avoid deception. It shall not have the capacity or tendency to mislead or deceive.

(2) Whether an advertisement has the capacity or tendency to mislead or deceive shall be determined by the commissioner from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence within the segment of the public to which it is directed.

(3) No advertisement shall use the terms "investment," "investment plan," "founder's plan," "charter plan," "expansion plan," "profit," "profits," "profit sharing," "interest plan," "savings," "savings plan," or other similar terms in connection with a policy in a context or under such circumstances or conditions as to have the capacity or tendency to mislead a purchaser or prospective purchaser of such policy to believe that he will receive, or that it is possible that he will receive, something other than a policy or some benefit not available to other persons of the same class and equal expectation of life.

[Order R-75-3, § 284-23-040, filed 8/22/75, effective 11/1/75.]

**WAC 284-23-050 Disclosure requirements.** (1) The information required to be disclosed by these rules shall not be minimized, rendered obscure or presented in an ambiguous fashion or intermingled with the text of the advertisement so as to be confusing or misleading.

(2) No advertisement shall omit material information or use words, phrases, statements, references or illustrations if such omission or such use has the capacity, tendency or effect of misleading or deceiving purchasers or prospective purchasers as to the nature or extent of any policy benefit payable, loss covered, premium payable or state or federal tax consequences. The fact that the policy offered is made available to a prospective insured for inspection prior to consummation of the sale, or an offer is made to refund the premium if the purchaser is not satisfied, does not remedy misleading statements.

(3) In the event an advertisement uses "nonmedical," "no medical examination required," or similar terms where issue is not guaranteed, such terms shall be accompanied by a further disclosure of equal prominence and in juxtaposition thereto to the effect that issuance of the policy may depend upon the answers to the health questions.

(4) An advertisement shall not use as the name or title of a life insurance policy or an annuity any phrase which does not include the words "life insurance" or "annuity" unless accompanied by other language clearly indicating it is life insurance or an annuity.

(5) An advertisement shall prominently describe the type of policy advertised.

(6) An advertisement of an insurance policy marketed by direct response techniques shall not state or imply that because there is no agent or commission involved there will be a cost saving to prospective purchasers unless such is the fact. No such cost savings may be stated or implied without justification satisfactory to the insurance commissioner prior to use.

(7) An advertisement for a policy containing graded or modified benefits shall prominently display any limitation of benefits. If the premium is level and coverage decreases or increases with age or duration, such fact shall be prominently disclosed.

(8) An advertisement for a policy with nonlevel premiums shall prominently describe the premium changes.

(9) With respect to dividends:

(a) An advertisement shall not utilize or describe dividends in a manner which is misleading or has the capacity or the tendency to mislead.

(b) An advertisement shall not state or imply that the payment or amount of dividends is guaranteed. If dividends are illustrated, they must be based on the insurer's current dividend scale and the illustration must contain a statement to the effect that they are not to be construed as guarantees or estimates of dividends to be paid in the future.

(c) An advertisement shall not state or imply that illustrated dividends under a participating policy and/or pure endowments will be or can be sufficient at any future time to assure, without the further payment of premiums, the receipt of benefits, such as a paid-up policy, unless the advertisement clearly and precisely explains what benefits or coverage would be provided at such time and under what conditions this would occur.

(10) An advertisement shall not state that a purchaser of a policy will share in or receive a stated percentage or portion of the earnings on the general account assets of the company.

(11) With respect to testimonials or endorsements by third parties:

(a) Testimonials used in advertisements must be genuine; represent the current opinion of the author; be applicable to the policy advertised, if any; and be accurately reproduced. In using a testimonial the insurer makes as its own all of the statements contained therein, and such statements are subject to all the provisions of this regulation.

(b) If the individual making a testimonial or an endorsement has a financial interest in the insurer or a related entity as a stockholder, director, officer, employee, or otherwise, or receives any benefit directly or indirectly other than required

union scale wages, such fact shall be disclosed in the advertisement.

(c) An advertisement shall not state or imply that an insurer or a policy has been approved or endorsed by a group of individuals, society, association or other organization unless such is the fact and unless any proprietary relationship between an organization and the insurer is disclosed. If the entity making the endorsement or testimonial is owned, controlled, or managed by the insurer, or receives any payment or other consideration from the insurer for making such endorsement or testimonial, such fact shall be disclosed in the advertisement.

(12) An advertisement shall not contain statistical information relating to any insurer or policy unless it accurately reflects recent and relevant facts. The source of any such statistics used in an advertisement shall be identified therein.

(13) With respect to introductory, initial, or special offers and enrollment periods:

(a) An advertisement of an individual policy or combination of such policies shall not state or imply that such policy or combination of such policies is an introductory, initial or special offer, or that applicants will receive substantial advantages not available at a later date, or that the offer is available only to a specified group of individuals, unless such is the fact. An advertisement shall not describe an enrollment period as "special" or "limited" or use similar words or phrases in describing it when the insurer uses successive enrollment periods as its usual method of marketing its policies.

(b) An advertisement shall not state or imply that only a specific number of policies will be sold or that a time is fixed for the discontinuance of the sale of the particular policy advertised because of special advantages available in the policy.

(c) An advertisement shall not offer a policy which utilizes a reduced initial premium rate in a manner which over-emphasizes the availability and the amount of the reduced initial premium. When an insurer charges an initial premium that differs in amount from the amount of the renewal premium payable on the same mode, all references to the reduced initial premium shall be followed by an asterisk or other appropriate symbol which refers the reader to that specific portion of the advertisement which contains the full rate schedule for the policy being advertised.

(d) An enrollment period during which a particular insurance policy may be purchased on an individual basis shall not be offered within this State unless there has been a lapse of not less than three months between the close of the immediately preceding enrollment period for the same policy and the opening of the new enrollment period. The advertisement shall specify the date by which the applicant must mail the application, which shall be not less than ten days and not more than forty days following the date on which such enrollment period is advertised for the first time. This rule applies to all advertising media, i.e., mail, newspapers, radio, television, magazines and periodicals used by any one insurer. The phrase "any one insurer" includes all the affiliated companies of a group of insurance companies under common management or control. This rule does not apply to the use of a termination or cutoff date beyond which an individual application for a guaranteed issue policy will not be accepted by an

insurer in those instances where the application has been sent to the applicant in response to his request. It is also inapplicable to solicitations of employees or members of a particular group or association which otherwise would be eligible under specific provisions of the insurance code for group, blanket or franchise insurance. In cases where an insurance product is marketed on a direct mail basis to prospective insureds by reason of some common relationship with a sponsoring organization, this rule shall be applied separately to each such sponsoring organization.

(14) An advertisement of a particular policy shall not state or imply that prospective insureds shall be or become members of a special class, group or quasi-group and as such enjoy special rates, dividends or underwriting privileges, unless such is the fact.

(15) An advertisement shall not make unfair or incomplete comparisons of policies, benefits, dividends or rates of other insurers. An advertisement shall not falsely or unfairly describe other insurers, their policies, services or methods of marketing.

[Order R-75-3, § 284-23-050, filed 8/22/75, effective 11/1/75.]

**WAC 284-23-060 Identity of insurer.** (1) The full name and home office of the insurer shall be clearly identified, and if any specific individual policy is advertised it shall be identified either by form number or other appropriate description. An advertisement shall not use a trade name, an insurance group designation, name of the parent company of the insurer, name of a particular division of the insurer, service mark, slogan, symbol or other device or reference without disclosing the name of the insurer, or in a manner that would have the capacity or tendency to mislead or deceive as to the true identity of the insurer or create the impression that a company other than the insurer would have any responsibility for the financial obligation under a policy.

(2) No advertisement shall use any combination of words, symbols or physical materials which by their content, phraseology, shape, color or other characteristics are so similar to a combination of words, symbols or physical materials used by a governmental program or agency or otherwise appear to be of such a nature that they tend to mislead prospective insureds into believing that the solicitation is in some manner connected with such governmental program or agency.

[Order R-75-3, § 284-23-060, filed 8/22/75, effective 11/1/75.]

**WAC 284-23-070 Solicitation beyond license limits and status of insurer.** (1) An advertisement which reasonably is expected to be seen or heard beyond the limits of the jurisdiction in which the insurer is licensed shall not imply licensing beyond such limits.

(2) An advertisement may state that an insurer is licensed in the state where the advertisement appears, provided it does not exaggerate such fact or suggest or imply that competing insurers may not be so licensed.

(3) An advertisement shall not create the impression that the insurer, its financial condition or status, the payment of its claim, or the merits, desirability or advisability of its policy forms or kinds of plans of insurance are recommended or endorsed by any governmental entity. However, where a gov-

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ernmental entity has recommended or endorsed a policy form or plan, such fact may be stated if the entity authorizes its recommendation or endorsement to be used in an advertisement.

[Order R-75-3, § 284-23-070, filed 8/22/75, effective 11/1/75.]

**WAC 284-23-080 Statements about the insurer.** An advertisement shall not contain statements, pictures or illustrations which are false or misleading, in fact or by implication, with respect to the assets, liabilities, insurance in force, corporate structure, financial condition, age or relative position of the insurer in the insurance business. An advertisement shall not contain a recommendation by any commercial rating system unless it clearly defines the scope and extent of the recommendation.

[Order R-75-3, § 284-23-080, filed 8/22/75, effective 11/1/75.]

**WAC 284-23-090 Advertising file to be maintained.** Each insurer shall maintain at its home or principal office a complete file containing a specimen copy of every printed, published or prepared advertisement of its individual policies and specimen copies of typical printed, published or prepared advertisements of its blanket, franchise and group policies, hereafter disseminated in this state, with a notation indicating the manner and extent of distribution and the form number of any policy advertised. Such file shall be subject to inspection by the insurance commissioner. All such advertisements shall be maintained in said file for a period of either four years or until the filing of the next regular report on examination of the insurer, whichever is the longer period of time.

[Order R-75-3, § 284-23-090, filed 8/22/75, effective 11/1/75.]

**WAC 284-23-100 Conflict with other rules.** It is not intended that these rules conflict with or supersede any rules currently in force or subsequently adopted in this state governing specific aspects of the sale or replacement of life insurance including, but not limited to, rules dealing with life insurance cost comparison indices, deceptive practices in the sale of life insurance and replacement of life insurance policies. Consequently, no disclosure required under any such rules shall be deemed to be an advertisement within the meaning of this regulation.

[Order R-75-3, § 284-23-100, filed 8/22/75, effective 11/1/75.]

**WAC 284-23-110 Violation defined as unfair practice.** A violation of this regulation, WAC 284-23-010 through 284-23-130, is hereby defined to be an unfair method of competition and an unfair or deceptive act or practice in the conduct of the business of insurance, pursuant to RCW 48.30.010.

[Order R-75-3, § 284-23-110, filed 8/22/75, effective 11/1/75.]

## LIFE INSURANCE DISCLOSURE

**WAC 284-23-200 Purpose.** (1) The purpose of this regulation is to require insurers to deliver to purchasers of life insurance, information which will improve the buyer's ability to select the most appropriate plan of life insurance for the buyer's needs, improve the buyer's understanding of the basic features of the policy which has been purchased or which is

under consideration and improve the ability of the buyer to evaluate the relative costs of similar plans of life insurance.

