

PART IV. LIFE INSURANCE

Chap.		Sec.
81.	REPLACEMENT OF LIFE INSURANCE AND ANNUITIES	81.1
82.	VARIABLE LIFE INSURANCE.....	82.1
83.	DISCLOSURES IN SOLICITATION OF LIFE INSURANCE	83.1
84.	TABLES APPROVED FOR USE IN DETERMINING MINIMUM NONFORFEITURE STANDARDS AND MINIMUM STANDARDS FOR VALUATION	84.1
84a.	MINIMUM RESERVE STANDARDS FOR INDIVIDUAL AND GROUP HEALTH AND ACCIDENT INSURANCE CONTRACTS	84a.1
84b.	ACTUARIAL OPINION AND MEMORANDUM	84b.1
84c.	VALUATION OF LIFE INSURANCE POLICIES	84c.1
84d.	RECOGNITION OF THE 2001 CSO MORTALITY TABLE FOR USE IN DETERMINING MINIMUM RESERVE LIABILITIES AND NONFORFEITURE BENEFITS AND THE 2001 CSO PREFERRED CLASS STRUCTURE MORTALITY TABLE FOR USE IN DETERMINING MINIMUM RESERVE LIABILITIES.....	84d.1
85.	VARIABLE ANNUITY AND VARIABLE ACCUMULATION ANNUITY CONTRACTS	85.1
86.	PREMIUM AND RETIREMENT DEPOSIT FUNDS	86.1
87.	REQUIREMENTS FOR CERTAIN LIFE INSURANCE POLICIES AND SALES PRACTICES	87.1
88.	INDIVIDUAL ACCIDENT AND SICKNESS INSURANCE MINIMUM STANDARDS	88.1
89.	APPROVAL OF LIFE, ACCIDENT AND HEALTH INSURANCE	89.1
89a.	LONG-TERM CARE INSURANCE MODEL REGULATION	89a.1
89b.	APPROVAL OF LIFE INSURANCE, ACCIDENT AND HEALTH INSURANCE AND PROPERTY AND CASUALTY INSURANCE FILING AND FORM	89b.1
90.	HOSPITAL EXPENSE BENEFITS	90.1
90a.	SEPARATE ACCOUNTS FOR PRINCIPAL AND INTEREST GUARANTEES	90a.1
90b.	[Reserved]	90b.1
90c.	INDIVIDUAL APPLICATIONS—STATEMENT OF POLICY	90c.1
90d.	INDIVIDUAL ACCIDENTAL DEATH BENEFITS; PROVIDED BY RIDERS OR BUILT INTO POLICIES— STATEMENT OF POLICY	90d.1
90e.	INDIVIDUAL IRA ENDORSEMENTS FOR LIFE INSURANCE AND ANNUITIES—STATEMENT OF POLICY	90e.1
90f.	INDIVIDUAL IMMINENT DEATH/LIFETIME HEALTH CARE FACILITY CONFINEMENT BENEFITS PROVIDED AS ACCELERATED DEATH BENEFIT OR SETTLEMENT OF DEATH BENEFIT; PROVIDED BY RIDERS OR BUILT INTO POLICIES—STATEMENT OF POLICY	90f.1
90g.	INDIVIDUAL HEALTH CARE FACILITY BENEFITS PROVIDED AS ACCELERATED DEATH BENEFIT OR SETTLEMENT OF DEATH BENEFIT; PROVIDED BY RIDERS OR BUILT INTO POLICIES—STATEMENT OF POLICY	90g.1

90h. **INDIVIDUAL WAIVER OF SURRENDER CHARGES FOR LIFE AND ANNUITY CONTRACTS RESULTING FROM HEALTH CARE FACILITY USAGE; PROVIDED BY RIDERS OR BUILT INTO POLICIES—STATEMENT OF POLICY** 90h.1

90i. **CERTIFICATES OF ASSUMPTION—STATEMENT OF POLICY** 90i.1

CHAPTER 81. REPLACEMENT OF LIFE INSURANCE AND ANNUITIES

Sec.

81.1. Purpose.

81.2. Definitions.

81.3. Exemptions.

81.4. Duties of agents and brokers.

81.5. Duties of insurers.

81.6. Duties of insurers that use agents or brokers.

81.7. Duties of insurers with respect to direct response sales.

81.8. Penalties.

81.9. [Reserved].

Authority

The provisions of this Chapter 81 issued under sections 347, 348 and 350 of The Insurance Company Law of 1921 (40 P. S. §§ 472, 473 and 475); sections 637—639 of The Insurance Department Act of 1921 (40 P. S. §§ 277—279); and The Insurance Unfair Practices Act (40 P. S. §§ 1151—1162) (repealed 1974), unless otherwise noted.

