

**SUBCHAPTER NN. CONSUMER NOTICES FOR LIFE INSURANCE POLICY AND
ANNUITY CONTRACT REPLACEMENTS
28 TAC §§3.9501 – 3.9506**

1. INTRODUCTION. The Commissioner of Insurance adopts new Subchapter NN, §§3.9501 - 3.9506, relating to the replacement of certain life insurance policies and annuity contracts. Sections 3.9503 - 3.9506 are adopted with changes to the proposed text published in the October 26, 2007 issue of the *Texas Register* (32 TexReg 7663). Sections 3.9501 and 3.9502 are adopted without changes.

2. REASONED JUSTIFICATION. The new subchapter is necessary to fulfill the requirements of HB 2762, 80th Legislature, Regular Session, effective September 1, 2007, that the Commissioner adopt rules to accomplish and enforce the purpose of new Chapter 1114 of the Insurance Code and adopt or approve model documents to be used as consumer notices under the new chapter. As provided in §1114.001, Chapter 1114 was enacted to (i) regulate the activities of insurers and agents with respect to the replacement of existing life insurance and annuities; (ii) protect the interests of purchasers of life insurance or annuities by establishing minimum standards of conduct to be observed in replacement or financed purchase transactions; (iii) ensure that purchasers receive information with which a decision in the purchaser's best interest may be made; (iv) reduce the opportunity for misrepresentation and incomplete disclosure; and (v) establish penalties for failure to comply with the requirements adopted under Chapter 1114. The adopted notices provide consumers with important information regarding potential consequences resulting from life insurance policy or

annuity contract replacement. This information is necessary to increase the likelihood of a consumer making a decision in their best interest and to reduce the opportunity for misrepresentation and incomplete disclosure.

On September 28, 2007, the Department posted an informal draft proposal of Subchapter NN on its website for a one week comment period. On October 26, 2007, the proposed new subchapter was published in the *Texas Register*. On November 12, 2007, the Department held a stakeholder meeting for interested parties, and a public hearing on the rule proposal was held on November 20, 2007. In response to comments received on the proposal published in the *Texas Register*, and comments received on the Department's preliminary response to comments received on the published proposal, as stated in the stakeholder meeting and public hearing, the Department has revised some of the proposed requirements in the published rule. Additionally, the Department has made a few minor technical changes to the proposed text that are not based on comments. None of the changes, however, introduce new subject matter or affect persons in addition to those subject to the proposal as published.

The Department received comments objecting to the proposed requirement in §3.9503 that the notices be reproduced without any change except as expressly allowed in the proposal. The National Association of Insurance Commissioners Life Insurance and Annuities Replacement Model Regulation (NAIC Replacement Model) allows for use of Commissioner-approved forms that are "substantially similar" to promulgated forms. However, HB 2762, which was based upon the NAIC Replacement Model, does not have a provision allowing for the use of substantially similar forms.

Instead, HB 2762 requires that notices used under Chapter 1114 must be either adopted or approved by the Commissioner.

Commenters voiced concern that the proposed requirement that notices be reproduced without any change to the notices specified in the proposal is more restrictive than the standard in the NAIC Replacement Model allowing for the use of Commissioner-approved substantially similar forms. Commenters opined that this difference could have negative consequences to both industry and consumers. These commenters stated that adoption of the Department's proposal could cause industry disruption because forms currently in use in Texas on a voluntary basis, pursuant to the substantially similar standard, may not comply with the Department's proposed requirement that the NAIC Replacement Model notice text be reproduced without any change, except for omission of inapplicable references. Commenters further stated that because the consumer notices under Insurance Code Chapter 1114 must be used beginning January 1, 2008, insurers would be unable to make changes to forms currently in use on such a short timeline, and as a result, would have to suspend business subject to the provisions of Chapter 1114 until such changes could be implemented.

One commenter also asserted that the proposed requirement that notices be reproduced without change may have negative consequences for consumers. The commenter stated that some replacement notices currently in use go beyond the NAIC Model Replacement notice in the scope and category of questions, and that prohibiting

such notices could decrease the likelihood of a consumer making a fully informed decision regarding replacement.

After considering these comments, the Department has revised the proposal in §§3.9503 - 3.9506 to allow insurers to file a notice with the Department for Commissioner review and approval that is substantially similar to a promulgated consumer notice specified in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC 3.9505(1). The adopted rules provide for the Commissioner's review and approval of a form filed with the Department, if, in the Commissioner's opinion, the filed notice protects the rights and interests of consumers to at least the same extent as the corresponding promulgated notice in the adopted rule. It is the Department's position that by requiring Commissioner review and approval of forms before use, the goal of consumer protection can still be achieved while allowing the industry the flexibility necessary to conduct business unimpeded. Therefore, the adopted rules allow for the filing, review, approval, and use of forms that are substantially similar to the forms specified in adopted Figure: 28 TAC §3.9504(b) and Figure: 28 TAC §3.9505(1) in §§3.9503 - 3.9506. Adopted §3.9503(b), however, requires insurers to use the notice in Figure: 28 TAC §3.9505(2) for direct response applicants not intending replacement or failing to answer an insurer's inquiry regarding replacement and does not allow insurers to file a notice that is substantially similar to that figure.

Commenters also voiced concern that the short time period between the adoption date of the rule and the date insurers must begin using consumer notices to comply with Chapter 1114 of the Insurance Code (January 1, 2008), would be insufficient for the Commissioner to review filed consumer notices and for the insurer to

make any required changes. Commenters requested that the Department consider allowing permanent usage of consumer notices that were filed with the Department on an informational basis under 28 TAC §3.5(b)(1) before the adoption of this subchapter. Another commenter requested that the Department consider waiving filing requirements of substantially similar notices until April 1, 2008, while another commenter requested that the Department waive all notice requirements until April 1, 2008.