(2) This regulation does not prohibit the use of additional material which is not in violation of this regulation or any other Washington statute or regulation.

[Statutory Authority: RCW 48.02.020 and 48.30.010. WSR 98-11-003 (Matter No. R 97-04), § 284-23-200, filed 5/6/98, effective 6/6/98. Statutory Authority: RCW 48.02.060, 48.30.010, and 48.30.090. WSR 79-07-053 (Order R 79-2), § 284-23-200, filed 6/25/79, effective 1/1/80.]

**WAC 284-23-210 Scope.** (1) Except for the exemptions specified in subsection (2) of this section, this regulation shall apply to any solicitation, negotiation or procurement of life insurance occurring within this state. This regulation shall apply to any issuer of life insurance contracts including fraternal benefit societies.

(2) Unless specifically included, this regulation shall not apply to:

- (a) Annuities.
- (b) Credit life insurance.
- (c) Group life insurance whose cost is borne in whole or in part by the individual insured's employer or by an association of which the individual insured is a member.
- (d) Life insurance policies issued in connection with pension and welfare plans as defined by and which are subject to the federal Employee Retirement Income Security Act of 1974 (ERISA).

(e) Variable life insurance under which the death benefits and cash values vary in accordance with unit values of investments held in a separate account.

[Statutory Authority: RCW 48.02.020 and 48.30.010. WSR 98-11-003 (Matter No. R 97-04), § 284-23-210, filed 5/6/98, effective 6/6/98. Statutory Authority: RCW 48.02.060, 48.30.010, and 48.30.090. WSR 79-07-053 (Order R 79-2), § 284-23-210, filed 6/25/79, effective 1/1/80.]

**WAC 284-23-220 Definitions.** For the purposes of this regulation, the following definitions shall apply:

(1) "*Buyer's Guide*" is a document that contains, and is limited to, the current buyer's guide, which has been recommended for use by the National Association of Insurance Commissioners. A company must use the current *Buyer's Guide* no later than six months after approval by the National Association of Insurance Commissioners.

(2) Cost comparison indexes:

(a) "Surrender cost comparison index—Guaranteed basis" is calculated by applying the following steps:

(i) Step one: Determine the guaranteed cash surrender value, if any, available at the end of the tenth and twentieth policy years.

(ii) Step two: Divide the result of step one by an interest factor that converts it into one equivalent level annual amount that, if paid at the beginning of each year, would accrue to the values in step one over the respective periods stipulated in step one. If the period is ten years, the factor is 13.207 and if the period is twenty years, the factor is 34.719.

(iii) Step three: Determine the equivalent guaranteed level premium by accumulating each guaranteed annual premium payable for the basic policy or rider at five percent interest compounded annually to the end of the period stipulated in step one and dividing the result by the respective fac-

tors stated in step two. (This amount is the guaranteed annual premium payable for a level premium plan.)

(iv) Step four: Subtract the result of step two from step three.

(v) Step five: Divide the result of step four by the number of thousands of the equivalent guaranteed level death benefit, using the company's guaranteed rate schedule to determine the amount payable upon death for purposes of subsection (3) of this section, to arrive at the "surrender cost comparison index—Guaranteed basis."

(b) "Net payment cost comparison index—Guaranteed basis" is calculated in the same manner as the comparable "surrender cost comparison index—Guaranteed basis" except that the cash surrender value is set at zero.

(3) "Equivalent guaranteed level death benefit" of a policy or term life insurance rider is an amount calculated as follows:

(a) Step six: Accumulate the amount payable upon death, regardless of the cause of death, at the beginning of each policy year for ten and twenty years at five percent interest compounded annually to the end of the tenth and twentieth policy years respectively.

(b) Step seven: Divide each accumulation of step six by an interest factor that converts the accumulation into one equivalent level annual amount that, if paid at the beginning of each year, would accrue to the value in step six over the respective periods stipulated in step six. If the period is ten years, the factor is 13.207 and if the period is twenty years, the factor is 34.719.

(4) "Generic name" is a short title that is descriptive of the premium and benefit patterns of a policy or a rider.

(5) "Policy data" is a display or schedule of guaranteed numerical values for each policy year or a series of designated policy years of the following information: Premiums; death benefits; cash surrender values and endowment benefits.

(6) "Policy summary" is a written statement describing the elements of the policy including but not limited to:

(a) A prominently placed title as follows: Statement of policy cost and benefit information.

(b) The name and address of the insurance agent, or, if no agent is involved, a statement of the procedure to be followed in order to receive responses to inquiries regarding the policy summary.

(c) The full name and home office or administrative office address of the company in which the life insurance policy is to be or has been written.

(d) The generic name of the basic policy and each rider.

(e) The following amounts, where applicable, for the first five policy years and representative policy years thereafter sufficient to clearly illustrate the premium and benefit patterns, including, but not necessarily limited to, the years for which life insurance cost indexes are displayed and at least one age from sixty through sixty-five or maturity whichever is earlier:

(i) The guaranteed annual premium for the basic policy.

(ii) The guaranteed annual premium for each optional rider.

(iii) The guaranteed amount payable upon death, at the beginning of the policy year regardless of the cause of death other than suicide, or other specifically enumerated exclu-

sions, which is provided by the basic policy and each optional rider, with benefits provided under the basic policy and each rider shown separately.

(iv) The guaranteed total cash surrender values at the end of the year with values shown separately for the basic policy and each rider.

(v) Any guaranteed endowment amounts payable under the policy which are not included under guaranteed cash surrender values above.

(f) The effective policy loan annual percentage interest rate, if the policy contains this provision, specifying whether this rate is applied in advance or in arrears. If the policy loan interest rate is adjustable, the policy summary shall also indicate that the annual percentage rate will be determined by the company in accordance with the provisions of the policy and the applicable law.

(g) Cost comparison indexes for ten and twenty years but in no case beyond the premium paying period. Separate indexes are displayed for the basic policy and for each optional term life insurance rider. The indexes need not be included for optional riders which are limited to benefits such as accidental death benefits, disability waiver of premium, preliminary term life insurance coverage of less than 12 months and guaranteed insurability benefits nor basic policies or optional riders covering more than one life.

(h) The date on which the policy summary is prepared.

The policy summary must consist of a separate document. All information required to be disclosed must be set out in such a manner as to not minimize or render any portion obscure. Any amounts which remain level for two or more years of the policy may be represented by a single number if it is clearly indicated what amounts are applicable for each policy year. Amounts in item (e) of this section shall be listed in total, not on a per thousand nor per unit basis. If more than one insured is covered under one policy or rider, guaranteed death benefits shall be displayed separately for each insured or for each class of insureds if death benefits do not differ within the class. Zero amounts shall be displayed as zero and shall not be displayed as a blank space.

[Statutory Authority: RCW 48.02.060, 48.44.050, and 48.46.200. WSR 08-03-127 (Matter No. R 2007-13), § 284-23-220, filed 1/23/08, effective 2/23/08. Statutory Authority: RCW 48.02.020 and 48.30.010. WSR 98-11-003 (Matter No. R 97-04), § 284-23-220, filed 5/6/98, effective 6/6/98. Statutory Authority: RCW 48.02.060, 48.30.010, and 48.30.090. WSR 79-07-053 (Order R 79-2), § 284-23-220, filed 6/25/79, effective 1/1/80.]

**WAC 284-23-230 Duties of insurers.** (1) The insurer shall provide a *Buyer's Guide* and a policy summary to any prospective purchaser upon request.

(2) The insurer shall provide, to all prospective purchasers, a *Buyer's Guide* prior to accepting the applicant's initial application, premium, or premium deposit.

(3) A policy summary must be delivered with or prior to delivery of a policy provided, however, that:

(a) If an illustration, subject to the requirements of chapter 48.23A RCW (Life insurance policy illustrations), is used in the sale of a policy, a policy summary does not have to be provided. Only guarantees may be shown in the policy summary for policies written with an application date on or after the effective date of chapter 48.23A RCW (Life insurance policy illustrations).

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(b) If the policy for which application is made or its policy summary does not contain an unconditional refund provision of at least ten days, the policy summary must be delivered prior to delivery of the policy.

(c) If the equivalent guaranteed level death benefit of the policy for which application is made does not exceed five thousand dollars, the requirement for providing a policy summary will be satisfied by delivery of a written statement containing the information described in WAC 284-23-220 (6)(b), (c), (d), (e)(i), (ii), (iii), (iv), (f), (g), (h), and (i).

[Statutory Authority: RCW 48.02.020 and 48.30.010. WSR 98-11-003 (Matter No. R 97-04), § 284-23-230, filed 5/6/98, effective 6/6/98. Statutory Authority: RCW 48.02.060, 48.30.010, and 48.30.090. WSR 79-07-053 (Order R 79-2), § 284-23-230, filed 6/25/79, effective 1/1/80.]

**WAC 284-23-235 Special plans and solicitation by direct response.** (1) In the case of a solicitation by direct response methods, the insurer shall provide a *Buyer's Guide* and a policy summary prior to accepting the application. However, if the policy contains an unconditional refund provision of at least ten days, the *Buyer's Guide* and a policy summary may be delivered with the policy.

(2) Special plans. This subsection modifies the application of this rule as indicated for certain special plans of life insurance:

(a) "Flexible premium and benefit policies." For policies sold without illustrations which:

(i) Permit the policyowner to vary the amount and timing of premium payments, or the amount payable on death, all indexes and other data shall be displayed assuming specific schedules of anticipated premiums and death benefits at issue.

(ii) Provide for a cash value that is based on separately identified interest credits and mortality and expense charges applied to the policy, then the policy summary shall indicate when the policy will expire based on the interest rates and mortality and other charges guaranteed in the policy and the anticipated or assumed annual premiums shown in the policy summary.

(b) "Multitrack policies." For policies which allow a policyowner to change or convert the policy from one plan or amount to another, the policy summary:

(i) Shall display all indexes and other data assuming that the option is not exercised; and

(ii) May display all indexes and other data using a stated assumption about the exercise of the option.

(c) "Policies with any rate subject to continued insurability." For policies which allow a policyowner a reduced premium rate if the insured periodically submits evidence of continued insurability, the policy summary:

(i) Shall display cost indexes and other data assuming that the insured always qualifies for the lowest premium;

(ii) Shall display cost indexes and other data assuming that the insured fails to qualify for the lowest premium and the company always charges the highest premiums allowable; and

(iii) Shall indicate the conditions that must be fulfilled for an insured to qualify periodically for the reduced rate.

[Statutory Authority: RCW 48.02.020 and 48.30.010. WSR 98-11-003 (Matter No. R 97-04), § 284-23-235, filed 5/6/98, effective 6/6/98.]

(10/22/14)

**WAC 284-23-240 General rules.** (1) Each insurer must maintain at its home office or principal office, a complete file containing one copy of each document authorized by the insurer for use under this regulation. The file must contain one copy of each authorized form for a period of three years following the date of its last authorized use unless otherwise provided by this regulation.

