

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, AUGUST 5, 2019

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COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

CASE NO. INS-2019-00088

Ex Parte: In the matter of Repealing and Adopting New
Rules Governing Forms Filing for Life and Accident and
Sickness Policies

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia ("Code") provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction, and § 38.2-223 of the Code provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 38.2 of the Code.

The rules and regulations issued by the Commission pursuant to § 38.2-223 of the Code are set forth in Title 14 of the Virginia Administrative Code. A copy also may be found at the Commission's website: <http://www.scc.virginia.gov/case>.

The Bureau of Insurance ("Bureau") has submitted to the Commission a proposal to repeal Chapter 100 of Title 14 of the Virginia Administrative Code entitled "Rules Governing the Submission for Approval of Life, Accident and Sickness, Annuity, Credit Life and Credit Accident Sickness Policy Forms" set out at 14 VAC 5-100-10 through 14 VAC 5-100-80; repeal Chapter 110 of Title 14 of the Virginia Administrative Code entitled "Rules and Regulations for Simplified and Readable Accident and Sickness Insurance Policies" set out at 14 VAC 5-110-10 through 14 VAC 5-110-80; and to adopt a new chapter, Chapter 101 of Title 14 of the Virginia

Administrative Code entitled "Rules Governing Life and Health Forms Filings," which are recommended to be set out at 14 VAC 5-101-10 through 14 VAC 5-101-120.

The repeal of Chapters 100 and 110 is necessary because these Rules are outdated, and many provisions are no longer applicable. The proposed new Rules in Chapter 101 address current filing practices and requirements for electronic filing. These Rules specifically establish form and filing requirements, readability requirements, variability provisions, documentation and authorization requirements as well as provisions for out-of-state and Multiple Employer Welfare Arrangements, or MEWA, filings.

NOW THE COMMISSION is of the opinion that the Rules at Chapters 100 and 110 of Title 14 of the Virginia Administrative Code should be repealed, and the proposed new Rules at Chapter 101 of Title 14 of the Virginia Administrative Code should be considered for adoption with a proposed effective date of January 1, 2020.

Accordingly, IT IS ORDERED THAT:

(1) The proposal to repeal Chapters 100 and 110 of Title 14 of the Virginia Administrative Code and adopt a new chapter proposed at Chapter 101 of Title 14 of the Virginia Administrative Code recommended to be set out at 14 VAC 5-101-10 through 14 VAC 5-101-120, is attached hereto and made a part hereof.

(2) All interested persons who desire to comment in support of or in opposition to, or request a hearing to oppose the repeal of, Chapters 100 and 110 and the adoption of the proposed new Chapter 101 shall file such comments or hearing request on or before September 30, 2019, with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, and shall refer to Case No. INS-2019-00088. Interested persons desiring to submit comments electronically may do so by following the instructions at

the Commission's website: <http://www.scc.virginia.gov/case>. All comments shall refer to Case No. INS-2019-00088.

(3) If no written request for a hearing on the proposed repeal and adoption of proposed new rules as outlined in this Order is received on or before September 30, 2019, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposal, may repeal Chapters 100 and 110 and adopt proposed Chapter 101 of Title 14 of the Virginia Administrative Code as submitted by the Bureau.

(4) The Bureau shall provide notice of the proposal to all carriers licensed in Virginia to write life insurance and annuity contracts, accident and sickness insurance, and viatical settlement policies as well as to all interested persons.

(5) The Commission's Division of Information Resources shall cause a copy of this Order, together with the proposal to repeal and adopt new rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the *Virginia Register of Regulations*.

(6) The Commission's Division of Information Resources shall make available this Order and the attached proposal on the Commission's website: <http://www.scc.virginia.gov/case>.

(7) The Bureau shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of Ordering Paragraph (4) above.

(8) This matter is continued.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: Office of the Attorney General, Division of Consumer Counsel, 202 N. 9th Street, 8th Floor, Richmond, Virginia 23219-3424; and a copy hereof shall be delivered to the Commission's Office of General Counsel and the Bureau of Insurance in care of Deputy Commissioner Julie S. Blauvelt.

STATE CORPORATION COMMISSION, BUREAU OF INSURANCE

CHAPTER 100 (Repealed.)

~~RULES GOVERNING THE SUBMISSION FOR APPROVAL OF LIFE, ACCIDENT AND SICKNESS, ANNUITY, CREDIT LIFE AND CREDIT ACCIDENT-SICKNESS POLICY FORMS~~

CHAPTER 101

RULES GOVERNING LIFE AND HEALTH FORMS FILINGS.

14VAC5-101-10. Purpose.

A. The purpose of this chapter is to provide uniform standards for filing forms in accordance with §§ 38.2-316, 38.2-3725 and 38.2-6003 of the Code of Virginia and to establish rules to expedite the review and approval of all forms relating to life, accident and sickness, annuity, credit life, credit accident and sickness, viatical settlements and legal services plans filed under Chapter 44 (§ 38.2-4400 *et seq.*) of Title 38.2 of the Code of Virginia that are delivered or issued for delivery in the Commonwealth of Virginia.