The Department's position is that a consumer notice filed with the Department on an informational basis does not satisfy the requirement of Insurance Code §1114.006 that the Commissioner adopt or approve consumer notices for use under Chapter 1114, because informational filings are not approved by the Commissioner. Waiving filing requirements for substantially similar consumer notices, or waiving all requirements relating to notices until April 1, 2008, would not comply with the effective date of January 1, 2008, required by HB 2762.

However, the Department agrees that the short time period between the rule adoption date and the date insurers must begin using consumer notices to comply with Chapter 1114 poses a challenge to insurers choosing to use a notice that is substantially similar to a promulgated consumer notice specified in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC 3.9505(1). To address this issue, the Department has adopted a three-tiered filing approach for substantially similar consumer notices in adopted §3.9506.

In the time period beginning with the effective date of Subchapter NN and ending on January 31, 2008, an insurer may immediately use a consumer notice that is substantially similar to a promulgated consumer notice specified in Figure: 28 TAC

§3.9504(b) or Figure: 28 TAC 3.9505(1) after filing it with the Department. The Commissioner will review the filed consumer notice and notify the insurer whether the consumer notice is approved or disapproved. If approved, the insurer may continue to use the approved notice unless and until such time as the Commissioner withdraws approval. If disapproved, the insurer must stop using the consumer notice, but may refile the corrected form as specified in §3.9506. Effective February 1, 2008, insurers must receive approval before use of a consumer notice that is substantially similar to a promulgated consumer notice specified in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC 3.9505(1). Effective April 1, 2008, an insurer must file a consumer notice that is substantially similar to a promulgated consumer notice specified in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC 3.9505(1) no later than the 60th day before use of the consumer notice, consistent with the filing timeline for forms subject to review as specified in Insurance Code §1701.051(b). The three-tiered filing approach will allow insurers using a consumer notice that is substantially similar to a promulgated consumer notice specified in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC 3.9505(1) to continue its use uninterrupted, but will also allow the Commissioner to review and approve consumer notices as required by Insurance Code Chapter 1114, and will provide sufficient time for a thorough review of filed consumer notices.

The Department received numerous comments on the consumer advisory notice required by proposed §3.9506. Although one commenter strongly supported the inclusion of the consumer advisory notice and suggested that it be also required for direct response applicants not intending replacement, other commenters stated that the consumer advisory was unnecessary because it simply restated information in the NAIC

Replacement Model notice. Commenters stated that the language in the advisory was potentially misleading or confusing to consumers and that the use of the consumer advisory notice would contribute to a lack of uniformity among the states.

While the Department strongly disagrees that the language in the proposed consumer advisory notice was confusing or misleading, the Department agrees that the advisory restated some information provided in the NAIC Replacement Model notice and has agreed to delete the consumer advisory notice requirement in the adoption. The purpose of the consumer advisory notice was to provide important information in a clear, concise, and direct manner. When considering whether a consumer notice that is substantially similar to a promulgated consumer notice specified in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC 3.9505(1) protects the rights and interest of consumers to the same extent as the corresponding consumer notices promulgated in Subchapter NN, the Commissioner will review filed notices for compliance with the goals of simplicity, clarity, and import exemplified by the proposed consumer advisory notice. Additionally, the Department will continue to place a high importance on these concepts and standards when considering any rule proposals on suitability of agent or insurer recommendations to consumers relating to life insurance or annuity sales.

Three minor technical changes to the proposed text have been made by the Department for clarification and consistency that are not based on comments. In the published proposal in Figure: 28 TAC §3.9504(b), the Department proposed the consumer notice to be identical to the notice in the NAIC Replacement Model for insurers using agents. However, the published proposal inadvertently varied from the NAIC Replacement Model by using the term “agent” rather than “producer” in two

instances and omitting the phrase “if there is one” on the third line of text in the notice for use with insurers using agents specified by Figure 28: TAC §3.9504(b). Figure 28: TAC §3.9504(b) is adopted with these changes in order to clarify the notice to the text of the corresponding notice in the NAIC Replacement Model. Also, information has been added to adopted §3.9503 to notify insurers of the availability of the promulgated consumer notices at the Department’s website or upon request through mail. None of the changes, however, introduce new subject matter or affect persons in addition to those subject to the proposal as published.

3. HOW THE SECTIONS WILL FUNCTION. Adopted §3.9501 states the purpose of the subchapter.

Adopted §3.9502 specifies that the terms “agent” and “producer” shall have the same meanings when used in the subchapter and defines those terms.

Adopted §3.9503 specifies the content and format requirements for the consumer notices specified in the subchapter. Adopted §3.9503(a) details the formatting and content requirements for the text in Figure: 28 TAC §3.9504(b), Figure: 28 TAC §3.9505(1) and Figure: 28 TAC §3.9505(2), and provides that references must be without any change except as specified in §3.9503(b), (c), or (d). Adopted §3.9503(b) specifies that the Commissioner shall approve a notice for use under the subchapter that is substantially similar to the text contained in Figure: 28 TAC §3.9504(b) for insurers using agents or Figure: 28 TAC 3.9505(1) for direct response applicants intending replacement if, in the Commissioner’s opinion, the notice protects the rights

and interest of applicants to at least the same extent as the corresponding notice adopted in the subchapter. Section 3.9504(b) also prohibits an insurer from filing a consumer notice that is substantially similar to the form specified in Figure: 28 TAC §3.9505(2) for direct response applicants not intending replacement or failing to answer an insurer's inquiry regarding replacement. Adopted §3.9503(c) specifies that Commissioner approval of a notice is not required if a notice promulgated under Subchapter NN or a consumer notice that is substantially similar to a promulgated consumer notice specified in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC 3.9505(1) approved pursuant to §3.9506 is used, and amendments to the notice are limited to the omission of a reference not applicable to the product being sold or replaced. Section 3.9503(c) specifies that a reference in a required notice is presumed applicable if it could be applicable under any circumstances and therefore may not be omitted from the required notice. Section 3.9503(d) specifies that an insurer may add a company name and identifying form number to notices required under the subchapter without obtaining commissioner approval. Adopted §3.9503(e) specifies that the notices contained in the subchapter may be obtained from the Department's website, or upon request from the Department by mail.