(2) An insurance producer must inform the prospective purchaser, prior to commencing any presentation that may lead to the sale of life insurance that the insurance producer is acting as an insurance producer with a life insurance line of authority. In sales situations in which an insurance producer is not involved, the insurer must identify its full name.

(3) Terms such as financial planner, investment advisor, financial consultant or financial counselor must not be used by an insurance producer unless the insurance producer is engaged in an advisory business and receives a substantial part of their compensation from that source unrelated to the sale of insurance.

(4) There must be no reference to a dividend or nonguaranteed element in the policy summary. Any reference to a dividend or a nonguaranteed element in the sales process must comply with the provisions of chapter 48.23A RCW.

(5) Any statement regarding the use of the life insurance cost comparison indexes must include an explanation to the effect that the indexes are useful only for the comparison of the relative costs of two or more similar policies.

[Statutory Authority: RCW 48.02.060 and 48.30.010. WSR 12-05-051 (Matter No. R 2011-21), § 284-23-240, filed 2/14/12, effective 3/16/12. Statutory Authority: RCW 48.02.020 and 48.30.010. WSR 98-11-003 (Matter No. R 97-04), § 284-23-240, filed 5/6/98, effective 6/6/98. Statutory Authority: RCW 48.02.060, 48.30.010, and 48.30.090. WSR 79-07-053 (Order R 79-2), § 284-23-240, filed 6/25/79, effective 1/1/80.]

**WAC 284-23-250 Failure to comply.** Failure of an insurer or an agent to provide or deliver a *Buyer's Guide*, a policy summary, or policy data as provided under WAC 284-23-230 and 284-23-235 shall constitute an unfair method of competition and an unfair act or practice, under RCW 48.30.010.

[Statutory Authority: RCW 48.02.020 and 48.30.010. WSR 98-11-003 (Matter No. R 97-04), § 284-23-250, filed 5/6/98, effective 6/6/98. Statutory Authority: RCW 48.02.060, 48.30.010, and 48.30.090. WSR 79-07-053 (Order R 79-2), § 284-23-250, filed 6/25/79, effective 1/1/80.]

## ANNUITY AND DEPOSIT FUND DISCLOSURE REGULATION

**WAC 284-23-300 Background.** This regulation, WAC 284-23-300 through 284-23-380, is based upon the model Annuity and Deposit Fund Disclosure Regulation adopted by the National Association of Insurance Commissioners on June 16, 1978.

[Statutory Authority: RCW 48.02.060, 48.30.010, and 48.30.090. WSR 79-07-052 (Order R 79-1), § 284-23-300, filed 6/25/79, effective 4/1/80.]

**WAC 284-23-310 Purpose.** (1) The purpose of this regulation is to require insurers to deliver to prospects for annuity contracts, or for deposit funds accepted in conjunction with life insurance policies or annuity contracts, information which helps the prospect select an annuity or deposit fund, or both, appropriate to the prospect's needs, improves the pros-

pect's understanding of the basic features of the plan under consideration and improves the prospect's ability to evaluate the relative benefits of similar plans.

(2) This regulation does not prohibit the use of additional material which is not in violation of this regulation or any other statute or regulation.

[Statutory Authority: RCW 48.02.060, 48.30.010, and 48.30.090. WSR 79-07-052 (Order R 79-1), § 284-23-310, filed 6/25/79, effective 4/1/80.]

**WAC 284-23-320 Scope.** (1) To the extent hereinafter provided, this regulation shall apply to any solicitation, negotiation or procurement of annuity contracts, or deposit funds accepted in conjunction with individual life insurance policies or with annuity contracts which are subject to this regulation, occurring within this state. The regulation shall apply to any issuer of life policies or annuity contracts, including fraternal mutual life insurers.

(2) This regulation shall apply to:

(a) Individual deferred annuities other than: (i) Variable annuities; (ii) investment annuities; and (iii) contracts registered with the Federal Securities and Exchange Commission.

(b) Deposit funds (i.e., arrangements under which amounts to accumulate at interest are paid in addition to life insurance premiums or annuity considerations under provisions of individual life insurance policies or annuity contracts).

(3) This regulation shall not apply to:

(a) Group annuity contracts whose cost is borne in whole or in part by the annuitant's employer or by an association of which the annuitant is a member. The cost of a contract shall not be deemed to be borne by an annuitant's employer to the extent the annuitant's salary is reduced or the annuitant foregoes a salary increase.

(b) Immediate annuity contracts.

(c) Policies or contracts issued in connection with employee benefit plans as defined by Section 3(3) of the Federal Employee Retirement Income Security Act of 1974 (ERISA) as amended from time to time.

(d) A single advance payment of specific premiums equal to the discounted value of such premiums.

(e) A policyholder's deposit account established primarily to facilitate payment of regular premiums and where the anticipated balance of such account does not exceed twice the sum of the premiums payable in one year on all policies for which premiums are being paid from such account.

[Statutory Authority: RCW 48.02.060, 48.30.010, and 48.30.090. WSR 79-07-052 (Order R 79-1), § 284-23-320, filed 6/25/79, effective 4/1/80.]

**WAC 284-23-330 Contract summary, contents.** For the purposes of this regulation, contract summary means a written statement describing the elements of the annuity contract and deposit fund, including but not limited to:

(1) A prominently placed title as follows: Statement of benefit information. (This shall be followed by an identification of the annuity contract or deposit fund, or both, to which the statement applies.)

(2) The name and address of the insurance agent or, if no agent is involved, a statement of the procedure to be followed in order to receive responses to inquiries regarding the contract summary.

(3) The full name and home office or administrative office address of the insurer which will issue the annuity contract or administer the deposit fund.

(4) The death benefits for the deposit fund, and for the annuity contract during the deferred period, and the form of the annuity payout. In the case where a choice of annuity payout form is provided, this item shall show the payout options guaranteed and the form of annuity payout selected for subsections (6), (7) and (9) of this section.

(5) A prominent statement that the contract does not provide cash surrender values if such is the case.

(6) The amount of the guaranteed annuity payments at the scheduled commencement of the annuity, based on the assumption that all scheduled considerations are paid and there are no prior withdrawals from or partial surrenders of the contract and no indebtedness to the insurer on the contract.

(7) On the same basis as for subsection (6) except for guarantees, illustrative annuity payments not greater in amount than those based on first, the current dividend scale and the interest rate currently used to accumulate dividends under such contracts, or the current excess interest rate credited by the insurer, and second, the current annuity purchase rates. A dividend scale or excess interest rate which has been publicly declared by the insurer with an effective date not more than two months subsequent to the date of declaration shall be considered a current dividend scale or current excess interest rate.

(8) For annuity contracts or deposit funds for which guaranteed cash surrender values at any duration are less than the total considerations paid, a prominent statement that such contractor fund may result in loss if kept for only a few years, together with a reference to the schedule of guaranteed cash surrender values required by subsection (9)(c) of this section.

(9) The following amounts, where applicable, for the first five contract years and representative contract years thereafter sufficient to clearly illustrate the patterns of considerations and benefits, including but not limited to the tenth and twentieth contract years and at least one age from sixty through sixty-five or the scheduled commencement of annuity payments, if any, whichever is earlier:

(a) The gross annual or single consideration for the annuity contract.

(b) Scheduled annual or single deposit for the deposit fund, if any.

(c) The total guaranteed cash surrender value at the end of the year, or, if no guaranteed cash surrender values are provided, the total guaranteed paid-up annuity at the end of the year. Values for a deposit fund must be shown separately from those for a basic contract.

(d) The total illustrative cash values or paid-up annuity at the end of the year, not greater in amount than that based on first, the current dividend scale and the interest rate currently used to accumulate dividends under such contracts or the current excess interest rate credited by the insurer, and second, the current annuity purchase rates. A dividend scale or excess interest rate which has been publicly declared by the insurer with an effective date not more than two months subsequent to the date of declaration shall be considered a current dividend scale or current excess interest rate.

(10) For a contract summary which includes values based on the current dividend scale or the current dividend accumulation or excess interest rate, a statement that such values are illustrations and are not guaranteed.

(11) The date on which the contract summary is prepared.

[Statutory Authority: RCW 48.02.060, 48.30.010, and 48.30.090. WSR 79-07-052 (Order R 79-1), § 284-23-330, filed 6/25/79, effective 4/1/80.]

#### **WAC 284-23-340 Contract summary, requirements.**

The contract summary must be a separate document. All information required to be disclosed must be set out in such a manner as not to minimize or render any portion thereof obscure. Any amounts which remain level for two or more contract years may be represented by a single number if it is clearly indicated what amounts are applicable for each contract year. Amounts in WAC 284-23-330 (4), (6), (7) and (9) shall, in the case of flexible premium annuity contracts, be determined either according to an anticipated pattern of consideration payments or on the assumption that considerations payable will be \$1,000 per year. If not specified in the contract, annuity payments shall be assumed to commence at age 65 or 10 years from issue, whichever is later. Zero amounts shall be displayed as zero and shall not be displayed as blank spaces.

[Statutory Authority: RCW 48.02.060, 48.30.010, and 48.30.090. WSR 79-07-052 (Order R 79-1), § 284-23-340, filed 6/25/79, effective 4/1/80.]

**WAC 284-23-350 Disclosure requirements.** (1) The insurer shall provide to all prospective purchasers a contract summary prior to accepting the applicant's initial consideration for the annuity contract, or in the case of a deposit fund, prior to acceptance of the applicant's initial consideration for the associated life insurance policy or annuity contract, unless the annuity contract or associated life insurance policy for which application is made provides for an unconditional refund period of at least ten days or unless the contract summary contains such an unconditional refund offer, in which event the contract summary must be delivered with or prior to the delivery of the annuity contract or associated life insurance policy.

(2) The insurer shall provide a contract summary to any prospective purchaser upon request.

[Statutory Authority: RCW 48.02.060, 48.30.010, and 48.30.090. WSR 79-07-052 (Order R 79-1), § 284-23-350, filed 6/25/79, effective 4/1/80.]

**WAC 284-23-360 General rules.** (1) Each insurer must maintain at its home office or principal office, a complete file containing one copy of each document authorized by the insurer for use pursuant to this regulation. Such file must contain one copy of each authorized form for a period of at least three years following the date of its last authorized use.

(2) An insurance producer must inform the prospective purchaser, prior to commencing a sales presentation, that the insurance producer is acting as an insurance producer with a life insurance line of authority and must inform the prospective purchaser of the full name of the insurer which the insurance producer is representing. In sales situations in which an insurance producer is not involved, the insurer must identify its full name.



(3) Terms such as financial planner, investment advisor, financial consultant, or financial counselor must not be used by an insurance producer unless the insurance producer is engaged in an advisory business and receives a substantial part of their compensation from that source unrelated to the sale of insurance.

(4) Any reference to dividends or to excess interest credits must include a statement that such dividends or credits are not guaranteed.

(5) A presentation of benefits must not display guaranteed and nonguaranteed benefits as a single sum unless guaranteed benefits are shown separately in close proximity thereto and with equal prominence.

(6) Sales promotion literature and contract forms must not state or imply that annuity contracts or deposit funds are the same as savings accounts or deposits in banking or savings institutions. The use of passbooks which resemble savings bank passbooks is prohibited.

