

COMMISSIONER OF INSURANCE

7

- (c) Disability income benefit.
- (d) Hospital insurance.
- (e) Basic or primary medical insurance.
- (f) Major medical benefit.
- (g) Surgical benefit.

(6) **DISABILITY BENEFITS NOT LISTED.** Disability benefits which are not specifically listed above will be examined at the time of filing to determine whether a separate statement of premium is required.

(7) **RESERVE VALUES.** Reserve values, on account of included provisions, will be based upon the requirements of s. 623.06, Stats., or other applicable statutes or, in the absence of specific requirements, on such additional standards as the commissioner of insurance may prescribe.

(8) **EFFECTIVE DATE.** On or after April 1, 1965, no life insurance policy shall be approved for use and no such policy heretofore approved shall be issued or delivered in this state unless it meets the requirements of this rule.

(9) **SEPARABILITY.** If any provision of this rule shall be held invalid, the remainder of the rule shall not be affected thereby.

Note: The repeal of the previous rule and the adoption of this rule was prompted by the inconsistency which existed between the repealed rule and provision 2 of s. 206.18 (1), 1973 Stats. This inconsistency caused an erosion in the application of the old section Ins 2.05 at the point where any of the benefits listed in the new rule were acceptable for inclusion in a life policy without a separate statement—a practice which is in almost complete disagreement with the apparent intent of the statute.

Provision 2 of s. 206.17 (1), 1973 Stats., requires an individual statement of the premium charged for any benefit provided in a life or endowment policy separate from the premium charged for the basic life or endowment coverage which is based on a life contingency table and provided by the policy. The commissioner feels that this full disclosure has strong merit even in the present insurance market. However, in the years since the enactment of this statute in 1909 several changes have taken place in the life insurance industry that necessitate a rule providing standards to determine whether certain disability benefits may be included in a life or endowment insurance policy without a separate statement of the premium charge in line with the original intent of the statute. The principal changes are:

1. The automatic inclusion of some benefits in a policy enables an insurance company to provide some additional disability benefits at a relatively small cost in relation to the charge for the basic life or endowment insurance coverage.

2. Custom of the business through the years has now classed some disability coverages as benefits which are a supplemental policy provision in most life or endowment policies and sometimes needed as an integral part of the policy.

The public interest dictates that it is expedient to recognize these 2 changes when the cost for the disability benefit is low or nominal, the coverage is needed and is easily understood by the applicant or insured. This rule provides criteria to determine disability coverages which may be defined as an integral part of the basic life and endowment insurance and are therefore, benefits which may be included without a separate and distinct statement of premium.

The new rule was developed as a result of the following main considerations:

1. The commissioner has a strong concern for disclosure in situations where intentional or unintentional misrepresentation may be present to mislead or confuse prospective purchasers of life insurance. The statutory basis for this authority is set forth in s. 207.04, 1973 Stats.

2. The disclosure philosophy in Wisconsin in respect to life insurance coverage premiums originated in the year 1909 when the legislature enacted section 1948m (now s. 206.18 (1), provision 2, 1973 Stats.) requiring that a policy of life insurance specify "separately for premium charged for any benefit promised in the policy other than life or endowment insurance."

The 1908 Wisconsin Insurance Report to the governor stated:

"Notwithstanding the liberal provisions for expenses which are possible under the new laws, several devices for increasing this amount far beyond the proposed benefits have been submitted to this department for its approval. There is an increasing tendency to introduce into contracts for life insurance provisions for additional benefits such as old age, disability and sick benefits. These forms of insurance in many cases are very desirable but it is rarely that the addition of these benefits to policies spring from an honest desire on the part of the companies to furnish the insurance protection. Their addition to policies of life insurance ordinarily only serves as a cloak for the addition of a greatly increased premium. The policyholder should be informed separately of what is charged him for the life insurance and what is charged him for the old age, disability or sick benefit insurance. This information should be contained in the contract of insurance. Policyholders can then judge for themselves whether the additional benefits are worth the charges which it is proposed to exact and both the company and the policyholder can get the resulting economy in agency and medical expenses from writing the two contracts at the same time."

These observations apparently prompted the legislature in the following year to enact section 1948m.