New §3.9504 addresses the consumer notice regarding life insurance policy and annuity contract replacements that is to be used for insurers using agents. Section 3.9504(a) requires an agent initiating an application for a life insurance policy or annuity contract to submit information to the insurer on whether an applicant for a life insurance policy or annuity contract has existing policies or contracts. New §3.9504(b) specifies the conditions that require the use of the consumer notice specified in Figure: 28 TAC

§3.9504(b) or approved consumer notice that is substantially similar to a promulgated consumer notice specified in Figure: 28 TAC §3.9504(b) and the procedures for providing the consumer notice to the applicant. Adopted Figure: 28 TAC §3.9504(b) specifies the text of the notice for insurers using agents.

Adopted §3.9505 regulates notices required in direct response sales governed by Insurance Code Chapter 1114. Section 3.9505 requires insurers to inquire whether an applicant applying in response to a direct response solicitation intends to replace, discontinue, or change an existing policy or contract. New §3.9505(1) requires that if the insurer proposed the replacement or if the applicant responds that they intend a replacement, the insurer must send an applicant the notice specified in Figure: 28 TAC §3.9505(1) or a consumer notice that is substantially similar to a promulgated consumer notice specified in Figure: 28 TAC 3.9505(1). New Figure: 28 TAC §3.9505(1) contains the text of the promulgated notice.

Adopted §3.9505(2) requires that if the applicant states a replacement is not intended or fails to respond to the insurer's inquiry regarding the applicant's replacement intention, the insurer must send the notice specified in Figure: 28 TAC §3.9505(2). New Figure: 28 TAC §3.9505(2) contains the text of the promulgated notice. The consumer notices promulgated in 28 TAC §3.9505(1) and Figure: 28 TAC §3.9505(2) are taken verbatim from the NAIC Replacement Model.

Adopted §3.9506 specifies the filing procedures for a consumer notice that is substantially similar to Figure: 28 TAC §3.9504(b) or Figure: 28 TAC §3.9505(1). Adopted §3.9506(a) specifies that beginning on the effective date of Subchapter NN and ending January 31, 2008, an insurer may use such a notice immediately after filing

it with the Department, and that an insurer making such a filing will receive a notice advising them whether the filing has been approved or disapproved. Adopted §3.9506(a)(1) specifies that an insurer that files a notice substantially similar to a promulgated consumer notice specified in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC 3.9505(1) beginning on the effective date of Subchapter NN, and ending January 31, 2008, and that receives a notice of approval from the Commissioner may continue to use the approved consumer notice unless and until such time as the Commissioner withdraws approval of the consumer notice. Adopted §3.9506(a)(2) specifies that an insurer who has filed a notice substantially similar to a promulgated consumer notice specified in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC 3.9505(1) beginning on the effective date of Subchapter NN, and ending January 31, 2008, that receives a notice of disapproval from the Commissioner must stop use of the consumer notice, but may refile the notice subject to the requirements of 28 TAC §3.5(b)(6).

Adopted §3.9506(b) specifies that effective February 1, 2008, an insurer subject to Insurance Code Chapter 1114 may not use a consumer notice that is substantially similar to a promulgated consumer notice specified in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC 3.9505(1) until it has been approved. Adopted §3.9506(b)(1) specifies that effective February 1, 2008, an insurer subject to Chapter 1114 that uses agents must either use the text of the notice promulgated in Figure: 28 TAC §3.9504(b), which is not subject to filing and approval, or a substantially similar consumer notice which has been approved. Adopted §3.9506(b)(2) specifies that effective February 1, 2008, in the case of a direct response applicant, an insurer subject to Chapter 1114 must either use

the text of the notice promulgated in Figure: 28 TAC §3.9505(1), which is not subject to filing and approval, or a substantially similar consumer notice which has been approved.

Adopted §3.9506(c) specifies that effective February 1, 2008, a consumer notice that is substantially similar to a promulgated consumer notice specified in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC 3.9505(1) must be filed with the Department in accordance with the filing submission requirements of 28 TAC §3.4 (relating to General Submission Requirements); that a consumer notice that is substantially similar to a promulgated consumer notice specified in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC 3.9505(1) is subject to the same standards and procedures as a filing made under 28 TAC §3.5(a)(1) (relating to Filing Authorities and Categories), and will be processed by the Department according to the procedures specified in 28 TAC §3.7 (relating to Form Acceptance and Procedures); and that a consumer notice disapproved by the Commissioner is subject to the requirements of §3.5(b)(6).

Adopted §3.9506(d) specifies that effective April 1, 2008, insurers who elect to use a consumer notice that is substantially similar to a promulgated consumer notice specified in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC 3.9505(1) shall file the notice no later than the 60th day before use. Adopted §3.9506(d) specifies that a consumer notice that is substantially similar to a promulgated consumer notice specified in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC 3.9505(1) is subject to Insurance Code §1701.054. Adopted §3.9506(d) also specifies that insurers that have filed and received approval of a consumer notice that is substantially similar to a promulgated consumer notice specified in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC 3.9505(1) before April 1, 2008, may continue to use the approved notice after April 1, 2008.

4. SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Substantially Similar Consumer Notices

Comment: Several commenters requested that the Department consider allowing notices that are substantially similar to the notices promulgated in the subchapter for insurers using agents and direct response applicants intending replacement. Commenters stated that forms currently in use in Texas on a voluntary basis that satisfy the NAIC Replacement Model would fail the Department's requirement in proposed §3.9503 that the promulgated notices be reproduced without change unless expressly authorized in the rule, and would result in a disruption of insurer business. Commenters also stated that the requirement in proposed §3.9503 that notices not be changed could result in consumer harm by prohibiting alternate similar notices that exceeded the NAIC Replacement Model notices in scope and category of questions.

Agency Response: The Department agrees that the proposal varied from the standard in the NAIC Replacement Model and that the variation could have a negative effect. While the NAIC Replacement Model allows for the use of Commissioner-approved forms that are "substantially similar" to promulgated forms, neither HB 2762, which was based upon the NAIC Replacement Model, nor the Department's proposal contained a provision for the use of substantially similar forms. Instead, HB 2762 requires that notices used under Chapter 1114 must be either adopted or approved by the Commissioner. Based upon the comments, the Department believes that allowing the use of substantially similar forms for insurers using agents and for direct response applicants intending replacement is necessary to allow insurers to continue conducting

business without interruption. The Department's position is that the goal of consumer protection can be achieved by requiring that substantially similar forms be filed with the Department for Commissioner review. Therefore, the Department has revised the rule as adopted to allow for the alternative of an insurer filing of a consumer notice that is substantially similar to the forms specified in Figure 28: TAC 3.9504(b) or Figure 28: TAC 3.9505(1) for Commissioner review and approval. The Commissioner shall approve a consumer notice that is substantially similar to a promulgated consumer notice specified in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC 3.9505(1) if, in the opinion of the Commissioner, the consumer notice protects the rights and interests of the applicant to the same extent as the corresponding notice promulgated in Figure 28: TAC 3.9504(b) or Figure 28: TAC 3.9505(1).

Comment: The Department received a request for a description of the approval process that will be used if a company files and begins using a substantially similar form in the period beginning with the effective date of Subchapter NN and ending with January 31, 2008, and the Commissioner subsequently disapproves the filing.

Agency Response: A consumer notice that is substantially similar to a promulgated consumer notice specified in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC 3.9505(1) filed with the Department will be subject to the same acceptance and rejection procedures as other filings subject to review as specified in 28 TAC §3.7. A disapproved filing may be resubmitted for review and approval as specified in 28 TAC §3.5(b)(6). Any notices that have been filed in the period beginning with the effective date of Subchapter NN and ending with January 31, 2008, and that are in use by an

insurer will have to be corrected as specified in 28 TAC §3.7(d) upon disapproval. These procedures are specified in adopted §3.9506(c).

Comment: The Department received inquiries as to whether a change in the bolding effects to the NAIC Replacement Model notice or the insertion of text notifying an applicant of their right to return and refund within the NAIC Replacement Model notice would necessitate filing a notice as a substantially similar form under the requirements of Subchapter NN.

Agency Response: Any change not expressly allowed in the rule to the consumer notices promulgated in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC 3.9505(1) will require a filing under adopted §3.9506, including a change in bolding effects, or the insertion of additional text within the NAIC Replacement Model notice.

Implementation of Consumer Notice Requirements

Comment: Commenters raised concerns that the short time period between the adoption date of the rule and the date insurers must begin using consumer notices to comply with Chapter 1114 of the Insurance Code (January 1, 2008), would be insufficient for the Commissioner to review filings and for the insurer to make any required changes. The Department received a request to allow insurers to continue to use on a permanent basis consumer notices that were filed on an informational basis before the adoption of this subchapter. Another commenter requested that the Department consider waiving filing requirements for substantially similar notices until April 1, 2008, while another asked that the Department waive all notice requirements until April 1, 2008.

Agency Response: The Department agrees that the short time period between the adoption date of the rule and the required compliance date may pose difficulty for an insurer electing to use a consumer notice that is substantially similar to a promulgated consumer notice specified in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC 3.9505(1) rather than a promulgated notice specified in the rule. However, the Department's position is that a consumer notice previously filed on an informational basis does not satisfy the requirement of Insurance Code §1114.006 that the Commissioner adopt or approve consumer notices for use under Chapter 1114, because informational filings are not considered approved by the Commissioner. The Department has also considered the request to waive notice requirements until April 1, 2008, but does not agree that such a waiver would be consistent with the January 1, 2008 effective date for Chapter 1114 specified by HB 2762.

To address the concerns raised by the commenters, the Department has specified a three-tiered filing approach in adopted §3.9506. In the time period beginning with the effective date of Subchapter NN and ending on January 31, 2008, an insurer may immediately use a consumer notice that is substantially similar to a promulgated consumer notice specified in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC 3.9505(1) after filing it with the Department. The Commissioner will review the filed consumer notice and notify the insurer whether the consumer notice is approved or disapproved. If approved, the insurer may continue to use the approved notice unless and until such time as the Commissioner withdraws approval. If disapproved, the insurer must stop using the consumer notice, but may refile the corrected form as specified in §3.9506.

Effective February 1, 2008, insurers must receive approval of a consumer notice that is substantially similar to a promulgated consumer notice specified in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC 3.9505(1) before use. Effective April 1, 2008, an insurer must file a consumer notice that is substantially similar to a promulgated consumer notice specified in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC 3.9505(1) no later than the 60th day before use of the consumer notice, consistent with the filing timeline for forms subject to review as specified in Insurance Code §1701.051(b).