[Statutory Authority: RCW 48.02.060 and 48.30.010. WSR 12-05-051 (Matter No. R 2011-21), § 284-23-360, filed 2/14/12, effective 3/16/12. Statutory Authority: RCW 48.02.060, 48.30.010, and 48.30.090. WSR 79-07-052 (Order R 79-1), § 284-23-360, filed 6/25/79, effective 4/1/80.]

**WAC 284-23-370 Failure to comply.** Failure of an insurer to provide or deliver a contract summary as provided in WAC 284-23-350 shall constitute an omission which misrepresents the benefits, advantages, conditions or terms of an annuity contract or of an insurance policy, and shall constitute an unfair method of competition and an unfair act or practice pursuant to RCW 48.30.010.

[Statutory Authority: RCW 48.02.060, 48.30.010, and 48.30.090. WSR 79-07-052 (Order R 79-1), § 284-23-370, filed 6/25/79, effective 4/1/80.]

## SUITABILITY IN ANNUITY TRANSACTIONS

**WAC 284-23-390 Duties of insurers and insurance producers.** (1) For purposes of this section, "suitability information" means information that is reasonably appropriate to determine the suitability of a recommendation, including the following:

- (a) Age;
- (b) Annual income;
- (c) Financial situation and needs, including the financial resources used for the funding of the annuity;
- (d) Financial experience;
- (e) Financial objectives;
- (f) Intended use of the annuity;
- (g) Financial time horizon;
- (h) Existing assets, including investment and life insurance holdings;
- (i) Liquidity needs;
- (j) Liquid net worth;
- (k) Risk tolerance; and
- (l) Tax status.

(2) In addition to the requirements in RCW 48.23.015, insurers and insurance producers must have reasonable grounds to believe the following requirements in recommending and executing a purchase or exchange of an annuity:

(a) The consumer has been reasonably informed of various features of the annuity, such as the potential surrender period and surrender charge, potential tax penalty if the con-

sumer sells, exchanges, surrenders or annuitizes the annuity, mortality and expense fees, investment advisory fees, potential charges for and features of riders, limitations on interest returns, insurance and investment components, and market risk;

(b) The consumer would benefit from certain features of the annuity, such as tax deferred growth, annuitization, or death or living benefit;

(c) The particular annuity as a whole, the underlying sub-accounts to which funds are allocated at the time of purchase or exchange of the annuity, and riders and similar product enhancements, if any, are suitable (and in the case of an exchange or replacement, the transaction as a whole is suitable) for the particular consumer based on his or her suitability information; and

(d) In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable including taking into consideration whether:

(i) The consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits (such as death, living or other contractual benefits), or be subject to increased fees, investment advisory fees or charges for riders, and similar product enhancements;

(ii) The consumer would benefit from product enhancements and improvements; and

(iii) The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding thirty-six months.

(3) Prior to the execution of a purchase, exchange or replacement of an annuity resulting from a recommendation, an insurance producer, or an insurer where no producer is involved, shall make reasonable efforts to obtain the consumer's suitability information.

(4) An insurer shall not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable based on the consumer's suitability information.

(5) An insurer's issuance of an annuity subject to subsection (2) of this section must be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.

(6) An insurance producer or, where no insurance producer is involved, the responsible insurer representative must at the time of sale:

(a) Make a record of any recommendation subject to this section;

(b) Obtain a customer signed statement documenting a customer's refusal to provide suitability information, if any; and

(c) Obtain a customer signed statement acknowledging that an annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the insurance producer's or insurer's recommendation.

(7) In addition to the requirements in RCW 48.23.015(4) an insurer must:

(a) Maintain reasonable procedures to inform its insurance producers of the requirements of this regulation and shall incorporate the requirements of this regulation into relevant insurance producer training manuals;

(b) Establish standards for insurance producer product training and must maintain reasonable procedures to require

its insurance producers to comply with the requirements of WAC 284-17-265;

(c) Provide product-specific training and training materials which explain all material features of its annuity products to its insurance producers;

(d) Maintain procedures for review of each recommendation prior to issuance of an annuity that are designed to ensure that there is a reasonable basis to determine that a recommendation is suitable. Such review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means including, but not limited to, physical review. Such an electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria;

(e) Maintain reasonable procedures to detect recommendations that are not suitable. This may include, but is not limited to, confirmation of consumer suitability information, systematic customer surveys, interviews, confirmation letters and programs of internal monitoring. Nothing in this subsection (8)(e) prevents an insurer from complying with this subsection (8)(e) by applying sampling procedures, or by confirming suitability information after issuance or delivery of the annuity; and

(f) Annually provide a report to senior management, including to the senior manager responsible for audit functions, which details the review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.

(8)(a) Nothing in this subsection restricts an insurer from contracting for performance of a function (including maintenance of procedures) required under RCW 48.23.015(4). An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to RCW 48.23.015(6) regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with (b) of this subsection.

(b) An insurer's supervision system must include supervision of contractual performance under this subsection. This includes, but is not limited to, the following:

(i) Monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed; and

(ii) Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager has a reasonable basis to represent, and does represent, that the function is properly performed.

(9) An insurance producer shall not dissuade, or attempt to dissuade, a consumer from:

(a) Truthfully responding to an insurer's request for confirmation of suitability information;

(b) Filing a complaint; or

(c) Cooperating with the investigation of a complaint.

[Statutory Authority: RCW 48.02.060 and 48.23.015(8). WSR 12-06-019 (Matter No. R 2011-23), § 284-23-390, filed 2/28/12, effective 3/30/12.]

## REPLACEMENT REGULATION

**WAC 284-23-400 Purpose.** The purpose of this regulation is:

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(1) To regulate the activities of insurers and insurance producers with respect to the replacement of existing life insurance and annuities;

(2) To protect the interests of life insurance and annuity purchasers by establishing minimum standards of conduct to be observed in replacement transactions by:

(a) Assuring that the purchaser receives information with which a decision can be made in his or her own best interest;

(b) Reducing the opportunity for misrepresentation and incomplete disclosures; and

(c) Establishing penalties for failure to comply with the requirements of this regulation.

[Statutory Authority: RCW 48.02.060 (3)(a) and 48.17.010(5). WSR 11-01-159 (Matter No. R 2010-09), § 284-23-400, filed 12/22/10, effective 1/22/11. Statutory Authority: RCW 48.02.060. WSR 87-14-015 (Order R 87-6), § 284-23-400, filed 6/23/87, effective 9/1/87; WSR 80-05-098 (Order R 80-5), § 284-23-400, filed 5/2/80, effective 10/1/80.]

### WAC 284-23-410 Definition of replacement.

"Replacement" means any transaction in which new life insurance or a new annuity is to be purchased, and it is known or should be known to the proposing insurance producer, or to the proposing insurer if there is no insurance producer, that by reason of such transaction, existing life insurance or annuity has been or is to be:

(1) Lapsed, forfeited, surrendered, or otherwise terminated;

(2) Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;

(3) Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;

(4) Reissued with any reduction in cash value; or

(5) Pledged as collateral or subjected to borrowing, whether in a single loan or under a schedule of borrowing over a period of time for amounts in the aggregate exceeding twenty-five percent of the loan value set forth in the policy.

[Statutory Authority: RCW 48.02.060 (3)(a) and 48.17.010(5). WSR 11-01-159 (Matter No. R 2010-09), § 284-23-410, filed 12/22/10, effective 1/22/11. Statutory Authority: RCW 48.02.060. WSR 87-14-015 (Order R 87-6), § 284-23-410, filed 6/23/87, effective 9/1/87; WSR 80-05-098 (Order R 80-5), § 284-23-410, filed 5/2/80, effective 10/1/80.]

**WAC 284-23-420 Other definitions.** (1) "Conservation" means any attempt by the existing insurer or an insurance producer to dissuade a policyowner from the replacement of existing life insurance or annuity. Conservation does not include such routine administrative procedures as late payment reminders, late payment offers or reinstatement offers.

(2) "Direct-response sales" means any sale of life insurance or annuity where the insurer does not utilize an insurance producer in the sale or delivery of the policy.

(3) "Existing insurer" means the insurance company whose policy is or will be changed or terminated in such a manner as described within the definition of "replacement."

(4) "Existing life insurance or annuity" means any life insurance or annuity in force, including life insurance under a binding or conditional receipt or a life insurance policy or annuity that is within an unconditional refund period.

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(5) "Replacing insurer" means the insurance company that issues or proposes to issue a new policy or contract which is a replacement of existing life insurance or annuity.

(6) "Registered contract" means variable annuities, investment annuities, variable life insurance under which the death benefits and cash values vary in accordance with unit values of investments held in a separate account, or any other contracts issued by life insurance companies which are registered with the Federal Securities and Exchange Commission.

[Statutory Authority: RCW 48.02.060 (3)(a) and 48.17.010(5). WSR 11-01-159 (Matter No. R 2010-09), § 284-23-420, filed 12/22/10, effective 1/22/11. Statutory Authority: RCW 48.02.060. WSR 87-14-015 (Order R 87-6), § 284-23-420, filed 6/23/87, effective 9/1/87; WSR 80-05-098 (Order R 80-5), § 284-23-420, filed 5/2/80, effective 10/1/80.]

**WAC 284-23-430 Exemptions.** Unless otherwise specifically included, this regulation shall not apply to transactions involving:

- (1) Credit life insurance;
- (2) Group life insurance or group annuities, unless the new coverage under the insurance or annuity is solicited on an individual basis and the cost of such coverage is borne substantially by the individual;
- (3) An application to the existing insurer that issued the existing life insurance when a contractual change or conversion privilege is being exercised;
- (4) Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company;
- (5) Transactions where the replacing insurer and the existing insurer are the same, or are subsidiaries or affiliates under common ownership or control; provided, however, insurance producers proposing replacement shall comply with the requirements of WAC 284-23-440 (1) and (2)(a) and (c); and

(6) Registered contracts shall be exempt only from the requirements of WAC 284-23-455 (2)(b) and (c), requiring provision of policy summary or ledger statement information; however, premium or contract contribution amounts and identification of the appropriate prospectus or offering circular shall be required in lieu thereof.

[Statutory Authority: RCW 48.02.060 (3)(a) and 48.17.010(5). WSR 11-01-159 (Matter No. R 2010-09), § 284-23-430, filed 12/22/10, effective 1/22/11. Statutory Authority: RCW 48.02.060. WSR 87-14-015 (Order R 87-6), § 284-23-430, filed 6/23/87, effective 9/1/87; WSR 80-05-098 (Order R 80-5), § 284-23-430, filed 5/2/80, effective 10/1/80.]

**WAC 284-23-440 Duties of insurance producers.** (1) Each insurance producer who initiates the application shall submit to the insurer to which an application for life insurance or annuity is presented, with or as part of each application:

(a) A statement signed by the applicant as to whether replacement of existing life insurance or annuity is involved in the transaction; and

(b) A signed statement as to whether the insurance producer knows replacement is or may be involved in the transaction.