3. Additional insight in respect to the original intent of the disclosure statute is given in Commissioner Cleary's letter on this subject dated October 22, 1915. In this letter the Commissioner has under consideration two filings in which a waiver of premium benefit was included in a policy form previously used. The new coverage with the total and permanent disability benefit was to be sold at the same price previously used only for the basic coverage. Commissioner Cleary indicated the following in respect to liberalization of policies where no direct charge is made for the additional benefit.

"Subdivision 2, of section 1948m, Wisconsin statutes, provided that no policy of insurance (Life) shall be delivered in Wisconsin after the year 1909 unless it contains a table specifying separately the *premium charged* for any benefit promised in the policy other than life or endowment insurance * * * It is argued that policies such as those proposed by the Prudential are subject to said section, and are required to show in a separate table the charge for such additional benefits.

"I cannot agree with this contention. I do not believe that it was the intention of the legislature, when it enacted this law, to restrict insurance companies in a liberalizing of their policies where no direct charge to the assured was made for the added benefit and where such additional benefit would not endanger the solvency of the company. I conclude after considering the statute carefully, that what the legislature had in mind was rather a situation where the company proposed to give benefits other than death and endowment benefits which involved additional premium charges, in which event the company must specifically state what that additional charge is. I take it that this provision was incorporated so that the assured might know what he was paying for the benefit promised; that the cost should not be concealed in a lump premium charge."

Commissioner Cleary also commented on the fact that even though there is no significant premium charge there is an increased company liability because of the provision and that a limited disclosure was needed to obtain approval. The last paragraph of the letter sets forth this position as follows:

"There can be no question that the added benefits promised in these policies cost the company something. The liability of the company on every outstanding policy containing this provision is greater than it would be if pure life or endowment insurance were the only benefits promised. It will be necessary, therefore, to take this additional benefit into account in valuing these policies. For this reason the policy should, by a printed or stamped provision incorporated in the policy, state the amount estimated as the cost of such benefit. This provision may also state that such sum is included in the premium charged. The sum so stated should be adequate, and will be a guide to actuaries in valuing the policies. The approval hereby given to the policies is subject to the incorporation of such a provision."

The above considerations provide a basis for the standards or criteria adopted in this rule.

History: 1-2-56; r. and recr., Register, March, 1965, No. 111, eff. 4-1-65; emerg. am. (1), (2) and (3) (b), eff. 6-22-76; am. (1), (2) and (3) (b), Register, September, 1976, No. 249, eff. 10-1-76; am. (1), (2) and (3) (b), Register, March, 1979, No. 279, eff. 4-1-79.

Ins 2.07 Replacement of life insurance policies; disclosure requirements. (1) **PURPOSE.** The interest of the life insurance and annuity policyholders must be protected by establishing minimum standards of conduct to be observed in the replacement or proposed replacement
Register, March, 1979, No. 279

of such policies; by making available full and clear information on which an applicant can make a decision in his own best interest; by reducing the opportunity for misrepresentation in replacement or possible replacement situations, and by precluding unfair methods of competition and unfair practices in the business of insurance. This rule implements and interprets s. 628.34, Stats., by establishing minimum standards for the replacement of life insurance and annuities.

(2) **SCOPE.** This rule shall apply to the solicitation of life insurance and annuities authorized by section Ins 6.75 (1) (a), covering residents of this state, and issued by insurance corporations, fraternal benefit societies, the federal government or the state life insurance fund. The procedures required by this rule shall not apply to the solicitation of group, industrial or credit life insurance, nor to the solicitation of insurance which is not in force but which may be purchased under a guaranteed insurability option, nor to the solicitation of short term nonrenewable life insurance policies written for periods not in excess of 31 days, nor to conversions of term insurance to permanent insurance within the same company. All of the provisions of this rule shall apply to non-group annuities except those provisions relating to the Proposal form described in Exhibit A.

(3) **DEFINITION.** For the purpose of this rule, "replacement" is any transaction wherein new life insurance or a new annuity is to be purchased and it is known to the agent or company at the time of application that as a part of the transaction, existing life insurance or an existing annuity has been or is to be lapsed, surrendered, converted into paid-up insurance, become extended insurance, be subjected to substantial borrowing of loan values whether in a single loan or under a schedule of borrowing over a period of time, or changed to a lower cash value plan of insurance. For the purposes of this paragraph the word substantial shall be construed to mean either a loan of \$250 or more or a loan in excess of 50% of the policy tabular loan values.

