

211 CMR: DIVISION OF INSURANCE

211 CMR 31.00: LIFE INSURANCE SOLICITATION

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31.01: Authority

211 CMR 31.00 is adopted and promulgated by the Commissioner of Insurance pursuant to M.G.L. c. 176D.

31.02: Purpose

(1) The purpose of 211 CMR 31.00 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) 211 CMR 31.00 does not prohibit the use of additional material which is not in violation of 211 CMR 31.00 or any other state statute or regulation.

31.03: Scope

(1) Except for the exemptions specified in 211 CMR 31.03(2), 211 CMR 31.00 shall apply to any solicitation, negotiation or procurement of life insurance occurring within Massachusetts. 211 CMR 31.05(2) shall apply only to an existing nonexempt policy held by a policyowner residing in Massachusetts. 211 CMR 31.00 shall apply to any issuer of life insurance contracts including fraternal benefit societies.

(2) Unless otherwise specifically included, 211 CMR 31.00 shall not apply to:

- (a) Individual and group annuity contracts;
- (b) Credit life insurance;
- (c) Group life insurance (except for disclosures relating to pre-need funeral contracts and arrangements; these disclosure requirements shall extend to the issuance or delivery of certificates as well as to the master policy);
- (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), 29 U.S.C Section 1001 *et seq.*; or
- (e) Variable life insurance under which the amount or duration of the life insurance varies according to the investment experience of a separate account.

31.04: Definitions

For the purpose of 211 CMR 31.00, the following definitions shall apply:

Buyer's Guide means the current Life Insurance Buyer's Guide adopted by the National Association of Insurance Commissioners (NAIC) or language approved by the Commissioner of Insurance.

31.04: continued

Current Scale of Nonguaranteed Elements means a formula or other mechanism that produces values for an illustration as if there is no change in the basis of those values after the time of illustration.

Generic Name means a short title which is descriptive of the premium and benefit patterns of a policy or rider.

Nonguaranteed Elements means the premiums, credited interest rates (including any bonus), benefits, values, non-interest based credits, charges or elements of formulas used to determine any of these, that are subject to company discretion and are not guaranteed at issue. An element is considered non-guaranteed if any of the underlying non-guaranteed elements are used in its calculation.

Policy Data means a display or schedule of numerical values, both guaranteed and nonguaranteed for each policy year or a series of designated policy years of the following information: illustrated annual, other periodic, and terminal dividends; premiums; death benefits; cash surrender values and endowment benefits.

Policy Summary means 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 producer, or, if no insurance producer 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 at least one age from 60 through 65 and policy maturity:
 1. The annual premium for the basic policy;
 2. The annual premium for each optional rider;
 3. The amount payable upon death, at the beginning of the policy year regardless of the cause of death, other than suicide or other specifically enumerated exclusions, that is provided by the basic policy and each optional rider; with benefits provided under the basic policy and each rider shown separately;
 4. The total guaranteed cash surrender values at the end of the year with values shown separately for the basic policy and each rider; and
 5. Any endowment amounts payable under the policy that are not included under cash surrender values.
- (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; and
- (g) The date on which the policy summary is prepared.

Pre-need Funeral Contract and Arrangement means an agreement by or for an individual before that individual's death relating to the purchase or provision of specific funeral or cemetery merchandise or services.

31.05: Duties of Insurers(1) Requirements Applicable Generally.

(a) The insurer shall provide a Buyer's Guide to all prospective purchasers prior to accepting the applicant's initial premium or premium deposit. However, if the policy for which application is made contains an unconditional refund provision of at least ten days, the Buyer's Guide may be delivered with the policy or prior to delivery of the policy.

(b) The insurer shall provide a policy summary to prospective purchasers where the insurer has identified the policy form as one that will not be marketed with an illustration. The policy summary shall show guarantees only. It shall consist of a separate document with all required information set out in a manner that does not minimize or render any portion of the summary obscure. Any amounts that 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 211 CMR 31.04: Policy Summary(e) shall be listed in total, not on a per thousand or per unit basis. If more than one insured is covered under one policy or rider, death benefits shall be displayed separately for each insured or for each class of insureds if the death benefits do not differ within the class. Zero amounts shall be displayed as a blank space. Delivery of the policy summary shall be consistent with the time for delivery of the Buyer's Guide as specified in 211 CMR 31.05(1)(a).

(2) Requirements Applicable to Existing Policies.

(a) Upon request by the policyowner, the insurer shall furnish either policy data or an in force illustration as follows:

1. For policies issued prior to the effective date of 211 CMR 28.00, Life Insurance Illustrations, the insurer shall furnish policy data, or, at its option, an in force illustration meeting the requirements of 211 CMR 28.00.

2. For policies issued after the effective date of 211 CMR 28.00, that were declared not to be used with an illustration, the insurer shall furnish policy data, limited to guaranteed values, if it has chosen not to furnish an in force illustration meeting the requirements of 211 CMR 28.00.

3. If the policy was issued after the effective date of 211 CMR 28.00, and declared to be used with an illustration, an in force illustration shall be provided.