(2) Where a replacement is involved, the insurance producer shall:

(a) Present to the applicant, not later than at the time of taking the application, a completed notice regarding replace-

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ment in the form as described in WAC 284-23-485, or other substantially similar form approved by the commissioner. Answers must be succinct and in simple nontechnical language. They should fairly and adequately highlight the points raised by the questions, without overwhelming the applicant with verbiage and data. An answer may include a reference to the contract or another source, but it must be essentially complete without the reference. The notice (and a copy) shall be signed by the applicant after it has been completed and signed by the insurance producer and the signed original shall be left with the applicant.

(b) Obtain with each application a list of all existing life insurance and/or annuity contracts to be replaced and properly identified by name of insurer, the insured and contract number. Such list shall be set forth on the notice regarding replacement required by WAC 284-23-485, immediately below the insurance producer's name and address. If a contract number has not been assigned by the existing insurer, alternative identification, such as an application or receipt number, shall be listed.

(c) Leave with the applicant the original or a copy of written or printed communications used for presentation to the applicant.

(d) Submit to the replacing insurer with the application, a copy of the replacement notice provided pursuant to WAC 284-23-440 (2)(a).

(3) Each insurance producer who uses written or printed communications in a conservation shall leave with the applicant the original or a copy of such materials used.

[Statutory Authority: RCW 48.02.060 (3)(a) and 48.17.010(5). WSR 11-01-159 (Matter No. R 2010-09), § 284-23-440, filed 12/22/10, effective 1/22/11. Statutory Authority: RCW 48.02.060. WSR 87-14-015 (Order R 87-6), § 284-23-440, filed 6/23/87, effective 9/1/87; WSR 80-05-098 (Order R 80-5), § 284-23-440, filed 5/2/80, effective 10/1/80.]

**WAC 284-23-450 Duties of all insurers.** Each insurer shall:

(1) Inform its field representatives or other personnel responsible for compliance with this regulation of the requirements of this regulation.

(2) Require with or as part of each completed application for life insurance or annuity a statement signed by the applicant as to whether such proposed insurance or annuity will replace existing life insurance or annuity.

[Statutory Authority: RCW 48.02.060. WSR 87-14-015 (Order R 87-6), § 284-23-450, filed 6/23/87, effective 9/1/87; WSR 80-05-098 (Order R 80-5), § 284-23-450, filed 5/2/80, effective 10/1/80.]

**WAC 284-23-455 Duties of insurers that use insurance producers.** Each insurer that uses an insurance producer in a life insurance or annuity sale shall:

(1) Require with or as part of each completed application for life insurance or annuity, a statement signed by the insurance producer as to whether he or she knows replacement is or may be involved in the transaction.

(2) Where a replacement is involved:

(a) Require from the insurance producer with the application for life insurance or annuity (i) a list of all of the applicant's existing life insurance or annuities to be replaced and (ii) a copy of the replacement notice provided the applicant pursuant to WAC 284-23-440 (2)(a). Such existing life insur-

ance or annuity shall be identified by name of insurer, insured and contract number. If a number has not been assigned by the existing insurer, alternative identification, such as an application or receipt number, shall be listed.

(b) Send to each existing insurer a written communication advising of the replacement or proposed replacement and the identification information obtained pursuant to (a) of this subsection and a policy summary, contract summary, or ledger statement containing policy data on the proposed life insurance or annuity as required by the life insurance solicitation regulation, WAC 284-23-200 through 284-23-270, and/or the annuity and deposit fund disclosure regulation, WAC 284-23-300 through 284-23-380. Cost indices and equivalent level annual dividend figures need not be included in the policy summary or ledger statement. This written communication shall be made within three working days of the date the application is received in the replacing insurer's home or regional office, or the date the proposed policy or contract is issued, whichever is sooner.

(c) Each existing insurer or such insurer's insurance producer that undertakes a conservation shall, within twenty days from the date the written communication plus the materials required in (a) and (b) of this subsection is received by the existing insurer, furnish the policyowner with a policy summary for the existing life insurance or a ledger statement containing policy data on the existing policy and/or annuity. Such policy summary or ledger statement shall be completed in accordance with the provisions of the life insurance solicitation regulation, WAC 284-23-200 through 284-23-270, except that information relating to premiums, cash values, death benefits and dividends, if any, shall be computed from the current policy year of the existing life insurance. The policy summary or ledger statement shall include the amount of any outstanding indebtedness, the sum of any dividend accumulations or additions, and may include any other information that is not in violation of any regulation or statute. Cost indices and equivalent level annual dividend figures need not be included. When annuities are involved, the disclosure information shall be that required in a contract summary under the annuity and deposit fund disclosure regulation, WAC 284-23-300 through 284-23-380. The replacing insurer may request the existing insurer to furnish it with a copy of the summaries or ledger statement, which shall be furnished within five working days of the receipt of the request.

(3) The replacing insurer shall maintain evidence of the "Notice Regarding Replacement," the policy summary, the contract summary and any ledger statements used, and a replacement register, cross indexed, by replacing insurance producer and existing insurer to be replaced. The existing insurer shall maintain evidence of policy summaries, contract summaries or ledger statements used in any conservation. Evidence that all requirements were met shall be maintained for at least three years or until the conclusion of the next succeeding regular examination by the insurance department of its state of domicile, whichever is later.

(4) The replacing insurer shall provide in its policy or in a separate written notice which is delivered with the policy that the applicant has a right to an unconditional refund of all premiums paid, which right may be exercised within twenty days commencing from the date of delivery of the policy.

[Statutory Authority: RCW 48.02.060 (3)(a) and 48.17.010(5). WSR 11-01-159 (Matter No. R 2010-09), § 284-23-455, filed 12/22/10, effective 1/22/11. Statutory Authority: RCW 48.02.060. WSR 87-14-015 (Order R 87-6), § 284-23-455, filed 6/23/87, effective 9/1/87.]

**WAC 284-23-460 Duties of insurers with respect to direct-response sales.** (1) If in the solicitation of a direct response sale, the insurer did not propose the replacement, and a replacement is involved, the insurer shall send to the applicant, with the policy, a replacement notice as described in WAC 284-23-485 or other substantially similar form approved by the commissioner. In such instances the insurer may omit the portion of the form which is included under the heading "Statement to Applicant by Insurance Producer," but including the portion beginning with "CAUTION" and continuing through the first three points down to and not including the fourth point which begins "Study the comments" without having to obtain approval of the form from the commissioner. The applicant's signature is not required on the notice.

(2) If the insurer proposes the replacement in connection with direct response sales, it shall:

(a) Provide to applicants or prospective applicants, with or as a part of the application, a replacement notice as described in WAC 284-23-485 or other substantially similar form approved by the commissioner.

(b) Request from the applicant with or as part of the application, a list of all existing life insurance or annuities to be replaced and properly identified by name of insurer, insured, and contract number.

(c) Comply with the requirements of WAC 284-23-455 (2)(b), if the applicant furnishes the names of the existing insurers, and the requirements of WAC 284-23-455(3), except that it need not maintain a replacement register.

[Statutory Authority: RCW 48.02.060 (3)(a) and 48.17.010(5). WSR 11-01-159 (Matter No. R 2010-09), § 284-23-460, filed 12/22/10, effective 1/22/11. Statutory Authority: RCW 48.02.060. WSR 87-14-015 (Order R 87-6), § 284-23-460, filed 6/23/87, effective 9/1/87; WSR 80-05-098 (Order R 80-5), § 284-23-460, filed 5/2/80, effective 10/1/80.]

**WAC 284-23-480 Penalties.** (1) Any insurance producer, and any insurer, representative, officer or employee of such insurer failing to comply with the requirements of this regulation shall be subject to such penalties as may be appropriate under the insurance laws of Washington.

(2) This regulation does not prohibit the use of additional material other than that which is required that is not in violation of this regulation or any other Washington statute or regulation.

(3) Policyowners have the right to replace existing life insurance after indicating in or as part of the applications for life insurance that such is not their intention; however, patterns of such action by policyowners who purchase the replacing policies from the same insurance producer shall be deemed prima facie evidence of the licensee's knowledge that replacement was intended in connection with the sale of those policies, and such patterns of action shall be deemed prima facie evidence of the licensee's intent to violate this regulation.

[Statutory Authority: RCW 48.02.060 (3)(a) and 48.17.010(5). WSR 11-01-159 (Matter No. R 2010-09), § 284-23-480, filed 12/22/10, effective 1/22/11. Statutory Authority: RCW 48.02.060. WSR 87-14-015 (Order R 87-6), § 284-23-480, filed 6/23/87, effective 9/1/87; WSR 80-05-098 (Order R 80-5), § 284-23-480, filed 5/2/80, effective 10/1/80.]

WAC 284-23-485 Form to be used for notice regarding replacement.

(Insurance company's name and address)

IMPORTANT NOTICE REGARDING REPLACEMENT OF INSURANCE

(Save this notice! It may be important to you in the future.)

The decision to buy a new life insurance policy or annuity and discontinue or change an existing one is very important. Your decision could be a good one—or a mistake. It should be carefully considered. The Washington state insurance commissioner requires us to give you this notice to help you make a wise decision.

STATEMENT TO APPLICANT BY INSURANCE PRODUCER: (Use additional sheets, as necessary.)

I believe the replacement of insurance involved in this transaction materially improves your position. My conclusion has taken into account the following factors, which I call to your attention.

- 1. Can there be reduced benefits or increased premiums in later years? . . . No . . . Yes, explain:
2. Are there penalties, set up or surrender charges for the new policy? . . . No . . . Yes, explain, emphasizing any extra cost for early withdrawal:
3. Will there be penalties or surrender charges under the existing insurance as a result of the proposed transaction? . . . No . . . Yes, explain:
4. Are there adverse tax consequences from the replacement under current tax law? . . . No . . . Yes, explain:
5. a) Are interest earnings a consideration in this replacement? No . . . Yes . . .
b) If "yes," explain what portions of premiums or contributions will produce limited or no earnings. As pertinent, include in your explanation the need for minimum deposits to enhance earnings, and the reduction of earnings that may result from set-up charges, policy fees, and other factors.
6. Are minimum amounts required to be on deposit before excess interest will be paid? . . . No . . . Yes, explain:
7. If the new program is based on a variable or universal life insurance policy or a single-premium policy or annuity:
a) Are the interest rates quoted before . . . or after . . . fees and mortality charges have been deducted?
b) Interest rates are guaranteed for how long? . . .
c) The minimum interest rate to be paid is how much? . . .
d) If applicable, the rate you pay to borrow is . . . . . , and the limit on the amount that can be borrowed is . . . . .
e) The surrender charges are . . . . .
f) The death benefit is . . . . .

8. Are there other short or long term effects from the replacement that might be materially adverse? . . . No . . . Yes, explain:

Signature of Insurance Producer Date
Name of Insurance Producer (Print or Type) Address

List of Policies or Contracts to be Replaced:

Table with 3 columns: Company, Insured, Contract No.

CAUTION: The insurance commissioner suggests you consider these points:

- > Usually, contestable and suicide periods start again under a new policy. Benefits might be excluded under a new policy that would be paid under existing insurance.
> Terminating or altering existing coverage, before new insurance has been issued, might leave you unable to purchase other life insurance or let you buy it only at substantially higher rates.
> You are entitled to advice from the existing insurance producer or company. Such advice might be helpful.
> Study the comments made above by the insurance producer. They apply to you and this proposal. They are important to you and your future.

