

Recurring Issues: Individual Life Insurance, Group Life Insurance and Annuities

In an effort to reduce the number of objection letters and to expedite speed-to-market, the Vermont Rates & Forms Section is publishing a list of the regulatory issues most frequently encountered in the review of individual life insurance, group life insurance and annuity form filings. Before submitting an individual or group life insurance or annuity policy form to the Department, filers should review this list and make any corrections necessary to bring the filing into compliance with these requirements. Please note that this is not a comprehensive list of Vermont requirements, merely the most common errors, and that filers should also review Vermont's insurance statutes and regulations before submitting a filing.

Filers should also complete the certification required under the SERFF Filing Instructions stating that they have read this list and made any necessary changes. Beginning October 1, 2015, individual life insurance, group life insurance and annuity filings that do not contain such a certification or do not comply with the following requirements will be subject to final disapproval without the opportunity to file a response.

Questions about the following requirements should be directed to Phil Keller, Director of Insurance Regulation, at (802) 828-1464.

Requirements Applicable to All Life Insurance and Annuity Filings

Accelerated Benefits for Long Term-Care: Life insurance riders that allow a policyholder to accelerate benefits to pay for long-term care must comply with the provisions of Vermont's Long-Term Care Regulation. H-2009-01, § 3 ("Applicability and Scope).

Arbitration: Policy provisions requiring binding arbitration are not permitted in the policy if the process can be demanded unilaterally by the insurer, as they may deprive the insured of access to the court. Binding arbitration is approvable only if both parties agree to the arbitration process at the time of the claim.

Assignment: The Department does not allow insurers to require that the insured assign the policy as a condition for obtaining a loan. Under the provisions of 8 V.S.A. § 3731(7)(A), the policy's cash value is the sole security for the loan.

Civil Unions: All form filings should be accompanied by a copy of the "Vermont Life Insurance Mandatory Civil Union Endorsement" or, alternatively, certify that contracts will be sold with an approved copy of the endorsement. Insurance Division Bulletin 128.

Confidentiality: Generally, all rate and form filings are public records subject to public disclosure. If a filer contends that material submitted to the Department is proprietary or otherwise exempt from disclosure it must designate the specific section of the filing that is claimed to be exempt from public disclosure and provide a detailed explanation supporting its claim for confidentiality, including appropriate references to Vermont law. The procedure for claiming confidentiality in filings is outlined more fully in Insurance Division Bulletin 149.

Death Benefits: It is the Department's position that it is not sufficient for a policy to state that interest on death benefits for insurance policies will be paid in accordance with state law, since interest requirements differ from state to state and this kind of general statement fails to inform policyholders of the specific interest requirements of Vermont law. The Department has developed a requirement that the interest required by Vermont law be set forth specifically in the policy, so that consumers can know what benefits they are entitled to when they make a claim. Accordingly, a life insurance policy's section on the payment of death proceeds should state that death benefits will include interest from the date of death to the date of payment at a rate equal to the greater of 6% per annum or the rate applicable to proceeds left on deposit with the insurer. 8 V.S.A. Section 3665(c)(2) and Insurance Division Bulletin 159.

Discretionary clauses: Vermont law does not allow life, health, or disability insurance policies to contain discretionary clauses that reserve to the insurer the right to interpret the terms of the contract. 8 V.S.A. § 4062f.

Fraud Warning: Vermont does not allow a fraud warning to state that a person who makes false statements on an application "commits" a fraudulent insurance act or "is guilty" of insurance fraud since the question of guilt is a determination for a court. As an alternative, it would be acceptable to use the fraud warning approved by the Product Standards Subcommittee of the Interstate Insurance Product Regulation Commission. This warning states that: "Any person who knowingly presents a false statement in an application for insurance may be guilty of a criminal offense and subject to penalties under state law."

Incontestability: Vermont's incontestability law is set forth in 8 V.S.A. § 3814 and allows an insurer to contest the validity of a life insurance policy after the passage of two years on the basis of non-payment of premium but *not on the basis of fraud or misrepresentation*. Policy provisions that allow an insurer to contest the validity of the policy on the ground of misrepresentation or fraudulent application statements even after the policy has been in force for more than two years are not acceptable.

Mental Health Parity: The benefits provided by Accidental Death and Dismemberment (AD&D) riders and disability riders are considered a form of health insurance and, therefore, must comply with Vermont's mental health parity law (8 V.S.A. §4089b), even when attached to a life insurance policy. For this reason, AD&D riders and disability riders may not have lower benefit levels for mental health conditions than for other covered conditions and may not exclude coverage for accidents or sickness caused by mental illness or by alcohol or substance abuse. In addition, riders that provide hospital benefits may not exclude facilities that treat mental illness or alcohol or substance abuse from the definition of a hospital.

Multi-line TOI's to be filed separately: To facilitate speed-to-market and accurate filing review, the Department's policy is that multi-line TOI's be submitted as individual filings in SERFF, and not be combined into a multi-line TOI filing.

Non-Forfeiture Law Compliance: Every individual and group life insurance policy filing, other than filings for term plans, and every individual deferred annuity filing shall contain an actuarial certification that the filing complies with Vermont's non-forfeiture laws. A certification that the filing complies with the NAIC standard non-forfeiture law will be rejected. 8 V.S.A. §§ 3750-3773.