(4) **DUTIES OF THE AGENT.** (a) The agent must:

1. Obtain with or as a part of each application for life insurance or an annuity a statement signed by the applicant as to whether such insurance will replace existing life insurance or an existing annuity on the same life and he must leave a copy of the statement with the applicant for his records;

2. Submit to his company in connection with each application for life insurance or an annuity a statement as to whether, to the best of his knowledge, replacement is involved in the transaction; and the name of every company whose policy he has reason to believe may be replaced.

(b) Where replacement is involved, the agent must:

1. Present a written proposal to each prospect solicited not later than at the time of taking the application and leave it with the applicant for his records;

2. Submit with the application to his company a copy of the proposal and related sales material or a clear identification of the sales material;

3. Immediately notify every applicable company of the possibility of replacement, and promptly furnish a copy of the proposal, and related sales material to each applicable company;

4. Present the notice required by subsection (9) of this rule and related sales material to each prospect solicited not later than at the time of taking the application and leave it with the applicant for his records.

(5) **DUTIES OF THE COMPANY.** (a) If agents are involved with the solicitation of life insurance or annuities on residents of this state, every authorized company must inform its agents of the requirements of this rule and:

1. Secure with or as part of the application a statement signed by the applicant as to whether the new insurance or annuity will replace existing insurance and also ascertain that a copy of the statement was left with the applicant;

2. Where a replacement is involved:

a. Secure a copy of the proposal, and the name of every company whose policy there is reason to think may be replaced;

b. Immediately ascertain that a copy of the proposal, and notice of the possibility of replacement has been furnished to every company which issued the insurance being replaced;

c. Examine the proposal, and be satisfied that it meets the requirements of this disclosure rule and Wis. Adm. Code section Ins 2.14;

d. Keep a copy of the proposal, and the applicant's signed statement in its home office for at least 3 years indexed so as to be readily available to the office of the commissioner of insurance;

(b) If agents are not involved with the solicitation of life insurance or annuities on residents of this state, every authorized company must:

1. Secure with or as part of the application a statement signed by the applicant as to whether the new insurance will replace existing insurance and the name of every company whose policy there is reason to think may be replaced.

2. Where replacement is involved, the company must:

a. Immediately notify every applicable company of the possibility of replacement and furnish such company with the details of the proposed insurance and related sales material;

b. Keep records of these notifications in its home office for at least 3 years indexed so as to be readily available to the office of the commissioner of insurance.

(6) **CONTENTS OF PROPOSAL.** The written proposal required by this rule must be in a form substantially as described in exhibit A and contain no misrepresentations or deceptive, false, or misleading statements.

(7) **VIOLATION.** Any violation of this rule shall be deemed to be a misrepresentation for the purpose of inducing a prospect to purchase insurance and any person guilty of such violation shall be subject to s. 601.64, Stats.

(8) **SEPARABILITY.** If any provision of this rule shall be held invalid, the remainder of the rule shall not be affected thereby.

(9) NOTICE TO APPLICANT. When replacement is involved, the agent must attach the following notice to the written proposal which is delivered to the applicant:

NOTICE TO APPLICANT

This notice to you is for your protection and is required by Wis. Adm. Code section Ins. 2.07, Rules of Office of the Commissioner of Insurance.