Completed Copy Received: (Applicant's Signature) (Date)

THIS COMPLETED FORM SHOULD BE FILED PERMANENTLY WITH YOUR NEW INSURANCE POLICY.

[Statutory Authority: RCW 48.02.060 (3)(a) and 48.17.010(5). WSR 11-01-159 (Matter No. R 2010-09), § 284-23-485, filed 12/22/10, effective 1/22/11. Statutory Authority: RCW 48.02.060. WSR 87-14-015 (Order R 87-6), § 284-23-485, filed 6/23/87, effective 9/1/87.]

MISCELLANEOUS RULES

WAC 284-23-550 Relationship of death benefits to premiums—Unfair practice defined. (1) It is an unfair practice for any insurer or fraternal benefit society to provide life insurance coverage on any person through a policy or certificate of coverage delivered on or after July 1, 1989, to or on behalf of such person in this state, unless the benefit payable at death under such policy or certificate will equal or exceed the cumulative premiums, as defined in subsection (4) of this section, paid for the policy or certificate, plus interest thereon at the rate of the monthly average of the five-year Constant Maturity Treasury rate reported by the Federal Reserve for the calendar month in which application for the policy is made compounded annually to the tenth anniversary of the effective date of coverage.

(2) This section applies to death benefits in relation to premiums, subject to the following provisions:

(a) When determining the relationship between benefits and premiums as set forth in subsection (1) of this section, neither premiums nor death benefits shall be adjusted for maturity benefits, surrender benefits, or policy loans.

(b) Annuity benefits, including annuity death benefits, and the premiums therefor shall be disregarded in applying this section.

(c) The following benefits, but not the premiums therefor, shall be disregarded in applying this section:

- (i) Accidental death benefits;
- (ii) Permanent disability benefits; and
- (iii) Any benefit similar to (c)(i) or (ii) of this subsection.

(3) For coverage which varies by duration, including coverage provided through dividends, the "benefit payable at death" for purposes of this section is the sum of the least death benefit during each policy year, for the lesser of ten years or the term of the coverage, including renewals, divided by the number of death benefits included in said sum.

(4) "Cumulative premiums," for purposes of this section, means all sums paid as consideration, net of dividends paid in cash in an orderly progression, for the coverage during the first ten years of the coverage, excluding amounts which are designated in the policy or certificate as providing for annuity benefits.

(5) The benefits required by this section shall be provided contractually.

(6) This section does not apply to:

(a) Life insurance where the minimum death benefit is five thousand dollars or more; or

(b) Coverage under group life insurance policies unless the insured pays all or substantially all of the premium and coverage under individual conversions from such excluded policies; or

(c) Limited payment whole life insurance where the premiums are level at all times, if the least death benefit payable at any time equals or exceeds the total of all premiums which, in the absence of death, would have been paid over the entire limited payment period.

(7) This section does not apply with respect to optional additional contributions paid to the insurer or fraternal benefit society under the terms of a universal life policy, which policy:

(a) Provides a guaranteed plan of insurance of at least ten years' duration on the basis of specified premiums and complies with subsections (1) through (5) of this section; and

(b) Contains a carefully expressed provision which clearly, fairly, and fully discloses the optional plan and the choice to participate therein; and

(c) Is designed so that the charges for, and the benefits to be derived from, the optional contributions are no less favorable to the insured than those which are applicable to the guaranteed plan required by (a) of this subsection.

(8) Approval of policy forms which do not comply with this section is withdrawn.

[Statutory Authority: RCW 48.02.060 and 48.30.010. WSR 14-21-178 (Matter No. R 2013-26), § 284-23-550, filed 10/22/14, effective 11/22/14; WSR 89-21-004 (Order R 89-12), § 284-23-550, filed 10/5/89, effective 11/5/89. Statutory Authority: RCW 48.02.060. WSR 89-07-086 (Order R 89-4), § 284-23-550, filed 3/22/89; WSR 89-05-017 (Order R 89-3), § 284-23-550, filed 2/9/89; WSR 88-24-053 (Order R 88-12), § 284-23-550, filed 12/7/88.]

**WAC 284-23-570 Deferred annuities with cash surrender benefits—Clarification.** (1) For contracts which provide cash surrender benefits, the "maturity value of the paid-up annuity benefit," to which RCW 48.23.460 refers, shall be equal to the cash surrender value on the maturity date.

(2) On the maturity date, the cash surrender value shall be equal to the amount used to determine the annuity benefit payments. There are no surrender charges at maturity.

[Statutory Authority: RCW 48.02.060 (3)(a). WSR 91-22-012 (Order R 91-8), § 284-23-570, filed 10/25/91, effective 11/25/91.]

**WAC 284-23-580 Insurer must obtain and keep evidence that insured is a key person—Definition of "key person."** (1) If a business entity seeks to be the owner and beneficiary of a contract of life insurance on an employee, the insurer must obtain and keep evidence that the business entity had an "insurable interest" in the life of the insured as required by RCW 48.18.030(3) and that the insured was a "key person" at the time the contract was made.

(2) An insurer issuing employer-owned key person life insurance to a business entity shall establish and apply appropriate underwriting guidelines to ensure that the employees or other persons on whose lives key person life insurance policies are written are actually key persons.

(3) An insurer issuing employer-owned life insurance policies or certificates must keep or require the employer to keep throughout the period of insurance, evidence that the insured has applied for or consented to the contract in writing. Consent requirements include, but are not limited to RCW 48.18.030, 48.18.060, and 48.18.580.

(4) If a contract of insurance is entered into pursuant to an exchange under Section 1035 of the Internal Revenue Code, an insurer is not required to obtain a new consent by the insured employee (as required at RCW 48.18.580(2)) only if the insurer to be replaced provides the replacing insurer with a copy of the original signed consent.

(5) The term "key person" means a person that, during the year the contract was made, was:

(a) A director;

(b) A shareholder who owns more than five percent in value of the stock of the employer; or

(c) A "highly compensated individual" or "highly compensated employee" within the meaning of Internal Revenue Code sections 414(q), 105(h) or 101(j), as applicable.

[Statutory Authority: RCW 48.02.060 and 48.18.586. WSR 08-01-076 (Matter No. R 2004-03), § 284-23-580, filed 12/17/07, effective 1/17/08.]

## ACCELERATED LIFE INSURANCE BENEFITS

**WAC 284-23-600 Title.** This regulation, WAC 284-23-600 through 284-23-730, inclusive, may be known and cited as "The Washington regulation on accelerated life insurance benefits."

[Statutory Authority: RCW 48.02.060 (3)(a) and 48.30.010. WSR 94-18-029 (Order R 94-18), § 284-23-600, filed 8/29/94, effective 9/29/94.]

**WAC 284-23-610 Authority, finding, purpose, and scope.** (1) The purpose of this regulation, WAC 284-23-600 through 284-23-730, is to define certain minimum standards for the regulation of accelerated benefit provisions of individ-

ual and group life insurance policies, a single violation of which will be deemed to constitute an unfair claims settlement practice. The commissioner finds and hereby defines it to be an unfair act or practice and an unfair method of competition for any insurer to provide accelerated benefits except as provided in this regulation.

(2) The commissioner finds that accelerated benefits in life insurance policies are primarily mortality risks rather than morbidity risks. The commissioner further finds that accelerated benefits are optional modes of settlement of proceeds under life insurance proceeds under RCW 48.11.020. No qualifying event as defined under WAC 284-23-620(3) changes the nature of the underlying life insurance policy. No accelerated benefits provision shall be called or marketed as long-term care as defined under RCW 48.83.020(5).

(3) This regulation applies to all accelerated benefit provisions of individual and group life insurance policies and riders which are issued or delivered to a resident of this state, on or after the effective date of this regulation. The regulation applies to both policies and riders. It also applies to solicitations for the sale of accelerated benefits, whether in the form of policies or riders.

(4) This regulation does not require inclusion or offering of any accelerated benefit in a life insurance policy. This regulation regulates those accelerated benefits which individual and group life insurers choose to advertise, offer, or market on or after the effective date of this regulation.

[Statutory Authority: RCW 48.02.060, 48.83.070, 48.83.110, 48.83.120, 48.83.130(1), and 48.83.140 (4)(a). WSR 08-24-023 (Matter No. R 2008-19), § 284-23-610, filed 11/24/08, effective 12/25/08. Statutory Authority: RCW 48.02.060, 48.30.010 and 48.11.020. WSR 98-05-026 (Matter No. R 96-13), § 284-23-610, filed 2/6/98, effective 3/9/98. Statutory Authority: RCW 48.02.060 (3)(a) and 48.30.010. WSR 94-18-029 (Order R 94-18), § 284-23-610, filed 8/29/94, effective 9/29/94.]

**WAC 284-23-620 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this regulation.

(1) "Accelerated benefits" means benefits payable under an individual or group life insurance policy. They are primarily mortality risks, rather than morbidity risks. Accelerated benefits may also mean optional modes of settlement of proceeds under life insurance policies. Accelerated benefits are benefits:

(a) Payable to either the policyholder of an individual life policy or to the certificate holder of a group life policy, during the lifetime of the insured, in anticipation of death, or upon the occurrence of certain specified life-threatening, terminal, or catastrophic conditions defined by the policy or rider as described in subsection (3) of this section; and

(b) Which reduce or eliminate the death benefit otherwise payable under the life insurance policy or rider; and

(c) Which are payable upon the occurrence of a single qualifying event which results in the payment of a benefit amount fixed at the time the accelerated benefit is paid.

(2) "Qualified actuary" means a person who is a qualified actuary as defined in WAC 284-05-060.

(3) "Qualifying event" means one or more of the following:

(a) A medical condition which a physician has certified is reasonably expected to result in death twenty-four months or less after the date of certification;

(b) A medical condition which has required or requires extraordinary medical intervention; for example, major organ transplants or the use of continuous life support, without which the insured would die;

(c) Any condition which usually requires continuous confinement in any eligible institution as defined in the policy or rider, if the insured is expected to remain there for the rest of his or her life;

(d) Any medical condition which, in the absence of extensive or extraordinary medical treatment, would result in a drastically limited life span of the insured. Such medical conditions may include, for example:

(i) Coronary artery disease resulting in an acute infarction or requiring surgery;

(ii) Permanent neurological deficit resulting from cerebral vascular accident;

(iii) End stage renal failure;

(iv) Acquired immune deficiency syndrome; or

(v) Other medical conditions which the insurance commissioner approves for any particular filing;

(e) Any condition which requires either community-based care or institutional care.

(4) "Community based care" means services including, but not limited to: (a) Home delivered nursing services or therapy; (b) custodial or personal care; (c) day care; (d) home and chore aid services; (e) nutritional services, both in-home and in a communal dining setting; (f) respite care; (g) adult day health care services; or (h) other similar services furnished in a home-like or residential setting that does not provide overnight care. Such services shall be provided at any level of care.

