

Chapter 284-95 WAC

TRANSFER OF INSURANCE CONTRACTS

WAC

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WAC 284-95-010 Title. This regulation, WAC 284-95-010 through 284-95-060, inclusive, shall be known and may be cited as "the Washington regulation on transfer of insurance contracts."

[Statutory Authority: RCW 48.02.060 (3)(a), 48.01.030 and 48.30.010. WSR 91-23-064 (Order R 91-9), § 284-95-010, filed 11/18/91, effective 12/19/91.]

WAC 284-95-020 Purpose and scope. (1) This regulation establishes procedures to be followed with respect to the transfer of insurance contracts from a transferring company to an assuming company, establishes notice and disclosure requirements to protect the rights of policyowners, and defines unfair or deceptive acts and practices and unfair methods of competition in the conduct of the business of insurance, pursuant to RCW 48.30.010.

(2) This regulation applies to any transfer of insurance contracts from a transferring company to an assuming company where:

(a) The policyowner, as defined in WAC 284-95-030(5), is a resident of this state at the time of the proposed transfer; or

(b) The holder of a certificate of group insurance is a resident of this state at the time of the proposed transfer and meets the criteria set forth in WAC 284-95-030(5).

(3) This regulation shall not apply in the following situations:

(a) Mergers or consolidations;

(b) A transferring company subject to an order of rehabilitation, conservation, liquidation, or similar applicable order issued in this or any other jurisdiction;

(c) Withdrawal from the state by a transferring company, pursuant to RCW 48.05.290;

(d) The absorption of a subsidiary insurance company by a parent company, where the parent company absorbs the entire subsidiary insurance company through a merger. However, this regulation shall apply where the parent company acquires only the insurance contracts of the subsidiary insurance company.

(4) Unless the transferring company complies fully with the requirements of this regulation, it shall be deemed to remain liable for its obligations to the policyowners under its insurance contracts.

[Statutory Authority: RCW 48.02.060 (3)(a), 48.01.030 and 48.30.010. WSR 91-23-064 (Order R 91-9), § 284-95-020, filed 11/18/91, effective 12/19/91.]

(11/18/91)

WAC 284-95-030 Definitions, applications, and procedures. (1) "A transfer of insurance contracts" means a transaction in which a transferring company, as defined in subsection (3) of this section, transfers one or more insurance contracts, together with all or substantially all of the liabilities and obligations under any such insurance contracts, to an assuming company, as defined in subsection (4) of this section, so that the rights of policyowners under the contracts are directly affected. This includes a transfer of the type deceptively known as "assumption reinsurance." This regulation is not intended to apply to a case of true reinsurance, where an insurer obtains additional security for the original undertaking.

(2) "Consent to transfer," in the context of this regulation, means the active and affirmative consent of each policyowner, as defined in subsection (5) of this section. This consent must be in writing, signed by the policyowner. It will not be presumed. It must be made after sufficient notice and disclosure concerning the proposed transfer, and concerning both the transferring company and the assuming company, as more fully set forth in WAC 284-95-040 and 284-95-050. Where a group insurance contract is concerned, the consent required is that of the group policyowner. Where the holder of a certificate of group insurance meets the criteria set forth in subsection (5) of this section, then the certificate holder is the policyowner, for the purpose of obtaining consent.

(3) "Transferring company" means the insurance company, fraternal benefit society, health care service contractor, or health maintenance organization which proposes to transfer one or more insurance contracts, together with all or substantially all of the liabilities arising under any such insurance contract, to an assuming company.

(4) "Assuming company" means the insurance company, fraternal benefit society, health care service contractor, or health maintenance organization which proposes to acquire one or more insurance contracts, together with all or substantially all of the liabilities arising under any such insurance contracts or contracts, from a transferring company.

(5) "Policyowner" means any individual or entity which has the right to either agree or not agree to alter the terms of an insurance contract and includes any person issued a certificate under a group insurance contract if such contract vests in that person rights that the owner of the group contract may not terminate.

(6) "An insurance contract," for purposes of this regulation, includes a life or disability insurance policy, an annuity contract, and a contract issued by a health care service contractor or health maintenance organization.

[Statutory Authority: RCW 48.02.060 (3)(a), 48.01.030 and 48.30.010. WSR 91-23-064 (Order R 91-9), § 284-95-030, filed 11/18/91, effective 12/19/91.]

WAC 284-95-040 Notice requirements. (1) The transferring company shall provide to each policyowner at least

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thirty days advance written notice of its intent to transfer the insurance contract to an assuming company. The written notice shall be deposited in the United States mail, postage prepaid, addressed to the last known address for the policyowner.

(2) The transferring company shall keep records of all notices which are returned as undeliverable and also of all responses which are signed and returned by the policyowner, regardless of whether those responses are consents or refusals to consent.

(3) The transferring company shall provide advance notice of the proposed transfer to the commissioner, which shall include a complete set of the forms and materials to be sent to policyowners. The notice shall be sent at least thirty days before it is sent to the policyowner.

[Statutory Authority: RCW 48.02.060 (3)(a), 48.01.030 and 48.30.010. WSR 91-23-064 (Order R 91-9), § 284-95-040, filed 11/18/91, effective 12/19/91.]