Source

The provisions of this Chapter 81 adopted September 30, 1969; amended December 2, 1977, effective December 3, 1977, 32 Pa.B. 3443; amended June 13, 1986, effective October 14, 1986, 16 Pa.B. 2131. Immediately preceding text appears at serial pages (104133) to (104134), (48094), (36548) to (36549), (42661) to (42662), (36552) to (36555) and (39755) to (39756).

Cross References

This chapter cited in 31 Pa. Code § 87.13 (relating to modified premium life insurance policies); and 31 Pa. Code § 90c.3 (relating to replacement questions for life insurance).

§ 81.1. Purpose.

The purpose of this chapter is to:

- (1) Regulate the activities of insurers, agents and brokers with respect to the replacement of existing life insurance and annuities.
- (2) Protect the interest of life insurance and annuity purchasers by establishing minimum standards of conduct to be observed in replacement transactions by:
 - (i) Assuring that purchasers receive information with which a decision can be made in the purchasers’ best interest.
 - (ii) Reducing the opportunity for misrepresentation and incomplete disclosures.
 - (iii) Establishing penalties for failure to comply with this chapter.

§ 81.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Commissioner—The Insurance Commissioner of the Commonwealth.

Conservation—An attempt by the existing insurer or its agent or broker to dissuade a policyowner from the replacement of existing life insurance or annuity. The term does not include routine administrative procedures, such as late payment reminders, late payment offers or reinstatement offers.

Department—The Insurance Department of the Commonwealth.

Direct-response sales—A sale of life insurance or annuity where the insured does not utilize an agent in the sale or delivery of the policy.

Existing insurer—The insurance company whose policy is or will be changed or terminated in such a manner as described in the definition of replacement.

Existing life insurance or annuity—A life insurance or annuity in force, including life insurance under a binding or conditional receipt or a life insurance policy or annuity that is within an unconditional refund period.

Registered contract—Variable annuities, variable life insurance under which the death benefits and cash values vary in accordance with unit values of investments held in a separate account or another contract issued by life insurance companies which is registered with the Federal Securities and Exchange Commission.

Replacement—A transaction in which new life insurance or a new annuity is to be purchased, and it is known or should be known to the proposing agent, broker or proposing insurer if there is no agent, that by reason of the transaction, existing life insurance or annuity has been or is to be one of the following:

- (i) Lapsed, forfeited, surrendered, assigned to replacing insurer or otherwise terminated.
- (ii) Converted to reduced paid-up insurance, continued as extended term insurance or otherwise reduced in value by the use of nonforfeiture benefits, dividend cash values or other policy cash values.
- (iii) Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid.
- (iv) Reissued with a reduction in cash value.
- (v) Pledged as collateral or subjected to borrowing, whether in a single loan or under a schedule of borrowing over a period of time for amounts in the aggregate exceeding 25% of the loan value set forth in the policy.

Replacing insurer—The insurance company that issues or proposes to issue a new policy or contract which is a replacement of existing life insurance or annuity.

§ 81.3. Exemptions.

Unless otherwise specifically included, this chapter does not apply to transactions involving:

- (1) Life insurance issued under section 3 of the act of May 11, 1949 (P. L. 1210, No. 367) (40 P. S. § 532.3), known as the Group Life Insurance Policy

Law or the Model Act for the Regulation of Credit Life Insurance and Credit Accident and Health Insurance (40 P. S. §§ 1007.1—1007.15).

- (2) Group life insurance or group annuities.
- (3) An application to the existing insurer that issued the existing life insurance and a contractual change or a conversion privilege is being exercised.
- (4) Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company.
- (5) Transactions where the replacing insurer and the existing insurer are the same, or are subsidiaries or affiliates under common ownership or control. Agents or brokers and insurers engaged in direct response sales proposing replacement shall comply with §§ 81.4(a), (b)(3) and (c) and 81.7(b)(2) (relating to duties of agents and brokers; and duties of insurers with respect to direct response sales).
- (6) Registered contracts shall be exempt from the requirements of § 81.6(a)(2)(ii) and (b) (relating to duties of insurers that use agents or brokers) requiring provision of policy summary or ledger statement information. Premium or contract contribution amounts and identification of the appropriate prospectus or offering circular are required in lieu thereof.

§ 81.4. Duties of agents and brokers.