The three-tiered filing approach will allow insurers using a consumer notice that is substantially similar to a promulgated consumer notice specified in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC 3.9505(1) to continue its use without interruption, but will also allow the Commissioner to review and approve forms as required by Insurance Code Chapter 1114 and will provide sufficient time for a thorough review of filed notices.

Texas Department of Insurance Consumer Advisory

Comment: The Department received numerous comments on the consumer advisory notice required by proposed §3.9506. Although one commenter strongly supported the inclusion of the consumer advisory notice and suggested that it should also be required for direct response applicants not intending replacement, other commenters stated that the consumer advisory was unnecessary because it simply restated information in the NAIC Replacement Model notice. Commenters stated that the language in the advisory was potentially misleading or confusing to consumers and one commenter suggested alternate wording to the consumer advisory notice. Another commenter asked whether

subsequent filings would be required when an insurer supplemented an approved consumer notice with the consumer advisory notice. Another commenter stated that Texas has actively participated in the NAIC for many years in an effort to achieve uniformity in state regulation, and that the use of the proposed consumer advisory notice in addition to the NAIC Replacement Model notice was inconsistent with Texas' support of the NAIC Replacement Model when it was adopted in 1998.

Agency Response: While the Department strongly disagrees that the language in the proposed consumer advisory notice was confusing or misleading, the Department agrees that the advisory restated some information provided in the NAIC Replacement Model notice and has agreed to delete the consumer advisory notice requirement in the adoption. The purpose of the consumer advisory notice was to provide important information in a clear, concise and direct manner that would be easy for a consumer to understand. The Department is convinced that the manner of presentation of this critical information is as important to the consumer in determining whether to replace existing policies or contracts as the information itself. Therefore, when considering whether a consumer notice that is substantially similar to a promulgated consumer notice specified in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC 3.9505(1) filed with the Department protects the rights and interest of consumers to the same extent as the corresponding promulgated consumer notice, the Commissioner will review filed notices for compliance with the goals of simplicity, clarity and import exemplified in the proposed consumer advisory notice. Additionally, the Department will continue to place a high importance on these concepts and standards when considering any rule

proposals on agent or insurer suitability of recommendations to consumers relating to life insurance or annuity sales.

Consumer Notice for Direct Response Applicants Intending Replacement

Comment: One commenter requested that the notice specified in proposed Figure: 28 TAC §3.9505(2) for direct response applicants intending replacement be amended to have a checkbox for applicants that wish for the insurer to send a copy of the signed notice back to the applicant.

Agency Response: The Department does not agree that the checkbox is necessary because a direct response applicant may make a copy of the signed notice for themselves before sending the signed notice to an insurer.

Right to Return and Receive Refund on Policy or Contract

Comment: A commenter recommended that the Department add a section to the rules to address an owner's right to return the policy or contract within 30 days and receive an unconditional full refund. The commenter asked that the rules require an insurer to include the notice addressing returns at the time the policy is delivered and require agents who deliver policies to verbally inform consumers of their right to return and refund.

Agency Response: The Department's interpretation of Insurance Code §1114.053(e) is that it requires replacing insurers using agents to deliver a notice of the 30-day right to return and refund at the time of policy or contract delivery. The use of the word

“owner” rather than “applicant” in §1114.053(e) indicates that the delivery is to occur at the time of delivery, rather than at the time of application. This statutory requirement is not reiterated in the rule. Section 1114.053(g) authorizes the Commissioner to require by rule that insurers also provide the 30-day notice at the time of application. However, at this time, the Department's position is that requiring insurers to provide two copies of the 30-day notice is not of sufficient benefit to consumers to necessitate such a requirement.

The Department also does not agree with the commenter regarding the necessity of requiring by rule that agents who deliver policies verbally inform owners of the 30-day right to refund and return. The Department's position, at this time, is that the requirement in §1114.053(g) that the written notice be given at the time of policy or contract delivery is sufficient.

5. NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL.

For: None.

For with changes: Texas Office of Insurance Public Counsel.

Against: None.

Neither for nor against, with recommended changes: Primerica; American Council of Life Insurers; National Association of Insurance and Financial Advisors – Texas; and Texas Association of Life & Health Insurers.

6. STATUTORY AUTHORITY. The new sections are adopted under the Insurance Code §§1114.006, 1114.007, and 36.001. Section 1114.006 requires that the

Commissioner by rule adopt or approve model documents to be used for consumer notices under Chapter 1114. Section 1114.007 authorizes the Commissioner to adopt reasonable rules in the manner prescribed by Insurance Code, Subchapter A, Chapter 36, to accomplish and enforce the purpose of Chapter 1114.

As provided in §1114.001, Chapter 1114 was enacted to (i) regulate the activities of insurers and agents with respect to the replacement of existing life insurance and annuities; (ii) protect the interests of purchasers of life insurance or annuities by establishing minimum standards of conduct to be observed in replacement or financed purchase transactions; (iii) ensure that purchasers receive information with which a decision in the purchaser's best interest may be made; (iv) reduce the opportunity for misrepresentation and incomplete disclosure; and (v) establish penalties for failure to comply with the requirements adopted under Chapter 1114.

Section 36.001 authorizes the Commissioner to adopt any rules necessary and appropriate to implement the powers and duties of the Department under the Insurance Code and other laws of this state.

7. TEXT.

SUBCHAPTER NN. CONSUMER NOTICES FOR LIFE INSURANCE POLICY AND ANNUITY CONTRACT REPLACEMENTS

§3.9501. Purpose. The purpose of this subchapter is to specify the content and procedural requirements for consumer notices for life insurance policy and annuity contract replacements as required by the Insurance Code §1114.006.