(5) "Institutional care" means care provided in a hospital, nursing home, or other facility certified or licensed by the state primarily affording diagnostic, preventive, therapeutic, rehabilitative, maintenance or personal care services. Such a facility provides twenty-four-hour nursing services on its premises or in facilities available to the institution on a formal prearranged basis.

[Statutory Authority: RCW 48.02.060, 48.83.070, 48.83.110, 48.83.120, 48.83.130(1), and 48.83.140 (4)(a). WSR 08-24-023 (Matter No. R 2008-19), § 284-23-620, filed 11/24/08, effective 12/25/08. Statutory Authority: RCW 48.02.060, 48.30.010 and 48.11.020. WSR 98-05-026 (Matter No. R 96-13), § 284-23-620, filed 2/6/98, effective 3/9/98. Statutory Authority: RCW 48.02.060 (3)(a) and 48.30.010. WSR 94-18-029 (Order R 94-18), § 284-23-620, filed 8/29/94, effective 9/29/94.]

**WAC 284-23-630 Assignees and beneficiaries.** Prior to the payment of any accelerated benefit, the insurer shall obtain from any assignee or irrevocable beneficiary a signed consent to the terms of the payout. If the insurer paying the accelerated benefit is itself an assignee, its own written consent is not required.

[Statutory Authority: RCW 48.02.060 (3)(a) and 48.30.010. WSR 94-18-029 (Order R 94-18), § 284-23-630, filed 8/29/94, effective 9/29/94.]

**WAC 284-23-640 Criteria for payment.** (1) Payment options may include, the option of taking the benefit as a lump sum. The benefit shall not be made available as an annuity contingent upon the life of the insured.

(2) Except with the prior written approval of the commissioner no insurer may restrict the use of the proceeds from the payment of accelerated benefits.

(3) If any part of the death benefit remains after payment of an accelerated benefit, then any applicable accidental death benefit payable under the policy or rider shall not be affected by the payment of the accelerated benefit. The contract or rider shall include a statement that the insured's accidental death benefit will not be affected by the acceleration of benefits.

[Statutory Authority: RCW 48.02.060, 48.30.010 and 48.11.020. WSR 98-05-026 (Matter No. R 96-13), § 284-23-640, filed 2/6/98, effective 3/9/98. Statutory Authority: RCW 48.02.060 (3)(a) and 48.30.010. WSR 94-18-029 (Order R 94-18), § 284-23-640, filed 8/29/94, effective 9/29/94.]

**WAC 284-23-650 Disclosure statement.** (1) The words "accelerated benefit" must be included in the required title of every life insurance policy or rider that includes a provision for accelerated benefits. Accelerated benefits shall not be described, advertised, marketed, or sold as either long-term care insurance or as providing long-term care benefits.

(2) Possible tax consequences and possible consequences on eligibility for receipt of medicare, medicaid, Social Security, supplemental security income (SSI), or other sources of public funding shall be included in every disclosure statement.

(a) The disclosure form shall include a disclosure statement. The disclosure statement shall be prominently displayed on the first page of the policy, rider, or certificate. The disclosure statement shall contain substantially the following: "If you receive payment of accelerated benefits from a life insurance policy, you may lose your right to receive certain public funds, such as medicare, medicaid, Social Security, Supplemental Security, supplemental security income (SSI), and possibly others. Also, receiving accelerated benefits from a life insurance policy may have tax consequences for you. We cannot give you advice about this. You may wish to obtain advice from a tax professional or an attorney before you decide to receive accelerated benefits from a life insurance policy."

(b) The disclosure statement must begin with the following statement: "This accelerated life benefit does not and is not intended to qualify as long-term care under Washington state law. Washington state law prevents this accelerated life benefit from being marketed or sold as long-term care."

(c) The disclosure form must be provided (i) to the applicant for an individual or group life insurance policy at the time application is made for the policy or rider; and (ii)(A) to the individual insured at the time the owner of an individual life insurance policy submits a request for payment of the accelerated benefit, and before the accelerated benefit is paid, or (B) to the individual certificate holder at the time an individual certificate holder of a group life insurance policy submits a request for payment of the accelerated benefit, and before the accelerated benefit is paid. It is not sufficient to provide this required disclosure statement only to the holder of a group policy.

(3) The disclosure form shall give a brief and clear description of the accelerated benefit. It shall define all qualifying events which can trigger payment of the accelerated benefit. It shall also describe any effect of payment of accelerated benefits upon the policy's cash value, accumulation account, death benefit, premium, policy loans, and policy liens.

(a) In the case of insurance solicited by an insurance producer, the insurance producer shall provide the disclosure form to the applicant before or at the time the application is signed. Written acknowledgement of receipt of the disclosure statement shall be signed by the applicant and the insurance producer.

(b) In the case of a solicitation by direct response methods, the insurer shall provide the disclosure form to the applicant at the time the policy is delivered, with a written notice that a full premium refund shall be made if the policy is returned to the insurer within the free look period.

(c) In the case of group life insurance policies, the disclosure form shall be contained in the certificate of coverage, and may be contained in any other related document furnished by the insurer to the certificate holder.

(4) If there is a premium or cost of insurance charge for the accelerated benefit, the insurer shall give the applicant a generic illustration numerically demonstrating any effect of the payment of an accelerated benefit upon the policy's cash value, accumulation account, death benefit, premium, policy loans, or policy liens.

(a) In the case of agent solicited insurance, the agent shall provide the illustration to the applicant either before or at the time the application is signed.

(b) In the case of a solicitation by direct response methods, the insurer shall provide the illustration to the applicant concurrently with delivery of the policy to the applicant.

(c) In the case of group life insurance policies, the disclosure form shall be included in the certificate of insurance or any related document furnished by the insurer to the certificate holder.

(5)(a) Insurers with financing options other than as described in WAC 284-23-690 (1)(b) and (c) of this regulation, shall disclose to the policyowner any premium or cost of insurance charge for the accelerated benefit. Insurers shall make a reasonable effort to assure that the certificate holder on a group policy is made aware of any premium or cost of insurance charge for the accelerated benefits, if he or she is required to pay all or any part of such a premium or cost of insurance charge.

(b) Insurers shall furnish an actuarial demonstration to the Insurance Commissioner when filing an individual or group life insurance policy or rider form that provides accelerated benefits, showing the method used to calculate the cost for the accelerated benefit.

(6) Insurers shall disclose to the policyholder any administrative expense charge. The insurer shall make a reasonable effort to assure that the certificate holder on a group policy is made aware of any administrative expense charge if he or she is required to pay all or any part of any such charge.

(7) When the owner of an individual policy or the certificate holder of a group policy requests payment of an accelerated benefit, within twenty days of receiving the request the insurer shall send a statement to that person, and to any irrevocable beneficiary, showing any effect that payment of an accelerated benefit will have on the policy's cash value, accumulation account, death benefit, premium, policy loans, and policy liens. This statement shall disclose that receipt of accelerated benefit payments may adversely affect the recipient's eligibility for medicaid or other government benefits or entitlements. When the insurer pays the accelerated benefit, it



shall issue an amended schedule page to the owner of an individual policy, or to the certificate holder of a group policy, showing any new, reduced in-force amount of the policy. When more than one payment of accelerated benefit is permitted under the policy or rider, the insurer shall send a revised statement to the owner of an individual policy, or to the certificate holder of a group policy, when a previous statement has become invalid due to payment of accelerated benefits.

[Statutory Authority: RCW 48.02.060, 48.83.070, 48.83.110, 48.83.120, 48.83.130(1), and 48.83.140 (4)(a). WSR 08-24-023 (Matter No. R 2008-19), § 284-23-650, filed 11/24/08, effective 12/25/08. Statutory Authority: RCW 48.02.060, 48.30.010 and 48.11.020. WSR 98-05-026 (Matter No. R 96-13), § 284-23-650, filed 2/6/98, effective 3/9/98. Statutory Authority: RCW 48.02.060 and 48.30.010. WSR 94-24-072 (Order R 94-25), § 284-23-650, filed 12/6/94, effective 1/6/95. Statutory Authority: RCW 48.02.060 (3)(a) and 48.30.010. WSR 94-18-029 (Order R 94-18), § 284-23-650, filed 8/29/94, effective 9/29/94.]

**WAC 284-23-660 Effective date of the accelerated benefit.** The accelerated benefit provision shall be effective for a qualifying event caused by an accident on the effective date of the policy or rider. The accelerated benefit provision shall be effective for illness no more than thirty days following the effective date of the policy or rider.

[Statutory Authority: RCW 48.02.060, 48.30.010 and 48.11.020. WSR 98-05-026 (Matter No. R 96-13), § 284-23-660, filed 2/6/98, effective 3/9/98. Statutory Authority: RCW 48.02.060 (3)(a) and 48.30.010. WSR 94-18-029 (Order R 94-18), § 284-23-660, filed 8/29/94, effective 9/29/94.]

**WAC 284-23-670 Waiver of premiums.** The insurer may offer a waiver of premium for the accelerated benefit provision, even in the absence of a policy waiver of premium provision being in effect. At the time payment of the accelerated benefit is requested, the insurer shall explain to the owner of an individual policy, or the certificate holder of a group policy, any continuing premium requirement necessary to keep the policy in force.

[Statutory Authority: RCW 48.02.060 (3)(a) and 48.30.010. WSR 94-18-029 (Order R 94-18), § 284-23-670, filed 8/29/94, effective 9/29/94.]

**WAC 284-23-680 Unfair discrimination.** An insurer shall not unfairly discriminate between insureds with different qualifying events covered under the policy or rider. An insurer may not unfairly discriminate between insureds with similar or identical qualifying events covered under the policy or rider. Insurers may not apply conditions on the payment of the accelerated benefits except those specified in the insured's policy or rider.

[Statutory Authority: RCW 48.02.060 (3)(a) and 48.30.010. WSR 94-18-029 (Order R 94-18), § 284-23-680, filed 8/29/94, effective 9/29/94.]

**WAC 284-23-690 Actuarial standards, financing options, effect on cash value, and effect on policy loans.**

(1) An insurer shall select among the following finance options. Under subsection (1)(a) and (1)(b) of this section, the accelerated death benefit is regarded as completely settled. Premiums, if any, payable for the remaining coverage shall be reduced proportionally.

(a) An insurer may require a premium charge or cost of insurance charge for the accelerated benefit. These charges

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shall be based on sound actuarial principles. No additional charges may be imposed to collect benefits.

(b) An insurer may pay the present value of the face amount of the insured's policy or certificate. The calculation of that present value shall be based upon any applicable discount appropriate to the policy design. The interest rate or interest rate methodology used in the calculation shall be based upon sound actuarial principles and disclosed in the policy or actuarial memorandum. The maximum interest rate used shall be no more than the greater of:

- (i) The current yield on ninety day treasury bills; or
- (ii) The current maximum statutory adjustable policy loan interest rate.

(c) An insurer may accrue an interest charge on the amount of the accelerated benefits. The interest rate or the interest rate methodology used in the calculation shall be based upon sound actuarial principles and shall be disclosed in the policy or the actuarial memorandum. The maximum interest rate used shall be no more than the greater of:

- (i) The current yield on ninety day treasury bills; or
- (ii) The current maximum statutory adjustable policy loan interest rate.