- (a) The agent or broker who initiates the application shall submit to the insurer to which an application for life insurance or annuity is presented, with or as part of each application:
 - (1) A statement signed by the applicant as part of each application as to whether replacement of existing life insurance or annuity is involved in the transaction.
 - (2) A signed statement as to whether the agent or broker knows replacement is or may be involved in the transaction.
- (b) If replacement is involved, the agent or broker shall:
 - (1) Present to the applicant, not later than at the time of taking the application, a Notice Regarding Replacement of Life Insurance and Annuities in the form as described in Appendix A (relating to notice regarding replacement of life insurance and annuities), or other substantially similar form filed and accepted prior to use by the Commissioner. The notice shall be signed by both the applicant and the agent or broker and left with the applicant.
 - (2) Obtain with or as part of each application a list of existing life insurance or annuities, or both, to be replaced and properly identified by name of insurer, the insured and contract number. If a contract number has not been assigned by the existing insurer, alternative identification, such as an application or receipt number, shall be listed.
 - (3) Leave with the applicant the original or a copy of written or printed communications used for presentation to the applicant relative to policies or annuities associated with the replacement sale.

- (4) Submit to the replacing insurer with the application a copy of the notice regarding replacement of life insurance and annuities provided under paragraph (1).
- (c) An agent or broker who uses written or printed communications in a conservation shall leave with the applicant the original or a copy of materials relative to policies or annuities associated with the replacement sale.

Source

The provisions of this § 81.4 corrected July 11, 1986, effective October 14, 1986, 16 Pa.B. 2523.

Notes of Decisions

It was a violation of this section to represent on insurance applications that the life insurance was not to be a replacement policy when the agent knew that one of the applications was for a replacement policy. *McDermond v. Foster*, 561 A.2d 70 (Pa. Cmwlth. 1989).

Cross References

This section cited in 31 Pa. Code § 81.3 (relating to exemptions); and 31 Pa. Code § 81.6 (relating to duties of insurers that use agents or brokers).

§ 81.5. Duties of insurers.

- (a) The insurer shall inform its field representatives or other personnel responsible for compliance with this chapter of the requirements of this chapter.
- (b) The insurer shall require as part of a completed application for life insurance or annuity a statement signed by the applicant as to whether the proposed insurance or annuity will replace existing life insurance or annuity.

Cross References

This section cited in 31 Pa. Code § 90c.3 (relating to replacement questions for life insurance).

§ 81.6. Duties of insurers that use agents or brokers.

- (a) An insurer that uses an agent or broker in a life insurance or annuity sale shall:
- (1) Require with or as part of a completed application for life insurance or annuity a statement signed by the agent or broker as to whether the broker knows replacement is or may be involved in the transaction.
- (2) If replacement is involved:
- (i) Require from the agent or broker with the application for life insurance or annuity a list of all the applicant's existing life insurance or annuity to be replaced, and a copy of the replacement notice provided the applicant under § 81.4(b)(1) (relating to duties of agents and brokers). The existing life insurance or annuity shall be identified by name of insurer, insured and contract number. If a number has not been assigned by the existing insurer, alternative identification, such as an application or receipt number, shall be listed.

(ii) Send to each existing insurer a written communication advising of the replacement or proposed replacement and the identification information obtained under subparagraph (i) and in the case of life insurance, the disclosure statement as required by § 83.3 (relating to disclosure statement) or a ledger statement containing comparable policy data on the proposed life insurance. A surrender comparison index need not be included. In the case of an annuity, a ledger statement containing comparable data shall be provided. This written communication shall be made within 5 working days of the date the application is received in the replacing insurer's home or regional office, or the date the proposed policy or contract is issued, whichever is sooner.

(b) An existing insurer or insurer's agent or broker that undertakes the conservation shall, within 20 days from the date the written communication plus the materials required in subparagraphs (i) and (ii) is received by the existing insurer, furnish the policyowner with a disclosure statement for the existing life insurance or ledger statement containing policy data on the existing policy or annuity, or both. The disclosure statement or ledger statement shall be completed in accordance with § 83.3, except that information relating to premiums, cash values, death benefits and dividends shall be computed from the current policy year of the existing life insurance. The disclosure statement or ledger statement shall include the amount of outstanding indebtedness, the sum of dividend accumulations or additions, and may include other information that is not in violation of regulations or statutes. A surrender comparison index need not be included. In the case of an annuity, a ledger statement containing comparable data shall be provided. The replacing insurer may request the existing insurer to furnish it with a copy of the statements, which shall be furnished within 5 working days of the receipt of the request.

