

**SUBCHAPTER PP. ANNUITY DISCLOSURES**  
**DIVISION 2. ANNUITY SUITABILITY DISCLOSURES**  
**§3.9721 and §3.9722**

**INTRODUCTION.** The Texas Department of Insurance (TDI) proposes new Division 2, consisting of new §3.9721 and §3.9722, in Chapter 3, Subchapter PP. These sections concern annuity suitability disclosures. New §3.9721 and §3.9722 implement House Bill 1777, 87th Legislature, 2021.

**EXPLANATION.** HB 1777 amends Insurance Code Chapter 1115 to incorporate a "best interest" standard of care for annuities that is similar to the Security Exchange Commission's standard, to harmonize the standards of care for annuities across regulatory platforms. HB 1777 applies to all annuity transactions occurring on or after September 1, 2021; agents must use a compliant disclosure form for annuity transactions on and after that date.

Insurance Code §1115.0514 and §1115.0516 require the Commissioner to prescribe by rule three new disclosure forms an agent must provide to a consumer, where applicable, either before or at the time of a recommendation or sale of an annuity. The forms must contain statutorily required information, including information incorporating the new best-interest standard and other consumer protection provisions, and they must be substantially similar to forms promulgated by the National Association of Insurance Commissioners (NAIC).

The proposed new sections, which implement §1115.0514 and §1115.0516, are described in the following paragraphs.

**Division 2. Annuity Suitability Disclosures.** TDI proposes new Division 2 (relating to Annuity Suitability Disclosures) to distinguish new §3.9721 and §3.9722 from existing §§3.9701 - 3.9712, which address annuity contract disclosures. After this rule's adoption,

a new Division 1, with a heading clarifying that it addresses annuity contract disclosures, will be administratively added for §§3.9701 - 3.9712.

**Section 3.9721.** New §3.9721 describes the purpose of new Division 2, stating that it provides standards for the disclosure of certain minimum information about annuity suitability as required by Insurance Code Chapter 1115.

**Section 3.9722.** New §3.9722 specifies which forms may be used by agents to satisfy the requirements of HB 1777.

Section 3.9722(a) covers the form mandated by Insurance Code §1115.0514(b) for use by agents before the recommendation or sale of an annuity.

Section 3.9722(b) covers the form mandated by Insurance Code §1115.0516(2) for use by agents if a consumer does not provide the agent some or all of the information needed to decide whether the annuity effectively meets the consumer's needs at the time of a recommendation or sale of an annuity.

Section 3.9722(c) covers the form mandated by Insurance Code §1115.0516(3) for use by agents if a consumer decides to enter into an annuity transaction that is not based on an agent's recommendation.

Section 3.9722 references forms adopted by the National Association of Insurance Commissioners (NAIC) in its Suitability in Annuity Transactions Model Regulation (Model 275), which, at the date of publication of this proposal, is available at [content.naic.org/sites/default/files/inline-files/MDL-275.pdf](http://content.naic.org/sites/default/files/inline-files/MDL-275.pdf). The section also provides an option to use TDI-developed forms that are substantially similar to the NAIC model forms, which are available at [www.tdi.texas.gov/forms](http://www.tdi.texas.gov/forms). Finally, the rule gives industry flexibility to develop their own disclosure forms that meet the statutory requirements and plain language standards, consistent with the federal government's plain language website ([www.plainlanguage.gov](http://www.plainlanguage.gov)). Additional plain language resources can be found on TDI's website at [tdi.texas.gov/commissioner/plain-language-industry.html](http://tdi.texas.gov/commissioner/plain-language-industry.html).

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Hilary Sayre, program specialist, Life and Health Division, has determined that during each year of the first five years the proposed new sections are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the sections, other than that imposed by the statute. Ms. Sayre made this determination because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Ms. Sayre does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

**PUBLIC BENEFIT AND COST NOTE.** For each year of the first five years the proposed new sections are in effect, Ms. Sayre expects that enforcing and administering the proposed sections will have the public benefit of ensuring that TDI's rules conform to Insurance Code §1115.0514 and §1115.0516. In addition, the new disclosure forms have the public benefit of providing the consumer with relevant information, such as how the consumer's agent is paid, to ensure that the consumer makes an informed decision to enter into an annuity transaction.

Ms. Sayre expects that the proposed new sections will not increase the cost of compliance with Insurance Code §1115.0514 and §1115.0516 because the new sections do not impose requirements beyond those in statute. Insurance Code §1115.0514 and §1115.0516 require that the Commissioner prescribe by rule three new disclosure forms an agent must provide to a consumer, where applicable, either before or at the time of a recommendation or sale of an annuity. As a result, any costs of preparing and issuing the

required forms, or any unforeseen costs associated with using the required forms, are attributable to statute and not the proposed sections.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** TDI has determined that the proposed new sections will have no adverse economic effect on small or micro businesses or rural communities. The cost analysis in the Public Benefit and Cost Note section of this proposal, which explains that associated costs are attributable to HB 1777 and not the proposed rules, also applies to these small and micro businesses and rural communities.

**EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045.** TDI has determined that this rule proposal does not impose a possible cost on regulated persons. However, even if it did, no additional rule amendments are required under Government Code §2001.0045 because the proposed rules are necessary to implement HB 1777.

**GOVERNMENT GROWTH IMPACT STATEMENT.** TDI has determined that for each year of the first five years that the proposed rules are in effect, the proposed rules:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will create a new regulation;
- will not expand, limit, or repeal an existing regulation;

- will not increase or decrease the number of individuals subject to the rules' applicability; and
- will not positively or adversely affect the Texas economy.

**TAKINGS IMPACT ASSESSMENT.** TDI has determined that no private real property interests are affected by this rule proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

**REQUEST FOR PUBLIC COMMENT.** TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on September 27, 2021. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC-GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC-GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by TDI no later than 5:00 p.m., central time, on September 27, 2021. If TDI holds a public hearing, TDI will consider written comments and those presented at the hearing.

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**STATUTORY AUTHORITY.** TDI proposes new Division 2, §3.9721 and §3.9722, under Insurance Code §§1115.005, 1115.0514, 1115.0516, and 36.001.

Insurance Code §1115.005 provides that the Commissioner may adopt reasonable rules to accomplish and enforce the purpose of Chapter 1115.

Insurance Code §1115.0514 requires that an agent, before the recommendation or sale of an annuity, provide a disclosure to the consumer on a form prescribed by the Commissioner by rule.

Insurance Code §1115.0516 requires two additional disclosure forms to be prescribed by the Commissioner by rule. Insurance Code §1115.0516(2) requires that an agent use a form at the time of an annuity recommendation or sale that documents (1) when a consumer refuses to provide either consumer profile information, and (2) the consumer's understanding of the consequences of failing to provide or providing insufficient consumer profile information. Insurance Code §1115.0516(3) requires that an agent use a form at the time of an annuity recommendation or sale that documents a statement from the consumer acknowledging when the consumer is entering into an annuity transaction that is not recommended by the agent.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

**CROSS-REFERENCE TO STATUTE.** Section 3.9721 and §3.9722 implement Insurance Code §1115.0514 and §1115.0516.

**TEXT.**

**§3.9721. Purpose.**

The purpose of this division is to provide standards for the disclosure of certain minimum information about annuity suitability and to adopt related forms to meet the requirements of Insurance Code Chapter 1115, concerning Suitability of Certain Annuity Transactions.

**§3.9722. Required Forms.**

(a) Before the recommendation or sale of an annuity, an agent must provide to the consumer a form that meets the requirements of Insurance Code §1115.0514(b), concerning Disclosure Obligation. The agent must use:

(1) form FIN194, which is adopted by reference and is available on the department's form website;

(2) the Insurance Agent (Producer) Disclosure for Annuities form, adopted by the National Association of Insurance Commissioners in the Suitability in Annuity Transactions Model Regulation; or

(3) another form that:

(A) meets the requirements of Insurance Code §1115.0514(b) and is substantially similar to the form specified in paragraph (2) of this subsection;

(B) is understandable to a person with an 8th-grade reading level;  
and

(C) is written in plain language, consistent with federal plain language recommendations from the Plain Language Action and Information Network.

(b) If, at the time of a recommendation or sale of an annuity, a consumer has not given an agent some or all of the information needed to decide whether the annuity effectively meets the consumer's needs, the agent must obtain a statement signed by the

consumer on a form that meets the requirements of Insurance Code §1115.0516(2), concerning Documentation Obligation. The agent must use:

(1) form FIN195, which is adopted by reference and is available on the department's form website;

(2) the Consumer Refusal to Provide Information form, adopted by the National Association of Insurance Commissioners in the Suitability in Annuity Transactions Model Regulation; or

(3) another form that:

(A) is substantially similar to the form specified in paragraph (2) of this subsection;

(B) is understandable to a person with an 8th-grade reading level;  
and

(C) is written in plain language, consistent with federal plain language recommendations from the Plain Language Action and Information Network.

(c) At the time of a recommendation or sale of an annuity, if a consumer decides to enter into an annuity transaction that is not based on the agent's recommendation, the agent must obtain a statement signed by the consumer that meets the requirements of Texas Insurance Code §1115.0516(3). The agent must use:

(1) form FIN196, which is adopted by reference and is available on the department's form website;

(2) the Consumer Decision to Purchase an Annuity Not Based on a Recommendation form, adopted by the National Association of Insurance Commissioners in the Suitability in Annuity Transactions Model Regulation; or

(3) another form that:



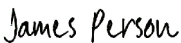
(A) is substantially similar to the form specified in paragraph (2) of this subsection;

(B) is understandable to a person with an 8th-grade reading level;  
and

(C) is written in plain language, consistent with federal plain language recommendations from the Plain Language Action and Information Network.

**CERTIFICATION.** This agency certifies that legal counsel has reviewed the proposal and found it to be within the agency's authority to adopt.

Issued in Austin, Texas, on August 10, 2021.

DocuSigned by:  
  
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James Person, General Counsel  
Texas Department of Insurance