The interest rate accrued on the portion of the lien which is equal in amount to the cash value of the policy at the time the benefit is accelerated shall be no more than the loan interest rate stated in the policy.

(d) Any other financing option that the commissioner is satisfied is not contrary to the best interests of the public. No financing option shall be offered by any insurer without the prior written approval of the commissioner.

(2) When an accelerated benefit is payable, there shall be no more than a pro rata reduction in the cash value based upon the percentage of death benefit accelerated to produce the accelerated benefit payment; provided, however, that the payment of accelerated benefits, any administrative expense charges, any future premiums, and any accrued interest may be considered a lien against the death benefit of the policy or rider, and the access to any remaining cash value may be restricted to the excess of the cash value over the sum of any other outstanding loans and any lien. Future access to additional policy loans may be limited to any excess of the cash value over the sum of the lien and any other outstanding policy amounts. When payment of an accelerated benefit results in a pro rata reduction in the cash value, the payment may not be applied toward repaying an amount greater than a pro rata portion of any outstanding policy loans.

(3) In the case of an acceleration as defined at WAC 284-23-620 (3)(e), an insurer shall use only one of the finance options permitted in this section for any insurance policy or certificate. An insurer may not place a lien on the face amount of an insured's policy or certificate and at the same time discount the face amount or accumulation amount.

[Statutory Authority: RCW 48.02.060, 48.30.010 and 48.11.020. WSR 98-05-026 (Matter No. R 96-13), § 284-23-690, filed 2/6/98, effective 3/9/98. Statutory Authority: RCW 48.02.060 and 48.30.010. WSR 94-24-072 (Order R 94-25), § 284-23-690, filed 12/6/94, effective 1/6/95. Statutory Authority: RCW 48.02.060 (3)(a) and 48.30.010. WSR 94-18-029 (Order R 94-18), § 284-23-690, filed 8/29/94, effective 9/29/94.]

**WAC 284-23-700 Actuarial disclosure and reserves.**

(1) A qualified actuary shall describe the accelerated benefits, the risks, the expected costs, and the calculation of statutory reserves in an actuarial memorandum accompanying each filing that includes a provision for accelerated benefits. The insurer shall maintain in its files descriptions of the bases and procedures used to calculate benefits payable under these provisions. These descriptions shall be made available for examination by the commissioner upon request.

(2)(a) When benefits are provided through the acceleration of benefits under individual or group life policies, or riders to such policies, policy reserves shall be determined in accordance with the Standard Valuation Law chapter 48.74 RCW. All valuation assumptions used in constructing the reserves shall be determined as appropriate for statutory valuation purposes by a qualified actuary. Mortality tables and interest currently recognized for life insurance reserves by the National Association of Insurance Commissioners may be used, as well as appropriate assumptions for the other provisions incorporated in the policy. The actuary shall follow both actuarial standards and certification for good and sufficient reserves. Reserves in the aggregate shall be sufficient to cover:

- (i) Policies upon which no claim has yet arisen; and
- (ii) Policies upon which a claim for one or more payments of accelerated benefits has arisen.

(b) For policies and certificates which provide actuarially equivalent benefits, no additional reserves need to be established.

(c) Policy liens and policy loans, plus any accrued interest, represent assets of the insurer for statutory reporting purposes. For any policy on which the policy lien exceeds the policy's statutory reserve liability, such excess must be held as a non-admitted asset.

[Statutory Authority: RCW 48.02.060 (3)(a) and 48.30.010. WSR 94-18-029 (Order R 94-18), § 284-23-700, filed 8/29/94, effective 9/29/94.]

**WAC 284-23-710 Filing requirements.** The filing of all forms containing accelerated benefit provisions is required, pursuant to RCW 48.18.100 and WAC 284-58-130.

[Statutory Authority: RCW 48.02.060, 48.30.010 and 48.11.020. WSR 98-05-026 (Matter No. R 96-13), § 284-23-710, filed 2/6/98, effective 3/9/98. Statutory Authority: RCW 48.02.060 (3)(a) and 48.30.010. WSR 94-18-029 (Order R 94-18), § 284-23-710, filed 8/29/94, effective 9/29/94.]

**WAC 284-23-720 Administrative expenses.** All charges or fees for administration or processing requests for any payments of accelerated benefits shall be disclosed and fully described in the policy, rider, and disclosure statement. Any such charge or fee shall be reasonable; shall be assessed no more than once; and may not exceed five hundred dollars.

[Statutory Authority: RCW 48.02.060 (3)(a) and 48.30.010. WSR 94-18-029 (Order R 94-18), § 284-23-720, filed 8/29/94, effective 9/29/94.]

**WAC 284-23-730 Resolution of disputes regarding occurrence of qualifying events.** In the event the insured's health care provider and a health care provider appointed by the insurer disagree on whether a qualifying event has occurred, the opinion of the health care provider appointed by the insurer is not binding on the claimant. The parties shall attempt to resolve the matter promptly and amicably. The

policy or rider providing the accelerated benefit shall provide that in case the disagreement is not so resolved, the claimant has the right to mediation or binding arbitration conducted by a disinterested third party who has no ongoing relationship with either party. As part of the final decision, the arbitrator or mediator shall award the costs of arbitration to one party or the other or may divide the costs equally or otherwise.

[Statutory Authority: RCW 48.02.060, 48.83.070, 48.83.110, 48.83.120, 48.83.130(1), and 48.83.140 (4)(a). WSR 08-24-023 (Matter No. R 2008-19), § 284-23-730, filed 11/24/08, effective 12/25/08. Statutory Authority: RCW 48.02.060, 48.30.010 and 48.11.020. WSR 98-05-026 (Matter No. R 96-13), § 284-23-730, filed 2/6/98, effective 3/9/98. Statutory Authority: RCW 48.02.060 (3)(a) and 48.30.010. WSR 94-18-029 (Order R 94-18), § 284-23-730, filed 8/29/94, effective 9/29/94.]

**JUVENILE LIFE INSURANCE**

**WAC 284-23-800 Purpose and scope.** The purpose of these rules is to set standards for detecting and preventing the purchase of juvenile life insurance for speculative or fraudulent reasons, by ensuring that insurance underwriting practices consider such risk, and by setting forth the minimum practices required to insure the life of a juvenile. These rules apply to life insurance policies governed by chapter 48.23 RCW that insure the life of a juvenile.

[Statutory Authority: RCW 48.02.060 (3)(a). WSR 10-12-099 (Matter No. R 2009-05), § 284-23-800, filed 6/2/10, effective 7/3/10. Statutory Authority: RCW 48.02.060 and 48.23.345. WSR 09-03-104 (Matter No. R 2007-09), § 284-23-800, filed 1/21/09, effective 2/21/09.]

**WAC 284-23-803 Definitions.** For the purpose of this rule, the following definitions apply, unless the context clearly requires otherwise:

(1) "Insurable interest" means a relationship to the insured at the time of application as defined in RCW 48.18-030 and 48.18.060(2).

(2) "Juvenile" means a person younger than eighteen years of age.

(3) "Juvenile Life Insurance Contract" means a life insurance policy or contract issued on the life of a juvenile.

(4) "Parent or legal guardian" means a natural parent, an adoptive parent whose status is documented in a final court order of adoption or a court appointed legal guardian for the juvenile. Step-parents who have not legally adopted the juvenile, foster parents, noncustodial parents or relatives acting in loco parentis are not considered parents or legal guardians of the juvenile for purposes of this rule.

[Statutory Authority: RCW 48.02.060 (3)(a). WSR 10-12-099 (Matter No. R 2009-05), § 284-23-803, filed 6/2/10, effective 7/3/10. Statutory Authority: RCW 48.02.060 and 48.23.345. WSR 09-03-104 (Matter No. R 2007-09), § 284-23-803, filed 1/21/09, effective 2/21/09.]

**WAC 284-23-806 Required procedures and standards for sale of juvenile life insurance policies.** Beginning July 1, 2009, an insurer must comply with the following procedures and standards when underwriting juvenile life insurance policies:

(1) An insurer may refuse an applicant's request for life insurance when the combined life insurance-in-force exceeds the issuing insurer's maximum for juveniles.

(2) Life insurance upon a juvenile must not be made or take effect unless at the time the contract is made, the appli-

cant is a person having an insurable interest in the life of the juvenile. The insurer must obtain and keep documentation sufficient to demonstrate that the applicant for the policy has an insurable interest in the life of the juvenile.

(3) In addition to the signature of the applicant, the consent of the parent or legal guardian with whom the juvenile resides, as evidenced by signature, must be obtained before submitting the application for underwriting. Any juvenile age fifteen or older must sign the application for insurance on the juvenile's life.

(4) An insurer must have underwriting standards and procedures justifying the issuance of a life insurance policy on the life of a juvenile. The insurer must provide the insurance commissioner with documentation from its records and files to support its underwriting justification upon request. The justification must address the following elements:

(a) The issued policy must conform to the insurer's established standards and practices for underwriting juvenile life insurance or explain any variance.

(b) As part of its underwriting practice, the insurer must identify the amount, if any, of other life insurance contracts on the life of the juvenile which are in force or applied for at the time of application.

(c) The insurer must confirm that the policy death benefit is grossly proportional to the value of life insurance or accidental death benefits issued for other siblings or immediate family members, and if not, justify why proportionality or equivalency was not required.

(d) The commissioner must be able to determine that the insurer had good cause to underwrite when the overall amount of insurance on the juvenile exceeds the annual household income, and if it does so, justify why such an amount was approved. The extent to which the beneficiary or applicant is dependent on the juvenile for income or other support is an example of such a justification.

(5) If an application on the life of a juvenile is fifty thousand dollars or less and issued without underwriting, the insurer must meet the following alternative requirements:

(a) In addition to asking the applicant, take reasonable steps to determine the total amount of insurance in-force on the life of the juvenile at the date of application including, but not limited to, checking any national database for in-force insurance information;

(b) Document the steps taken to determine the total amount of insurance in-force on a particular application and make the documentation available to the insurance commissioner upon request; and

(c) File an amended application or endorsement for use in Washington including the following statement: "This policy may be void or reduced when a claim is submitted if the total amount of life insurance in-force from all sources exceeds the underwriting limits established for issuance of this policy on the life of a juvenile." This statement must be printed in bold face type of at least twelve-point font.

(6) For each application for juvenile life insurance rejected by an insurer, each insurer must maintain at its home or principal office a complete file containing the original signed application, underwriting analysis, correspondence with the applicant and any other documents pertinent to the decision to reject the applicant as an insured, for a period of not less than ten years from the date the application was

signed by the applicant. Such file shall be subject to inspection by the insurance commissioner.

[Statutory Authority: RCW 48.02.060 (3)(a). WSR 10-19-023 (Matter No. R 2010-05), § 284-23-806, filed 9/9/10, effective 10/10/10; WSR 10-12-099 (Matter No. R 2009-05), § 284-23-806, filed 6/2/10, effective 7/3/10. Statutory Authority: RCW 48.02.060 and 48.23.345. WSR 09-03-104 (Matter No. R 2007-09), § 284-23-806, filed 1/21/09, effective 2/21/09.]