4. Unless otherwise requested, the policy data shall be provided for 20 consecutive years beginning with the previous policy anniversary. The statement of policy data shall include nonguaranteed elements according to the current scale, the amount of outstanding policy loans, and the current policy loan interest rate. Policy values shown shall be based on the current application of nonguaranteed elements in effect at the time of the request.

(b) If a life insurance company changes its method of determining scales of nonguaranteed elements on existing policies it shall, no later than when the first payment is made on the new basis, advise each affected policy owner residing in Massachusetts of this change and of its implication on affected policies. This requirement shall not apply to policies for which the amount payable upon death under the basic policy as of the date when advice would otherwise be required does not exceed \$5,000.

(c) If the insurer makes a material revision in the terms and conditions under which it will limit its right to change any nonguaranteed factor; it shall, no later than the first policy anniversary following the revision, advise each affected policy owner residing in Massachusetts.

31.06: Pre-need Funeral Contracts and Arrangements

The following information shall be adequately disclosed at the time an application is made, prior to accepting the applicant's initial premium or deposit; for a pre-need funeral contract and arrangement that is funded or to be funded by a life insurance policy:

(1) The fact that a life insurance policy is involved or being used to fund an arrangement;

(2) The nature of the relationship among the soliciting producer or producers, the provider of the funeral or cemetery merchandise or services, the administrator and any other person;

(3) The relationship of the life insurance policy to the funding of the arrangement and the nature and existence of any guarantees relating to the arrangement;

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31.06: continued

- (4) The impact on the arrangement:
 - (a) Of any changes in the life insurance policy including but not limited to, changes in the assignment, beneficiary designation or use of the proceeds;
 - (b) Of any penalties to be incurred by the policyholder as a result of failure to make premium payments;
 - (c) Of any penalties to be incurred or monies to be received as a result of cancellation or surrender of the life insurance policy;
- (5) A list of the merchandise and services which are applied or contracted for in the arrangement and all relevant information concerning the price of the funeral services, including an indication that the purchase price is either guaranteed at the time of purchase or to be determined at the time of need in accordance with 239 CMR 4.00;
- (6) All relevant information concerning what occurs and whether any entitlements or obligations arise if there is a difference between the proceeds of the life insurance policy and the amount actually needed to fund the arrangement in accordance with 239 CMR 4.00;
- (7) Any penalties or restrictions, including but not limited to geographical restrictions or the inability of the provider to perform, on the delivery of merchandise, services or the arrangement guarantee; and
- (8) That a sales commission or other form of compensation is being paid and the identity of the individuals or entities to whom it is paid.

31.07: General Rules

- (1) Each insurer shall maintain at its home office or principal office, a complete file containing one copy of each form authorized by the insurer for use pursuant to 211 CMR 31.00. Such file shall 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 211 CMR 31.00.
- (2) An insurance producer shall inform the prospective purchaser, prior to commencing a life insurance sales presentation, that he is acting as an insurance producer and inform the prospective purchaser of the full name of the insurance company which he is representing to the buyer. In sales situations in which an insurance producer is not involved, the insurer shall identify its full name.
- (3) Terms such as financial planner, investment advisor, financial consultant, or financial counseling shall not be used in such a way as to imply that the insurance producer is primarily engaged in an advisory business in which compensation is unrelated to sales unless such is actually the case. This provision is not intended to preclude persons who hold some form of formal recognized financial planning or consultant designation from using this designation even when they are only selling insurance. This provision also is not intended to preclude persons who are members of a recognized trade or professional association having such terms as part of its name from citing membership, providing that a person citing membership, if authorized only to sell insurance products, shall disclose that fact. This provision does not permit persons to charge an additional fee for services that are customarily associated with the solicitation, negotiation or servicing of policies.
- (4) Any reference to nonguaranteed elements must include a statement that the item is not guaranteed and is based on the company's current scale of nonguaranteed elements. If a nonguaranteed element would be reduced by the existence of a policy loan, a statement to that effect shall be included in any reference to nonguaranteed elements. A presentation or depiction of a policy issued after the effective date of 211 CMR 28.00 that includes nonguaranteed elements over a period of years shall be governed by 211 CMR 28.00.
- (5) For the purposes of 211 CMR 31.00, the company must show the maximum annual premium if it reserves the right to change the premium.

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31.08: Failure to Comply

Failure of an insurer to provide or deliver a Buyer's Guide, an in force illustration, a policy summary or policy data as provided in 211 CMR 31.05 shall constitute an omission which misrepresents the benefits, advantages, conditions or terms of an insurance policy.

31.09: Severability

If any provision of 211 CMR 31.00 or its application to any person or circumstance is for any reason held to be invalid by any court of law, the remainder of the regulation and its application to other persons or circumstances shall not be affected.

31.10: Effective Date

211 CMR 31.00 shall apply to all solicitations of life insurance which commence on or after September 1, 2006.

REGULATORY AUTHORITY

211 CMR 31.00: M.G.L. chs. 175 and 176D, § 11.

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