(c) The replacing insurer shall maintain evidence of the Notice Regarding Replacement of Life Insurance and Annuities, the disclosure statement and any ledger statement used, and a replacement register, cross indexed, by replacing agent and existing insurer to be replaced. The existing insurer shall maintain evidence of disclosure statements or ledger statements used in any conservation. Evidence that all requirements were met shall be maintained for at least 3 years or until the conclusion of the next succeeding regular examination by the Department of its state of domicile, whichever is earlier.

(d) The replacing insurer shall have prominently printed on the first page of the policy or attached thereto a notice that the applicant has a right to an unconditional refund of all premiums paid, which right may be exercised within a period of 20 days commencing from the date of delivery of the policy.

Cross References

This section cited in 31 Pa. Code § 81.3 (relating to exemptions); and 31 Pa. Code § 81.7 (relating to duties of insurers with respect to direct response sales).

§ 81.7. Duties of insurers with respect to direct response sales.

(a) If in the solicitation of a direct response sale, the insurer did not propose the replacement and a replacement is involved, the insurer shall:

(1) Send to the applicant with the policy a Notice Regarding Replacement of Life Insurance and Annuities in the form as described in Appendix A or Appendix B (relating to notice regarding replacement of life insurance and annuities) or other substantially similar form filed and accepted prior to use by the Commissioner. In such instances, the insurer may delete the last sentence and the references to signatures from Appendix A without having to refile the form and obtain acceptance prior to use by the Commissioner.

(2) Comply with the requirements of § 81.6(d) (relating to duties of insurers that use agents or brokers).

(b) If in the solicitation of a direct response sale, the insurer proposed the replacement and a replacement is involved, the insurer shall:

(1) Provide to applicants or prospective applicants with or as a part of the application a Notice Regarding Replacement of Life Insurance and Annuities in the form as described in Appendix A or Appendix B or other substantially similar form filed and accepted prior to use by the Commissioner. In such instances the insurer may delete the last sentence and the references to signatures from Appendix A without having to refile the form and obtain acceptance prior to use by the Commissioner.

(2) Upon request of the applicant or prospective applicant, provide written or printed communications relative to policies or annuities associated with the replacement sale.

(3) Request from the applicant with or as part of the application, a list of existing life insurance or annuity to be replaced and properly identified by name of insurer and insured.

(4) Comply with the requirements of § 81.6(a)(2)(ii), if the applicant furnishes the name of the existing insurers, and the requirements of § 81.6(c), except that it need not maintain a replacement register, and the requirements of § 81.6(d).

Source

The provisions of this § 81.7 corrected July 11, 1986, effective October 14, 1986, 16 Pa.B. 2523.

Cross References

This section cited in 31 Pa. Code § 81.3 (relating to exemptions).

§ 81.8. Penalties.

(a) Failure to comply with this chapter, after an administrative hearing as provided by statute, may subject an agent or broker to penalties provided in section 639 of The Insurance Department Act of one thousand nine hundred and twenty-one (40 P. S. § 279). Failure to comply shall be considered a separate and

distinct violation and may not prevent or be considered in lieu of a proceeding against an agent or broker for violation of section 637 or section 638 of The Insurance Department Act of one thousand nine hundred and twenty-one (40 P. S. § 277 or § 278). Failure to comply may, for purposes of section 639 of The Insurance Department Act of one thousand nine hundred and twenty-one, be considered as conduct that would disqualify an agent or broker from initial issuance of a license under section 603 and 622 of The Insurance Department Act of one thousand nine hundred and twenty-one (40 P. S. §§ 233 and 252).

(b) Failure to comply with this chapter, after an administrative hearing as provided by statute, may subject an insurance company, association or exchange, its members, officers, directors or attorney-in-fact, to penalties provided in section 350 of The Insurance Company Law of 1921 (40 P. S. § 475). Failure to comply shall be considered a separate and distinct violation and may not prevent or be considered in lieu of a proceeding against an insurance company, association or exchange, its members, officers, directors or attorney-in-fact for violation of section 347, 348 or 349 of The Insurance Company Law of 1921 (40 P. S. § 472, § 473 or § 474).

(c) In addition to subsections (a) and (b), failure to make the disclosure outlined in this chapter may be considered a violation of the Unfair Insurance Practices Act (40 P. S. §§ 1171.1—1171.15).

(d) A policyholder has the right to replace an existing policy after indicating on the application that replacement is not by intention. Patterns of replacement by policyholders of the same agent, broker or company shall be considered prima facie evidence of the knowledge of the agent, broker or company that replacement was intended in connection with the transaction. Patterns of replacement shall be considered violations of this chapter.