§3.9502. Definitions. When used in this subchapter, the words “agent” and “producer” shall mean, unless the context clearly indicates otherwise, an individual who holds a license under Insurance Code Chapter 4054 and who sells, solicits, or negotiates life insurance or annuities in this state.

§3.9503. Consumer Notice Content and Format Requirements.

(a) The text contained in Figure: 28 TAC §3.9504(b), Figure: 28 TAC §3.9505(1) and Figure: 28 TAC §3.9505(2) must be in at least 10 point type and presented in the same order as indicated in each figure and without any change to the specified text, including bolding effects, except as provided in subsections (b), (c), and (d) of this section.

(b) Pursuant to §3.9506 of this subchapter (relating to Filing Procedures for Substantially Similar Consumer Notices), in lieu of using the notices contained in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC §3.9505(1), an insurer may file a notice with the department that is substantially similar to the text contained in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC §3.9505(1) for review and approval by the commissioner. The commissioner shall approve the notice if, in the commissioner’s opinion, the notice protects the rights and interests of applicants to at least the same extent as the notices adopted in Figures: 28 TAC §3.9504(b) or Figure: 28 TAC §3.9505(1). An insurer required to send the notice specified in Figure: 28 TAC §3.9505(2) may not file a notice that is substantially similar to that figure for review and approval by the commissioner.

(c) Commissioner approval of a notice is not required if a notice promulgated or approved under this subchapter is used and amendments to that notice are limited to

the omission of references not applicable to the product being sold or replaced. For purposes of this subchapter, a reference in any notice required under this subchapter to a product that is being sold or replaced is applicable if the reference could be applicable under any possible circumstances and therefore may not be omitted from the required notice.

(d) An insurer may add a company name and identifying form number to notices specified under this subchapter without obtaining commissioner approval.

(e) The promulgated forms specified in this subchapter are available upon request from the Life, Health & Licensing Division, MC 106-1E, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9107 or 333 Guadalupe, Austin, Texas 78701, or by accessing the department website at www.tdi.state.tx.us.

§3.9504. Consumer Notice Regarding Replacement for Insurers Using Agents.

(a) An agent who initiates an application for a life insurance policy or annuity contract shall submit to the insurer, with or as part of the application, a statement signed by both the applicant and the agent as to whether the applicant has existing life insurance policies or annuity contracts.

(b) If the applicant states that the applicant does have existing policies or contracts, the agent shall present and read to the applicant, not later than at the time of taking the application, a notice regarding replacement that contains the text contained in Figure: 28 TAC §3.9504(b), or substantially similar notice filed with the department and approved under this subchapter. The notice shall be signed by both the applicant and the agent attesting that the notice has been read aloud by the agent or that the

applicant did not wish the notice to be read aloud, in which case the agent is not required to read the notice aloud.

Figure: 28 TAC §3.9504(b):

**IMPORTANT NOTICE:
REPLACEMENT OF LIFE INSURANCE OR ANNUITIES**

This document must be signed by the applicant and the producer, if there is one, and a copy left with the applicant.

You are contemplating the purchase of a life insurance policy or annuity contract. In some cases this purchase may involve discontinuing or changing an existing policy or contract. If so, a replacement is occurring. Financed purchases are also considered replacements.

A replacement occurs when a new policy or contract is purchased and, in connection with the sale, you discontinue making premium payments on the existing policy or contract, or an existing policy or contract is surrendered, forfeited, assigned to the replacing insurer, or otherwise terminated or used in a financed purchase.

A financed purchase occurs when the purchase of a new life insurance policy involves the use of funds obtained by the withdrawal or surrender of or by borrowing some or all of the policy values, including accumulated dividends, of an existing policy to pay all or part of any premium or payment due on the new policy. A financed purchase is a replacement.

You should carefully consider whether a replacement is in your best interests. You will pay acquisition costs and there may be surrender costs deducted from your policy or contract. You may be able to make changes to your existing policy or contract to meet your insurance needs at less cost. A financed purchase will reduce the value of your existing policy and may reduce the amount paid upon the death of the insured.

We want you to understand the effects of replacements before you make your purchase decision and ask that you answer the following questions and consider the questions on the back of this form.

1. Are you considering discontinuing making premium payments, surrendering, forfeiting, assigning to the insurer, or otherwise terminating your existing policy or contract? YES NO
2. Are you considering using funds from your existing policies or contracts to pay premiums due on the new policy or contract? YES NO

If you answered "yes" to either of the above questions, list each existing policy or contract you are contemplating replacing (include the name of the insurer, the insured or annuitant, and the policy or contract number if available) and whether each policy or contract will be replaced or used as a source of financing:

	INSURER NAME	CONTRACT OR POLICY #	INSURED OR ANNUITANT	REPLACED (R) OR FINANCING (F)
1.				
2.				
3.				

Make sure you know the facts. Contact your existing company or its agent for information about the old policy or contract. If you request one, an in force illustration, policy summary or available disclosure documents must be sent to you by the existing insurer. Ask for and retain all sales material used by the agent in the sales presentation. Be sure that you are making an informed decision.

The existing policy or contract is being replaced because

_____.

I certify that the responses herein are, to the best of my knowledge, accurate:

Applicant's Signature and Printed Name

Date

Producer's Signature and Printed Name

Date

I do not want this notice read aloud to me. _____ (Applicants must initial only if they do not want the notice read aloud.)

A replacement may not be in your best interest, or your decision could be a good one. You should make a careful comparison of the costs and benefits of your existing policy or contract and the proposed policy or contract. One way to do this is to ask the company or agent that sold you your existing policy or contract to provide you with information concerning your existing policy or contract. This may include an illustration of how your existing policy or contract is working now and how it would perform in the future based on certain assumptions. Illustrations should not, however, be used as a sole basis to compare policies or contracts. You should discuss the following with your agent to determine whether replacement or financing your purchase makes sense:

PREMIUMS: Are they affordable?
 Could they change?