B. Any rate filing submitted to the commission that corresponds with a form subject to this chapter shall comply with the applicable filing requirements of this chapter.

C. Medicare supplement and long-term care marketing communications that are required to be filed with the commission pursuant to § 38.2-3609 of the Code of Virginia and 14VAC5-200-160 shall comply with the applicable filing requirements of this chapter.

D. Policyholder notification letters required to be filed with the commission pursuant to 14VAC5-200-75 D shall comply with the applicable filing requirements of this chapter.

14VAC5-101-20. Applicability and scope.

This chapter shall apply to all companies licensed in this Commonwealth to write the types of insurance covered by this chapter.

14VAC5-101-30. Definitions.

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

"Approval" means a disposition applied to a form indicating that it has been filed by a company, reviewed and approved by the commission and that it may be used in this Commonwealth for the purpose with which it was approved.

"Commission" means the State Corporation Commission.

"Company" means any entity licensed in the Commonwealth to transact the business of insurance or viatical settlements.

"Filed for use" means a disposition applied to a form that is required to be filed with the commission but does not require approval and may be used in this Commonwealth for the purpose with which it was filed.

"Filing description" means a cover letter or electronic summary of the contents of a form filing.

"Form" or "forms" includes but is not limited to a policy, rider, endorsement, amendment, application, enrollment form, certificate of insurance, evidence of coverage, group agreement, supplemental agreement, rate or any other form required to be filed with or approved by the commission.

"Policy" means an insurance policy, contract, certificate, evidence of coverage or other agreement of insurance and includes any attached rider or endorsement.

"SERFF" means the National Association of Insurance Commissioners System for Electronic Rate and Form Filing, or its successor.

14VAC5-101-40. Source of filing.

All filings shall be transmitted electronically through SERFF or submitted in writing to the commission. The filing shall be submitted by the company representative having forms filing responsibilities or by a third-party consulting or legal firm authorized by the company to file its forms. Proof of authorization for any third-party filing shall be included.

14VAC5-101-50. General filing requirements.

A. The commission may set filing deadlines as needed. Deadlines shall be strictly enforced.

B. A form is considered filed with the commission on the date the filing is received.

C. Each filing shall be accompanied by a filing description that shall include:

1. The type of insurance form, including a description of the form and the market for which the form is intended. Intentions to concentrate on a specialized market should be noted.

2. The form number of each form that is being filed.

3. An indication that the form is new, or if replacing, revising or modifying a previously approved form, the exact changes that are intended.

4. An identification of any change in benefits and an indication of whether the change affects premium rates for the form.

5. An indication when a form submitted has been withdrawn by another regulatory body and the reasons for such a withdrawal.

D. Any form to be used in only the group or only the individual market shall be separately filed.

E. Except for an application or enrollment form, each filing shall pertain to only one type of insurance. Combinations of types of insurance in one filing are otherwise prohibited, unless specifically allowed by law.

F. Any form filed that is to be used with a previously approved form, including an application, shall identify the form number, approval date and SERFF or state tracking number in the new filing.

G. Any amendment, endorsement or rider that intends to revise a previously approved form shall be accompanied by the previously approved form filed as supporting documentation.

14VAC5-101-60. Form requirements.

The following requirements shall be met for each form submitted for review or approval:

1. The form number shall appear in the lower left-hand corner of the first page of each form. It shall consist of numbers, letters or a combination of both. The form number shall distinguish the form from all other forms used by the company.

2. The full licensed name of the company, including the address of the home office, shall appear in prominent print at the top of the cover page of any policy, application or enrollment form. Examples of prominent print include print that is in all capital letters, bold, enlarged font, contrasting color, underlined or otherwise differentiated from the other type in the form. The full licensed name of the company shall appear in prominent print on all other forms.

3. A marketing name or logo also may be used on the form, provided that the marketing name or logo does not mislead as to the identity of the company.

4. The cover page of a policy also shall include the address of an office that will administer the policy if different from the home office, a company telephone number and company website address.

5. Each form shall be submitted in the final form in which it is to be marketed or issued, sufficiently completed in "John Doe" fashion to indicate how it is intended to be used.

6. Each form that is to be used in an electronic version shall be filed in a format that matches the electronic version exactly.

14VAC5-101-70. Readability.

A. Each form submitted for review or approval shall be written in simplified language, logically and clearly arranged, printed in a legible format, and understandable to a person of average intelligence without special insurance knowledge or training.

B. A policy of more than three pages shall include a table of contents listing the principal sections and provisions and the pages on which they are found.

C. Defined words and terms shall be placed in a separate definition section that is clearly identified. A word or term that is used only in one section may be defined within that section.