- I. If you are urged to purchase life insurance and it is suggested that you surrender or lapse or in any other way change the status of your existing insurance in the process, you are entitled to request and receive from the person soliciting insurance a written proposal signed by him setting forth all the pertinent facts bearing on the transaction and the advantages and disadvantages of changing to the proposed coverages.
- II. In every case, it is to your advantage to secure the advice and recommendations of your present life insurance company regarding the proposed replacement or change in such existing policies. You may secure this information by notifying your present insurance company or its agent about the proposed replacement or change. In the event the replacement or change suggested is presented by a person representing the company in which you already have existing insurance, you are entitled to secure the views of the home office or of a management representative of this company regarding the desirability of such replacement or change.
- III. If you are considering replacement of your present insurance, you are advised that, as a general rule, it is not to your advantage to drop or change any of your existing life insurance for the purpose of replacing it with new life insurance in the same or another company. Some of the reasons for this are as follows:
 - A. When a new policy is issued, its acquisition costs must be paid. Almost invariably such costs are higher on a new policy than the current costs on an existing policy.
 - B. The incontestable and suicide clauses begin anew in a new policy. This could result in a claim under a new policy being denied by the company which would have been paid under the policy which was replaced.
 - C. A new policy usually will be issued at an age higher than that of the existing policy and thus usually will have a higher premium rate.
 - D. Existing policies often have more favorable provisions than new policies in such areas as settlement options and disability benefits.
 - E. Your present insurance company can often make a desired change on terms which would be more favorable to you than if you replaced your existing insurance with new insurance.
- IV. For the above reasons it is also generally not to the policyholder's advantage to put the original policy on reduced paid-up or extended insurance or to borrow its loan value beyond ability or expectation to repay in order to have sufficient funds to pay premiums on a new policy in the same or another company.

- V. There may be a few very occasional cases where a replacement might be to your advantage. However, your best protection in every case is to secure the comments and views of your present insurance company before arriving at any decision on such an important matter.
 - VI. If, in the negotiation to replace existing insurance, it is suggested by an agent or employee of the present company that the existing insurance not be replaced, you are entitled to request from the person making the suggestion a written statement setting forth all the pertinent facts bearing on the advantages of the suggestion.
- (10) **EFFECTIVE DATE.** This rule shall become effective June 1, 1972.

EXHIBIT A
PROPOSAL

(This form provides information on your present life insurance.) It also provides information on the life insurance which has been proposed to you.)

Name of Applicant -----

Address -----

Street City State Zip Code

Name of Insured if Other Than Applicant -----

Date of Birth of Insured -----

1. Comparative Information

<i>Item</i>	<i>Existing Life Insurance</i>	<i>Proposed Life Insurance</i>
Policy Number	-----	XXXXXXXX
Insurance Company	-----	-----
Amount of Basic Insurance:	-----	-----
Currently	\$ -----	-----
10 Years Hence	\$ -----	-----
20 Years Hence	\$ -----	-----
At Age 65	\$ -----	-----
Basic Plan of Insurance	-----	-----
Present Amount of Term Rider (s)	\$ -----	-----
Issue Age	-----	-----
Issue Date	-----	XXXXXXXX

<i>Premium For:</i>	<i>Prem.</i>	<i>Yr. Prem. Payable to</i>	<i>Year Coverage Ceases</i>	<i>Prem.</i>	<i>Yr. Prem. Payable to</i>	<i>Year Coverage Ceases</i>
Basic Policy	\$ ---	-----	-----	\$ ---	-----	-----
*Accidental Death Ben.	---	-----	-----	---	-----	-----
*Waiver of Prem. Ben.	---	-----	-----	---	-----	-----
*Disability Income Ben.	---	-----	-----	---	-----	-----
Family Income or Increased Protection Rider	---	-----	-----	---	-----	-----
Option to Purchase Additional Insurance	---	-----	-----	---	-----	-----
Other Benefits (Explain)	---	-----	-----	---	-----	-----
Total Current Prem.	\$ ---	-----	-----	\$ ---	-----	-----
Frequency of Premium Payment	---	-----	-----	---	-----	-----

*If Premium for Benefits: (A) is not separable from basic policy premium, insert "Included in Basic Policy Premium", or (B) is an aggregate premium, show the aggregate premium.

† If more than one existing life insurance policy is to be affected by a transaction included within the definition of a replacement contained in subsection (3) of the rule, (1) the existing life insurance column of a separate signed Proposal form must be completed for each such policy providing the information required by the form with respect to existing policies, and (2) a separate signed Proposal form must be completed for the proposed policy. The latter form must summarize, to the extent possible, the information concerning the existing policies set forth on the separate forms, and must include the information required in items 2 through 6 of the Proposal form.