You're older—are premiums higher for the proposed new policy?
How long will you have to pay premiums on the new policy? On the old policy?

POLICY VALUES: New policies usually take longer to build cash values and to pay dividends.
Acquisition costs for the old policy may have been paid, you will incur costs for the new one.
What surrender charges do the policies have?
What expense and sales charges will you pay on the new policy?
Does the new policy provide more insurance coverage?

INSURABILITY: If your health has changed since you bought your old policy, the new one could cost you more, or you could be turned down.
You may need a medical exam for a new policy.
Claims on most new policies for up to the first two years can be denied based on inaccurate statements.
Suicide limitations may begin anew on the new coverage.

IF YOU ARE KEEPING THE OLD POLICY AS WELL AS THE NEW POLICY:

How are premiums for both policies being paid?
How will the premiums on your existing policy be affected?
Will a loan be deducted from death benefits?
What values from the old policy are being used to pay premiums?

IF YOU ARE SURRENDERING AN ANNUITY OR INTEREST SENSITIVE LIFE PRODUCT:

Will you pay surrender charges on your old contract?
What are the interest rate guarantees for the new contract?
Have you compared the contract charges or other policy expenses?

OTHER ISSUES TO CONSIDER FOR ALL TRANSACTIONS:

What are the tax consequences of buying the new policy?
Is this a tax free exchange? (See your tax advisor.)
Is there a benefit from favorable "grandfathered" treatment of the old policy under the federal tax code?
Will the existing insurer be willing to modify the old policy?
How does the quality and financial stability of the new company compare with your existing company?

§3.9505. Direct Response Consumer Notices.

In the case of a life insurance or annuity application initiated as a result of a direct response solicitation, the insurer shall inquire whether the applicant, by applying for the proposed policy or contract, intends to replace, discontinue, or change an existing life insurance policy or annuity contract. The inquiry may be included with, or submitted as a part of, each completed application for such policy or contract.

(1) If the insurer has proposed the replacement or if the applicant indicates a replacement is intended and the insurer continues with the replacement, the insurer shall send a notice that contains the text in Figure: 28 TAC §3.9505(1), or a substantially similar notice filed with the department and approved under this subchapter.

Figure: 28 TAC §3.9505(1):

**IMPORTANT NOTICE:
REPLACEMENT OF LIFE INSURANCE OR ANNUITIES**

You are contemplating the purchase of a life insurance policy or annuity contract. In some cases this purchase may involve discontinuing or changing an existing policy or contract. If so, a replacement is occurring. Financed purchases are also considered replacements.

A replacement occurs when a new policy or contract is purchased and, in connection with the sale, you discontinue making premium payments on the existing policy or contract, or an existing policy or contract is surrendered, forfeited, assigned to the replacing insurer, or otherwise terminated or used in a financed purchase.

A financed purchase occurs when the purchase of a new life insurance policy involves the use of funds obtained by the withdrawal or surrender of or by borrowing some or all of the policy values, including accumulated dividends, of an existing policy, to pay all or part of any premium or payment due on the new policy. A financed purchase is a replacement.

You should carefully consider whether a replacement is in your best interests. You will pay acquisition costs and there may be surrender costs deducted from your policy or

contract. You may be able to make changes to your existing policy or contract to meet your insurance needs at less cost. A financed purchase will reduce the value of your existing policy and may reduce the amount paid upon the death of the insured.

We want you to understand the effects of replacements and ask that you answer the following questions and consider the questions on the back of this form.

1. Are you considering discontinuing making premium payments, surrendering, forfeiting, assigning to the insurer, or otherwise terminating your existing policy or contract?
 YES NO
2. Are you considering using funds from your existing policies or contracts to pay premiums due on the new policy or contract? YES NO

Please list each existing policy or contract you are contemplating replacing (include the name of the insurer, the insured, and the policy or contract number if available) and whether each policy or contract will be replaced or used as a source of financing:

	INSURER NAME	CONTRACT OR POLICY #	INSURED OR ANNUITANT	REPLACED (R) OR FINANCING (F)
1.				
2.				
3.				

Make sure you know the facts. Contact your existing company or its agent for information about the old policy or contract. If you request one, an in force illustration, policy summary or available disclosure documents must be sent to you by the existing insurer. Ask for and retain all sales material used by the agent in the sales presentation. Be sure that you are making an informed decision.

I certify that the responses herein are, to the best of my knowledge, accurate:

Applicant's Signature and Printed Name

Date

A replacement may not be in your best interest, or your decision could be a good one. You should make a careful comparison of the costs and benefits of your existing policy or contract and the proposed policy or contract. One way to do this is to ask the company or agent that sold you your existing policy or contract to provide you with information concerning your existing policy or contract. This may include an illustration of how your existing policy or contract is working now and how it would perform in the future based on certain assumptions. Illustrations should not, however, be used as a

sole basis to compare policies or contracts. You should discuss the following with your agent to determine whether replacement or financing your purchase makes sense:

PREMIUMS: Are they affordable?
Could they change?
You're older—are premiums higher for the proposed new policy?
How long will you have to pay premiums on the new policy? On the old policy?

POLICY VALUES: New policies usually take longer to build cash values and to pay dividends.
Acquisition costs for the old policy may have been paid, you will incur costs for the new one.
What surrender charges do the policies have?
What expense and sales charges will you pay on the new policy?
Does the new policy provide more insurance coverage?

