

Title 23. Public Utilities and Regulated Industries
Chapter I. State Insurance Department, Department of Commerce
Subchapter B. Life, Health, and Accident
Part 85. Life Insurance Disclosure

Codification Notes. This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"Section 1. Repeal and Replace Rule 17

This Rule 17 will repeal and replace Rule 17, which became effective on February 1, 1974, in its entirety.

Section 2. Authority

This rule is issued under the authority of Ark. Code Ann. §§ 23-61-108, 23-66-207, 23-66-307, 25-15-201, et seq., and any other applicable laws."

"Section 9. Separability

If any provisions of this rule be held invalid, the remainder shall not be affected.

Section 10. Effective Date

This rule shall become effective July 15, 2009."

Subpart 1. Generally

23 CAR § 85-101. Purpose.

(a) The purpose of this part is to require insurers to deliver to purchasers of life insurance clear and unambiguous information that will improve the buyer's:

(1) Ability to select the most appropriate plan of life insurance for the buyer's needs; and

(2) Understanding of the basic features of the policy that has been purchased

or

is under consideration.

(b) This part does not prohibit the use of additional material that is not a violation of this part or any other Arkansas statute or rule.

Authority. Arkansas Code §§ 23-61-108, 23-66-207, 23-66-307.

23 CAR § 85-102. Scope.

(a)(1) Except for the exemptions specified in subsection (b) of this section, this part shall apply to any solicitation, negotiation, or procurement of life insurance occurring within this state.

(2) 23 CAR § 85-104(b) of this part shall apply only to an existing nonexempt policy held by a policy owner residing in this state.

(3) This part shall apply to any issuer of life insurance contracts including fraternal benefit societies.

(b) This part shall not apply to:

(1) Individual and group annuity contracts;

(2) Credit life insurance;

(3) Group life insurance;

(4) 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. § 1001 et seq., as amended;

(5) Variable life insurance under which the amount or duration of the life insurance varies according to the investment experience of a separate account; or

(6) Any life insurance policy or certificate that is issued to fund a prepaid funeral benefits contract as defined in Arkansas Code § 23-40-103(15) or any similar policy written through or in connection with a funeral home with the purpose of providing funds for final expenses and having similar underwriting characteristics as prepaid funeral benefits contracts.

Authority. Arkansas Code §§ 23-61-108, 23-66-207, 23-66-307.

23 CAR § 85-103. Definitions.

For the purposes of this part, the following definitions shall apply:

(1) "Buyer's guide" means the free guide available at the State Insurance Department or online at <http://www.insurance.arkansas.gov> titled "Life Insurance Buyer's Guide";

(2) "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;

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

(4)(A) "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.

(B) An element is considered nonguaranteed if any of the underlying nonguaranteed elements are used in its calculation;

(5) "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:

(A) Illustrated annual, other periodic, and terminal dividends;

(B) Premiums;

(C) Death benefits;

(D) Cash surrender values; and

(E) Endowment benefits; and

(6) "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 (5) policy years and representative policy years thereafter sufficient to clearly illustrate the premium and benefit patterns, including at least one (1) age from sixty (60) through sixty-five (65) and policy maturity:

(i) The annual premium and premium payment period for the basic policy;

(ii) The annual premium and premium payment period for each optional rider;

(iii) 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;

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

(v) Any endowment amounts payable under the policy that are not included under cash surrender values above;

(F)(i) 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.

(ii) 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) The specific type of life insurance coverage;

(H)(i) If dividends are to be illustrated, it must disclose that:

(a) Such dividends are neither guarantees nor estimates of future results; and

(b) Dividend illustrations are based on the company's current experience and may change depending upon such company experience.

(ii) Any additional policy benefits or guarantees made by the policy or arising from the use of dividends must be separately disclosed;

(I) Where any nonguaranteed element or value is shown, equal prominence must be given to the corresponding guaranteed value;

(J) If the amount of coverage or premium for the policy and riders decreases or increases at any time, representative amounts of coverages and premiums must be shown to indicate to the prospective purchaser how such amounts will change; and

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

Authority. Arkansas Code §§ 23-61-108, 23-66-207, 23-66-307.

23 CAR § 85-104. Duties of insurers and producers.

(a) Requirements applicable generally.

(1)(A) The insurer shall provide a buyer's guide to all prospective purchasers prior to accepting the applicant's initial premium or premium deposit.

(B) However, if the policy for which application is made contains an unconditional refund provision of at least ten (10) days, the buyer's guide may be delivered with the policy or prior to delivery of the policy.

(2)(A) The insurer shall provide a separate policy summary to prospective purchasers that shall be set out in a manner that does not minimize or render any portion of the summary obscure.