§ 81.9. [Reserved].

APPENDIX A
NOTICE REGARDING REPLACEMENT OF LIFE
INSURANCE AND ANNUITIES

You have indicated that you intend to replace existing life insurance or annuity coverage in connection with the purchase of our life insurance or annuity policy. As a result, we are required to send you this notice. Please read it carefully.

Whether it is to your advantage to replace your existing insurance or annuity coverage, only you can decide. It is in your best interest, however, to have adequate information before a decision to replace your present coverage becomes final so that you may understand the essential features of the proposed policy and your existing insurance or annuity coverage.

You may want to contact your existing life insurance or annuity company or its agent for additional information and advice or discuss your purchase with other advisors. Your existing company will provide this information to you. The information you receive should be of value to you in reaching a final decision.

If either the proposed coverage or the existing coverage you intend to replace is participating, you should be aware that dividends may materially reduce the cost of insurance and are an important factor to consider. Dividends, however, are not guaranteed.

You should recognize that a policy which has been in existence for a period of time may have certain advantages to you over a new policy. If the policy coverages are basically similar, the premiums for a new policy may be higher because rates increase as your age increases. Under your existing policy, the period of time during which the issuing company could (contest the policy because of a material misrepresentation or omission concerning the medical information requested in your application, or)* deny coverage for death caused by suicide, may have expired or may expire earlier than it will under the proposed policy. Your existing policy may have options which are not available under the policy being proposed to you or may not come into effect under the proposed policy until a later time during your life. Also, your proposed policy's cash values and dividends, if any, may grow slower initially because the company will incur the cost of issuing your new policy. On the other hand, the proposed policy may offer advantages which are more important to you.

If you are considering borrowing against your existing policy to pay the premiums on the proposed policy, you should understand that in the event of your death, the amount of any unpaid loan, including unpaid interest, will be deducted from the benefits of your existing policy thereby reducing your total insurance coverage.

After we have issued your policy, you will have 20 days from the date the new policy is received by you to notify us you are cancelling the policy issued on your application and you will receive back all payments you made to us.

*Use bracketed language only when the application asks health questions.

You are urged not to take action to terminate or alter your existing life insurance or annuity coverage until you have been issued the new policy, examined it and have found it acceptable to you.

Cross References

This appendix cited in 31 Pa. Code § 81.4 (relating to duties of agents and brokers); and 31 Pa. Code § 81.7 (relating to duties of insurers with respect to direct response sales).

**APPENDIX B
NOTICE REGARDING REPLACEMENT OF LIFE
INSURANCE AND ANNUITIES**

Definition: Replacement is any transaction where, in connection with the purchase of new insurance or annuity coverage, you lapse, surrender, convert to paid-up insurance, place on extended term, reduce benefits or term of coverage, reduce cash value or borrow all or part of the policy loan values on an existing insurance policy or annuity.

In connection with the purchase of this coverage, IF YOU HAVE REPLACED OR INTEND TO REPLACE your present life insurance or annuity coverage, you should be certain that you understand all of the relevant factors involved.

You should BE AWARE that you may be required to provide *evidence of insurability* and

(1) If your HEALTH condition has CHANGED since the application was taken on your present policies, you may be required to pay ADDITIONAL PREMIUMS under the NEW POLICY, or be DENIED COVERAGE.

(2) Your present occupation or activities *may not be covered or could require additional premiums.*

(3) The INCONTESTABLE and SUICIDE CLAUSE will begin anew in a new policy. This could RESULT in a *CLAIM under the new policy BEING DENIED that would otherwise have been paid.*

(4) Current law DOES NOT require your present insurer(s) to REFUND any premiums.

(5) It may be to your advantage to OBTAIN INFORMATION regarding your existing policies *from the insurer or agent from whom you purchased the policy. Your existing company will provide this information to you.*

CAUTION: If after studying the information available to you, you decide to replace your existing life insurance or annuity coverage with our policy, you are urged not to take any action to terminate or alter your existing coverage until after you have been issued the new policy, examined it and found it to be acceptable to you. If you should terminate or otherwise materially alter your existing coverage and fail to qualify for the life insurance or annuity coverage for which you have applied, you may find yourself unable to purchase other life insurance or annuity coverage or be able to purchase it only at substantially higher rates.

_____ INSURANCE COMPANY

INSURER'S MAILING DATE: _____

Cross References

This appendix cited in 31 Pa. Code § 81.7 (relating to duties of insurers with respect to direct response sales).

[Next page is 82-1.]

81-12

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