INSURABILITY: If your health has changed since you bought your old policy, the new one could cost you more, or you could be turned down.
You may need a medical exam for a new policy.
Claims on most new policies for up to the first two years can be denied based on inaccurate statements.
Suicide limitations may begin anew on the new coverage.

IF YOU ARE KEEPING THE OLD POLICY AS WELL AS THE NEW POLICY:

How are premiums for both policies being paid?
How will the premiums on your existing policy be affected?
Will a loan be deducted from death benefits?
What values from the old policy are being used to pay premiums?

IF YOU ARE SURRENDERING AN ANNUITY OR INTEREST SENSITIVE LIFE PRODUCT:

Will you pay surrender charges on your old contract?
What are the interest rate guarantees for the new contract?
Have you compared the contract charges or other policy expenses?

OTHER ISSUES TO CONSIDER FOR ALL TRANSACTIONS:

What are the tax consequences of buying the new policy?
Is this a tax free exchange? (See your tax advisor.)
Is there a benefit from favorable "grandfathered" treatment of the old policy under the federal tax code?

Will the existing insurer be willing to modify the old policy?
How does the quality and financial stability of the new company
compare with your existing company?

(2) If the applicant indicates a replacement or change is not intended or if the applicant fails to respond to the statement, the insurer shall send the applicant, with the policy or contract, a new policy or contract notice that contains the statements in Figure: 28 TAC §3.9505(2).

Figure: 28 TAC §3.9505(2):

**NOTICE REGARDING REPLACEMENT
REPLACING YOUR LIFE INSURANCE POLICY OR ANNUITY?**

Are you thinking about buying a new life insurance policy or annuity and discontinuing or changing an existing one? If you are, your decision could be a good one—or a mistake. You will not know for sure unless you make a careful comparison of your existing benefits and the proposed policy or contract's benefits.

Make sure you understand the facts. You should ask the company or agent that sold you your existing policy or contract to give you information about it.

Hear both sides before you decide. This way you can be sure you are making a decision that is in your best interest.

§3.9506. Filing Procedures for Substantially Similar Consumer Notices.

(a) Beginning with the effective date of this subchapter and ending January 31, 2008, an insurer subject to Insurance Code Chapter 1114 may use a consumer notice that is substantially similar to the text promulgated in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC §3.9505(1) immediately after filing the consumer notice with the department. An insurer who has filed a consumer notice that is substantially similar to the text promulgated in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC §3.9505(1) in the period of time beginning with the effective date of this subchapter and ending on

January 31, 2008, will receive a notice of approval or disapproval of the consumer notice from the commissioner.

(1) An insurer who has filed a consumer notice that is substantially similar to the text promulgated in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC §3.9505(1) in the period of time beginning with the effective date of this subchapter and ending on January 31, 2008, who receives a notice of approval from the commissioner may continue to use the approved consumer notice unless and until such time as the commissioner withdraws approval of the notice.

(2) An insurer who has filed a consumer notice that is substantially similar to the text promulgated in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC §3.9505(1) in the period of time beginning with the effective date of this subchapter and ending on January 31, 2008, who receives a notice of disapproval from the commissioner shall stop using the consumer notice, but may refile the notice subject to the requirements of §3.5(b)(6) of this chapter (relating to Filing Authorities and Categories).

(b) Effective February 1, 2008, an insurer may not use, issue, or deliver a notice that is substantially similar to a promulgated consumer notice specified in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC §3.9505(1) until it has been approved.

(1) Effective February 1, 2008, an insurer subject to Insurance Code Chapter 1114 using agents must either use the text of the notice contained in Figure: 28 TAC §3.9504(b), which is not subject to filing and approval, or a consumer notice substantially similar to the text contained in Figure: 28 TAC §3.9504(b) which has filed under this section and approved.

(2) Effective February 1, 2008, in the case of an applicant responding to a direct response solicitation, an insurer subject to Insurance Code Chapter 1114 must either use the text contained in Figure: 28 TAC §3.9505(1), which is not subject to filing and approval, or a consumer notice substantially similar to the text contained in Figure: 28 TAC §3.9505(1) which has been filed under this section and approved.

(c) Effective February 1, 2008, a filing of a consumer notice that is substantially similar to a promulgated consumer notice specified in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC §3.9505(1) must be filed in accordance with the submission requirements of §3.4 of this chapter (relating to General Submission Requirements), and is subject to the same standards and procedures as a filing made under §3.5(a)(1) of this chapter. A filing of a consumer notice that is substantially similar to a promulgated consumer notice specified in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC 3.9505(1) will be processed according to the procedures specified in §3.7 of this chapter (relating to Form Acceptance and Procedures). A consumer notice that is disapproved by the commissioner is subject to the requirements of §3.5(b)(6) of this chapter.

(d) Effective April 1, 2008, insurers subject to Chapter 1114 who elect not to use a consumer notice specified in this subchapter shall file a notice that is substantially similar to a promulgated consumer notice specified in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC §3.9505(1) no later than 60 days prior to use. A consumer notice that is substantially similar to a promulgated consumer notice specified in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC §3.9505(1) filed after April 1, 2008, is subject to Insurance Code §1701.054 (relating to approval of forms). Insurers that have filed and

received approval of a consumer notice before April 1, 2008, may continue to use the approved consumer notice unless and until such time as the commissioner withdraws approval of the notice.

CERTIFICATION. This agency hereby certifies that the adopted sections have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas, on _____, 2007.

Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that new §§3.9501 – 3.9506 specified herein, concerning consumer notices to be used in life insurance policy and annuity contract replacement transactions, are adopted.

AND IT IS SO ORDERED.

MIKE GEESLIN
COMMISSIONER OF INSURANCE

ATTEST:

Gene C. Jarmon
General Counsel and Chief Clerk

COMMISSIONER'S ORDER NO. _____