(B) The policy summary shall set forth information as follows:

(i) Any amounts that remain level for two (2) 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;

(ii) Amounts in 23 CAR § 85-103(6)(E) shall be listed in total, not on a per thousand or per unit basis;

(iii) If more than one (1) insured is covered under one (1) policy or rider, death benefits shall be displayed separately for each insured or for each class of insureds if death benefits do not differ within the class;

(iv) Zero (0) amounts shall be displayed as a blank space; and

(v) Delivery of the policy summary shall be consistent with the time for delivery of the buyer's guide as specified in subdivision (a)(1) of this section.

(3)(A) When the sale involves a product in addition to life insurance, the life insurance solicitation must be:

(i) Separately disclosed; and

(ii) Independently available without the purchase of another product, unless such sale has been found unobjectionable by the Insurance Commissioner.

(B) All information applicable to the life insurance sale must be separately disclosed as required by this section.

(4) In the event a computer or financial advisory service produces or furnishes individualized promotional material used in connection with the sale or solicitation of insurance, a complete disclosure shall be made identifying any financial, proprietary, or contractual arrangement or interest between the service and the insurer or insurance producer.

(b) Requirements applicable to existing policies.

(1)(A) 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 this state of this change and of its implication on affected policies.

(B) 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 five thousand dollars (\$5,000).

(2) 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 this state.

(c) Recordkeeping.

(1)(A) Insurers, general agents, independent agencies, and insurance producers shall maintain or be able to make available to the commissioner records of the information collected from the consumer and other information required by this part for five (5) years after the insurance transaction is completed by the insurer.

(B) An insurer is permitted, but shall not be required, to maintain documentation on behalf of an insurance producer.

(2) Records required to be maintained by this part may be maintained:

(A) In paper, photographic, microprocess, magnetic, mechanical, or electronic media; or

(B) By any process that accurately reproduces the actual document.

Authority. Arkansas Code §§ 23-61-108, 23-66-207, 23-66-307.

23 CAR § 85-105. General rules.

(a) Each insurer shall maintain, at its home office or principal office, a complete file containing one (1) copy of each document authorized and used by the insurer pursuant to this part for a period of five (5) years following the date of its last authorized use unless otherwise provided by this part.

(b)(1) An insurance producer shall:

(A) Inform the prospective purchaser prior to commencing a life insurance sales presentation that he or she is acting as a life insurance producer; and

(B) Inform the prospective purchaser of the full name of the insurance company which the insurance producer is representing to the buyer.

(2) In sales situations in which an insurance producer is not involved, the insurer shall identify its full name.

(c)(1) An insurance producer shall not use terms such as "financial planner", "investment advisor", "financial consultant", or "financial counseling" in such a way as

to imply that he or she is primarily engaged in an advisory business in which compensation is unrelated to sales unless that is actually the case.

(2) 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.

(3) 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, provided that a person citing membership, if authorized only to sell insurance products, shall disclose that fact.

(4) 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.

(d)(1) Any reference to a nonguaranteed element or value shall include a statement that the item is not guaranteed and is based on the company's current scale of nonguaranteed elements (use appropriate special term such as "current dividend" or "current rate" scale).

(2) Any such reference must also give equal prominence to the corresponding guaranteed value.

(3) 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.

(e) An insurer or insurance producer shall not use terms such as savings, deposits, investments, etc., in such a way as to mislead the prospective purchaser to believe that the primary purpose of the life insurance solicitation is of an investment nature.

(f) An insurer or insurance producer shall not use comparisons or analogies or the manipulation of amounts and numbers in such a way as to mislead the prospective purchaser concerning the cost of insurance protection to be provided by the insurance contract or any other significant aspect of the contract.

(g) An insurer or insurance producer shall not use any system or presentation for comparing cost of life insurance that does not recognize the time value of money.

(h) An insurer or insurance producer shall not describe the policy dividend as other than a refund or return of part of the premium paid, which is not guaranteed and which is subject to periodic change.

(i)(1) An insurer or insurance producer shall not make unfair or misleading comparisons of dissimilar policies or riders.

(2) An advertisement shall not directly or indirectly make unfair or incomplete comparisons of policies or benefits or otherwise falsely disparage:

- (A) Competitors;
- (B) Their policies;
- (C) Their services; or
- (D) Their business methods.

(j) The reference to an insurance premium as a deposit, an investment, a savings, or the use of other phrases of similar meaning when referring to an insurance premium is prohibited.

(k) An insurer or insurance producer may not indicate that cash or loan values are death benefits nor that said values are available in addition to the face amount of insurance payable upon death of the insured.

Authority. Arkansas Code §§ 23-61-108, 23-66-207, 23-66-307.

23 CAR § 85-106. Failure to comply.

Failure of an insurer to provide or deliver a buyer's guide, a policy summary, or policy data shall constitute an omission that misrepresents the benefits, advantages, conditions, or terms of an insurance policy.

Authority. Arkansas Code §§ 23-61-108, 23-66-207, 23-66-307.