<i>Tabular Cash Values:</i>	<i>†Existing Life Insurance</i>	<i>Proposed Life Insurance</i>
At Present	\$ -----	\$ -----
1 Year Hence	-----	-----
5 Years Hence	-----	-----
10 Years Hence	-----	-----

At age — (Highest age shown in Cash Value Table of existing Policy)	\$ -----	\$ -----
Cash Value of any existing Dividend Additions or Accumulations (if available from applicant)	\$ -----	\$ -----
Amount of Loan Now Outstanding, if any	\$ -----	\$ -----
Annual Loan Interest Rate	% -----	% -----
Date Contestable Period Expires	-----	-----
Date Suicide Clause Expires	-----	-----
Settlement Option at Age 65	\$ -----	\$ -----
Monthly Life Income—10 Years Certain—per \$1,000 Proceeds		
Dividends**		
Is Policy Participating?	-----	-----
Annual Divident (current scale)	-----	-----
1 Year Hence	-----	-----
2 Years Hence	-----	-----
5 Years Hence	-----	-----
10 Years Hence	-----	-----
Total 10 Years	\$ -----	\$ -----

**Dividends are based on the 19— dividend scale. The dividends shown are not to be construed as guarantees or estimates of dividends to be paid in the future. Dividends depend on mortality experience, investment earnings and other factors, and are determined each year at the sole discretion of the company's board of directors.

The agent is responsible for furnishing required dividend information. It is recommended that he obtain this for the policy being replaced from the company issuing the original insurance. As an alternative, however, he may show dividends on closest comparable policy, amount, age and duration from current statistical manuals (interpolating where necessary) provided the premium rate for such closest comparable policy is the same as, or differs only inconsequentially from, the premium rate for the policy to be replaced. It is to be recognized that dividend information under this alternative method, with respect to existing insurance is not likely to be as accurate as dividend information obtained directly from the company issuing the original insurance.

Source of dividend information used:

2. *Advantages of Continuing any Existing Life Insurance:*

3. *Advantages of the Proposed Replacement of the Existing Life Insurance:*

4. *Additional Information:*

(A) The Existing Life Insurance Cannot Fulfill Your Intended Objectives for the Following Reason(s):

(B) The Existing Life Insurance (Can) (Cannot) be Changed to Provide the Benefits Desired Under the Proposed Life Insurance. If it Can be Changed, the Reason for Proposing New Life Insurance Rather than Changing the Existing Life Insurance is as Follows:

(C) Under the Proposal, the Existing Life Insurance Policy Will Be Treated as Follows:

5. *The Primary Reason for the Proposed Replacement of the Existing Life Insurance by New Insurance is as Follows:*

6. *Additional Remarks:*

Date _____

Signature of Agent _____

Address _____

I hereby acknowledge that I received the above completed "Proposal" and the "Notice to Applicant" before I signed the application for the proposed new insurance.

Date _____

Signature of Applicant _____

Note: It is the position of the commissioner that the changing of a policy to one with lower cash values is replacement if the freed premium dollars are to be used to purchase additional life insurance. This position is not intended to discourage the programming of life insurance as it is recognized that insurance needs change. Rather, it is intended that the insured should be given as many facts as possible to aid in making a decision.

Subsection (4) (a) requires that a copy of the replacement statement be left with the applicant. This requirement is satisfied if the statement is included in the application and the application is made a part of the policy.

The rule under paragraph (a) of subsection (4) requires a distinct and separate statement by the applicant as to knowledge of replacement and a distinct and separate statement by the agent as to knowledge of replacement. A statement made by the applicant and subscribed to by the agent does *not* meet this requirement.

Subsection (4) (b) 3. makes a purposeful distinction between the 'immediate' notice and the 'prompt' submission of the required items. It is important that "immediate" notice of replacement be sent to the company whose policy is being replaced. That company may then offer recommendations to its policyholder before the replacement policy is issued. In some cases the replacement proposal may contain some inadvertent errors which should be corrected before the proposal is forwarded. If notice of replacement were held up until these corrections were made, the transaction might be completed before the original company has an opportunity to make its recommendations to its policyholder. To give effect to the distinction between immediate notice and prompt submission of the proposal:

(1) Compliance with the requirement of immediate notification under the rule will be deemed sufficient if the notice is forwarded within 24 hours of the taking of the application, or if such forwarding precedes all other steps, such as ordering an inspection report or medical examination.

(2) The replacing company may, by written agreement, assume the agent's responsibility of immediate notification. In so doing, however, the company must delay policy issuance for a period commensurate with the delay resulting from its action and must be prepared to handle any dissatisfaction of the applicant with appropriate remedy as, for example, cancellation with full return of premium.