WAC 284-95-050 Requirement of full disclosure. (1)

At a minimum, the notice sent to the policyowner shall state the following in language easily understood by a policyowner:

(a) The date upon which the transfer of liabilities arising under the insurance contract is to take place.

(b) The name and address of the proposed assuming company.

(c) The fact that the policyowner has a legal right to either consent to the proposed transfer, or to refuse to consent to it.

(d) The fact that if the policyowner wishes to accept the proposed transfer, that person must affirmatively do so by signing and returning the enclosed consent form.

(e) The fact that unless the policyowner signs and returns the enclosed consent form, the proposed transfer will not take place as to the insurance contract in his or her case, and that as a result the liabilities arising under that insurance contract will remain with the transferring company.

(f) Depending upon the intent of the transferring company, the policyowner should be told whether the transferring company will or may utilize the services of the proposed assuming company or another entity for administratively servicing the insurance contract, if consent to the transfer is not given, even though the obligations and liabilities under the insurance contract will remain with the transferring company. Examples of such servicing should be illustrated.

(g) The reason or reasons for the proposed transfer.

(h) Enough information about both the transferring company and the assuming company for the policyowner to make an informed choice about whether to consent to the proposed transfer or not. Necessary information will vary from one situation to another. However, it shall include, although it is not limited to, the following: The assets and liabilities of each company, and the business experience of each, particularly with respect to the kind of insurance involved in the proposed transfer.

(i) Whether the assuming company holds a valid certificate of authority or registration for the kind of insurance involved in the proposed transfer, issued by the state of which the policyowner is a resident.

(j) Whether the proposed transfer would have any effect upon availability and extent of protection afforded by any

state guaranty fund, in the event of insolvency of the proposed assuming company.

(2) The notice and disclosure shall be accompanied by a form by which the policyowner may consent to or reject the proposed transfer. The form shall be worded in language easily understood by the policyowner, and be accompanied by a postage prepaid return envelope, by which it may be returned. All the forms shall be subject to the type size requirements of RCW 48.20.012(2).

(3) After processing, the transferring company shall return to consenting policyowners a copy of the consent to transfer for attachment to the insurance contract. The transferring company shall retain the policyowner's written consent with its records pertaining to each insurance contract.

(4) The notice and disclosure documents must also advise the policyowner that the transferring company will not unfairly discriminate against those policyowners who do not consent to the transfer.

(5) A certificate of assumption shall be provided to each consenting policyowner. The certificate shall include, at a minimum, the statement that the assuming company assumes all contractual obligations under the insurance contract. It shall include the name of the assuming company and its address to which communications relating to the insurance contract should be sent. The certificate of assumption shall become a part of the transferred contract. The form of certificate of assumption shall be filed with the insurance commissioner pursuant to RCW 48.18.100.

[Statutory Authority: RCW 48.02.060 (3)(a), 48.01.030 and 48.30.010. WSR 91-23-064 (Order R 91-9), § 284-95-050, filed 11/18/91, effective 12/19/91.]

WAC 284-95-060 Prohibited policy provisions. No insurance contract, or other contractual document pertaining to any such insurance contract, shall contain any waiver or disclaimer of any of the rights recognized or protected by this regulation.

[Statutory Authority: RCW 48.02.060 (3)(a), 48.01.030 and 48.30.010. WSR 91-23-064 (Order R 91-9), § 284-95-060, filed 11/18/91, effective 12/19/91.]

WAC 284-95-070 Transfers to unauthorized insurers. Where a Washington resident owns an insurance contract issued by a company authorized to do business in Washington, that company may not transfer such insurance contract to a company which is not authorized to do business in Washington. Acting as the assuming company in a transfer of insurance involving a Washington risk constitutes the transaction of insurance for which a Washington certificate of authority, license, or registration is required.

[Statutory Authority: RCW 48.02.060 (3)(a), 48.01.030 and 48.30.010. WSR 91-23-064 (Order R 91-9), § 284-95-070, filed 11/18/91, effective 12/19/91.]

WAC 284-95-080 Unfair or deceptive acts or practices. It is an unfair or deceptive act or practice, pursuant to RCW 48.30.010, for any transferring company to:

(1) Be a party to a transfer of insurance contracts which is in violation of the provisions of this regulation; or

(2) Represent to policyowners, either verbally or in writing, that the commissioner has approved a transfer of insurance contracts. It shall be a false representation in advertising, in the sense of RCW 48.44.110, for a health care service

contractor to represent to policyowners, either verbally or in writing, that the commissioner has approved any transfer of insurance contracts. It shall be a false or misleading practice in advertising, in the sense of RCW 48.46.400, and a deceptive, misleading, or unfair practice in advertising, in the sense of RCW 48.46.130 (1)(e), for a health maintenance organization to represent to policyowners, either verbally or in writing, that the commissioner has approved any transfer of insurance contracts; or

(3) Unfairly discriminate against policyowners who do not consent to the proposed transfer of insurance contracts.

[Statutory Authority: RCW 48.02.060 (3)(a), 48.01.030 and 48.30.010. WSR 91-23-064 (Order R 91-9), § 284-95-080, filed 11/18/91, effective 12/19/91.]