Statement of Variability: If a filing includes variable material, the filer must include a statement of variability (SOV) describing in detail the alternative text the insurer anticipates using in lieu of the text shown as variable in the filed version of the forms. The SOV must explain the circumstances under which the variable items will change and for numerical items, such as interest rates or annual fees, must show the range of variability, i.e., the minimum and maximum amount for each item.

Additional Requirements for Variable Life

Compliance with Variable Life Regulation: Filers of variable life products should carefully review the requirements of Insurance Regulation I-88-3 ("Variable Life Insurance") and certify that the filing conforms to the requirements of that regulation.

Free Look Period: The cover page of every variable life policy should contain a statement that the policyholder may return the policy within ten (10) days of receipt and receive "a refund equal to the total of all premium payments" for the policy. Regulation I-88-3, Article 4, Section 3(5). Issuers of variable policies should note that the phrase "a refund equal to the total of all premium payments" does not allow them to reduce the refund by any decline in the cash value of the policy that has occurred during the free-look period.

Fund changes: When changes are made to the funds available in a separate account, insurers should submit an informational filing that identifies the changes and certifies the following:

- a. Fund changes do not represent a change in the investment policy of the separate account.
- b. Administrative expenses associated with the new funds do not represent an increase that exceeds the range set forth in the Statement of Variability for the policy.
- c. Trading restrictions for the separate accounts funds have not been altered.

Additional Requirements for Group Life

Conversion: Group life policies must comply with the conversion provisions of 8 V.S.A. §§ 3820-3823, even if they afford a portability option upon termination.

Eligible groups: For group policies, the filing description should specify the eligible groups to which the policy will be sold. 8 V.S.A. §§ 3803-3810a.

Discretionary groups: Filers that intend to market their policies to discretionary groups under § 3810a(b) should identify the discretionary group by name and explain with specificity how the group satisfies the requirements of subsection (b). Insurers may not sell life insurance to a discretionary group until the group has been approved by the Commissioner.

Out-of-state-groups: Since Vermont asserts extra-territorial jurisdiction (Insurance Division Bulletin No. 61), group life insurance may not be marketed to Vermont residents unless the holder of the master policy qualifies as an eligible group under 8 V.S.A. §§ 3803-3810a. In such cases, the certificate of insurance must be included in the filing and the cover page of the certificate must state, in capital letters, that, in the event of a conflict between the laws of the state where the policy is issued and the laws of Vermont, the laws of Vermont will control.

Definition of Dependent: Policies often exclude married children from the definition of a dependent or a dependent child. Since many married children are also financially dependent on their parents, it is the Department's position that such an exclusion is unfairly discriminatory unless the insurer possesses statistical information indicating that the health care costs of married children are greater than the costs of their unmarried counterparts.

Portability: Vermont's eligible group statute for life insurance (8 V.S.A. § 3810a) was amended in 2009 to allow for portability groups. Group policies that offer a certificate holder the opportunity to port his or her coverage on termination should describe the nature of the portability group (e.g., is it a group maintained by the insurer?) and should explicitly set forth in the policy forms the conditions under which a certificate holder may port his or her coverage.

Equity-Indexed Annuities and Variable Life Products

Buyers' Guide: Filers of equity indexed annuity and life insurance products should include a copy of the Buyers' Guides required by Insurance Division Bulletins 110 and 121, respectively. Filers should note that the NAIC Buyer's Guide does not comply with Bulletins 110 and 121 in several respects, including the fact that the NAIC Guide does not display index values for the most recent five years, the change in the index per year expressed as a percentage, and the effect of the changes on a hypothetical dollar amount paid into the contract at the beginning of the five years shown. As an alternative to submitting a Vermont-specific Buyers Guide, it would be acceptable to use the NAIC Buyers' Guide in conjunction with a Vermont supplement that provides the additional information required by Bulletins 110 and 121.

Application Forms/Underwriting Questions

AIDS/HIV: Vermont law prohibits an insurer from requesting or requiring that a person reveal having taken HIV-related tests in the past. 8 V.S.A. § 4724(20)(A). The Department does not permit insurers to require that an applicant disclose information relating to AIDS, HIV or ARC

unless the diagnosis of those conditions has been made by a licensed physician. Any underwriting questions seeking this information must be limited to diagnoses made by a licensed physician. It is not acceptable to ask whether an AIDS/HIV diagnosis has been made by a “member of the medical profession.”

Authorizations to release medical information: The period during which the authorization is in effect cannot exceed 24 months and the applicant must have the right to revoke the authorization at any time, without prejudice to the insurer for actions taken in reliance on the authorization prior to the date of revocation. Department Regulation IH-2001-1, § 18.B. In addition, the authorization must explicitly exclude the release of previously administered HIV tests.

Diagnostic Testing: Under Vermont law, underwriting questions must be designed to yield medically relevant information about the risk to be assumed by the insurer. It is the Department's position that the fact that someone has been advised to take an HIV test is not by itself relevant in assessing whether that individual poses a medical risk. For this reason, questions about recommendations for diagnostic testing should explicitly exclude recommendations that an applicant undergo HIV testing.

Secondary Addressee: The application should contain a provision notifying applicants who are 64-years-of-age or older that they have the right to designate a secondary addressee to receive notice of impending cancellation of coverage. Bulletin 14.