(3) The replacing company may, by written agreement, assume the agent's duty to satisfy the requirements as set forth in subsection (4) (b) 3. It is reasonable to expect that the required items will be sent to the replacing company within 3 working days of the time the application is received at the home office unless the proposal has to be returned to the agent for corrections or additional information. In no event should the replacement policy be issued until after the required items have been sent to the other company.

The procedures in (1) and (2) comprise a prima facie means of compliance but do not preclude such other means as may prove to give immediate notification and which would come within the generally accepted definition of "immediate".

It is recognized that the present "Notice to Applicant" is not entirely appropriate for use in cases involving annuities. This rule makes no attempt to prescribe the specific wording of this notice because of the many variables in the few replacement cases that are contemplated. However, it is expected that the company will assume the responsibility of adapting the notice to fit annuity cases when they arise.

History: (See also history of Ins 2.065) Cr. Register, March, 1972, No. 195, eff. 6-1-72; emerg. am. (1) and (2) eff. 6-22-76; am. (1) and (2); Register, September, 1976, No. 249, eff. 10-1-76; am. (2), Register, March, 1979, No. 279, eff. 4-1-79.

Ins 2.08 Special policies and provisions; prohibitions, regulations, and disclosure requirements. (1) **PURPOSE.** The interest of the public and the maintenance of a fair and honest life insurance market must be safeguarded by identifying and prohibiting certain types of policy forms and policy provisions and by requiring certain insurance premiums to be separately stated. This rule implements and interprets applicable statutes including ss. 628.34, 631.20, 632.44 (1) and 632.62, Stats.

(2) **SCOPE.** This rule shall apply to the kinds of insurance authorized by section Ins 6.75 (1) (a), and shall also apply to fraternal benefit societies.

(3) **DEFINITIONS.** For the purpose of this rule certain life insurance policy forms and provisions referred to herein shall have the following meaning:

(a) *Coupon policy* is any policy form which includes a series of coupons prominently and attractively featured in combination with an insurance contract. Such coupons are one-year pure endowments whether or not so identified and whether or not physically attached to the insurance contract. The coupons are devised to give the appearance of the interest coupons that are frequently attached to investment bonds. Although the face amount of the coupon benefit is essentially a refund of premium previously paid by a policyholder, it is frequently represented that it is the earnings or return on the investment of the policyholder in life insurance.

(b) *Charter policy* is a term or name assigned by an insurance company to a policy form. Such a policy is usually issued by a newly organized company and it is sold on the basis that its availability will be limited to a specific predetermined number of units of a fixed dollar amount. Such policies generally provide that the policyholder shall participate in the earnings resulting from either or both participating policies and non-participating policies. It is characteristic of such a policy that in its presentation to the public it is represented that the policyholder will receive a special advantage in any future distribution of earnings, profits, dividends or abatement of premium. It is also represented that such advantage will not be made available to the persons holding other types of policies issued by the company. Other names such as *Founders, President, and Executive Special* are frequently used for policies of the type herein described, and for the purpose of this rule when they are so used they shall be considered as *charter policies*.

(c) A *Profit-sharing policy* is any policy form which contains provisions representing that the policyholder will be eligible to participate, with special advantage not available to the persons holding other types of policies issued by the same company, in any future distribution of general corporate profits. Such policy forms are so drafted that it appears to a prospective policyholder that he is purchasing a preferential share of the future profit and earnings of the insurance corporation rather than purchasing a life insurance policy which may be subject to refund of excess premium payments. The provisions of the policy may incorrectly represent the amount and source of surplus that will be available for apportionment and return to policyholders in the form of dividends. Policy forms using such terms as *profits, surplus, or surplus-sharing* in the manner herein described shall, for the purpose of this rule, be considered as *profit-sharing policies*.

(4) **PROHIBITIONS, REGULATIONS, AND DISCLOSURE REQUIREMENTS.** In accordance with the purpose expressed in subsection (1) of this rule and in consideration of the apparent intent of the legislature, the use in this state of certain types of policy forms and policy provisions shall be subject to the following prohibitions and regulations:

(a) *Coupon policy* forms misrepresent, distort, and disguise the true nature of the insurance purchased. Therefore, no *coupon policy* shall be