D. A policy shall be divided into logically arranged sections with an appropriately named caption or heading for ease in locating desired content. Captions and headings shall be clearly set apart from the general text.

E. Any form submitted for review or approval shall be printed in at least 10-point type size.

F. Any policy shall achieve a minimum Flesch reading ease score of 50 or an equivalent score using another comparable test, unless otherwise specified by statute. The commission may approve an alternative to the Flesch reading ease score if it is determined to be comparable. The Flesch reading ease score shall be identified in the certificate of compliance for each policy.

G. A company may request an exception to the Flesch reading ease score. This request shall identify the specific reasons why the minimum standards have not been met and provide details of the policy's Flesch reading ease score test. The commission may except the policy if, in its sole discretion, it finds that a lower score: (i) will provide a more accurate reflection of the readability of the policy; (ii) is warranted by the nature of a particular policy or type or class of

policies; or (iii) is caused by certain policy language that is drafted to conform to the requirements of any state or federal law, regulation or agency interpretation.

14VAC5-101-80. Variability.

A. Use of variable bracketed information shall be limited. Any form submission that contains variable bracketed language that is so extensive that it cannot reasonably be reviewed shall be disapproved.

B. Administrative information, such as officer names, titles and signatures, contact information, or company logo may be presented as variable bracketed text.

C. Different types of benefits may be variable only for inclusion or exclusion within the form. The use of brackets within brackets is not permitted, except when variability is necessary to identify a period of time or other numeric value.

D. Each instance of variable text shall appear in brackets on a form, and shall be separately and completely explained in detail in a Statement of Variability document. Each explanation of variability shall appear in the same order that it appears on the form.

E. Requests for revisions to a Statement of Variability contained in a previously approved filing shall be accomplished by notification in the original filing.

14VAC5-101-90. MEWA filings.

Any multiple employer welfare arrangement (MEWA) that has registered with the commission as a licensed insurance company in accordance with 14 VAC 5-410-40 shall also meet the form and rate filing requirements of §§ 38.2-316 and 38.2-316.1 of the Code of Virginia.

14VAC5-101-100. Out-of-state filings.

A. Any company that wishes to deliver a certificate of insurance to any resident of this Commonwealth in connection with a policy issued outside of Virginia shall file each form that will be delivered in Virginia with the commission. The company shall demonstrate:

1. Whether the state in which the policy was issued has substantially similar laws to Virginia as defined in subdivision A 1 through 3 of §§ 38.2-3319.1 or 38.2-3522.1 of the Code of Virginia as applicable; and

2. The type of group: (i) as defined in §§ 38.2-3318.1 or 38.2-3521.1 of the Code of Virginia as applicable; or (ii) a non-defined or discretionary group, to which the policy is issued.

B. If the group is defined in accordance with §§ 38.2-3318.1 or 38.2-3521.1 of the Code of Virginia as applicable, the company shall file any form that will be delivered in Virginia along with documentation that substantiates that the issuing state's filing requirements have been met. In addition, a certification from the company is required indicating that the group insurance coverage marketed to residents of this Commonwealth will comply with the provisions of §§ 38.2-3318.1 or 38.2-3521.1 of the Code of Virginia as applicable.

C. If the group is non-defined or discretionary and the state of issue has substantially similar laws to Virginia, the company shall file any form that will be delivered in Virginia along with documentation that substantiates that the issuing state's filing requirements have been met. In addition, a certification from the company is required indicating that the group insurance coverage marketed to residents of this Commonwealth complies with the requirements of subdivisions E 1 through 3 of this section.

D. If the group is non-defined or discretionary and the state of issue does not have substantially similar laws to Virginia, the company shall file for approval any form that will be delivered in this Commonwealth in accordance with § 38.2-316 of the Code of Virginia.

E. Any policy issued outside of Virginia shall demonstrate that:

- 1. The policy is not contrary to Virginia's public policy and is in the best interest of the citizens of Virginia;
- 2. The issuance of the policy will result in economies of acquisition or administration; and
- 3. The benefits are reasonable in relation to the premiums charged.

14VAC5-101-110. Certificate of compliance.

Each form filing shall include a statement identical to the following that is signed by an officer of the company:

The Flesch reading ease score of the filed policy form is _____.

I represent that a review of the enclosed form has been conducted, and I certify that, to the best of my knowledge and belief, each form submitted is consistent and complies with the requirements of Title 38.2 of the Code of Virginia and the applicable rules and regulations. I understand that a failure to comply with these requirements will result in a disapproval of the filing.

Signature of Officer

Printed Name

Title

14VAC5-101-120. Severability.

If any provision of this chapter or its application to any person or circumstance is for any reason held to be invalid by a court, the remainder of this chapter and the application of the provisions to other persons or circumstances shall not be affected.

CHAPTER 110 (Repealed.)

~~RULES AND REGULATIONS FOR SIMPLIFIED AND READABLE ACCIDENT AND SICKNESS
INSURANCE POLICIES~~