




The State of New Hampshire
Insurance Department

21 South Fruit Street, Suite 14
Concord, NH 03301
(603) 271-2261 Fax (603) 271-1406
TDD Access: Relay NH 1-800-735-2964

John Elias
Commissioner

Alexander K. Feldvebel
Deputy Commissioner

Bulletin
Docket No.: INS 19-006-AB

TO: All Life and Annuity Insurance Companies, Brokers, Producers and Agents
FROM: John Elias, Insurance Commissioner 
DATE: May 10, 2019
RE: Waiver of Ins 306.04(e)

I. Introduction

The purpose of this Bulletin is to address an issue which has been brought to the attention of the New Hampshire Insurance Department by industry seeking clarification and guidance relative to form filings and disclosure documents for individual annuity contracts. Industry has indicated that compliance with Ins 306.04(e)¹ is impractical and burdensome. This rule requires insurers to include in the disclosure document "the name, age and sex of the proposed annuitant and the date on which the disclosure document was prepared". The New Hampshire Insurance Department has undertaken a review of this recently adopted rule.

II. Background of Rule

Prior to 2018, New Hampshire regulations regarding life and annuity disclosures were contained in Ins 306.06 Disclosure Requirements and Ins 306.05 Contract Summary (exp. 2-16-2009 respectively). Under those rules, per Ins 306.05 a contract summary was required to be provided to all prospective purchasers prior to accepting the applicant's initial consideration unless the contract provided for a minimum 10 day free look period. The name, age and sex of the proposed annuitant, among other things, was required to be contained in the contract summary. See Ins 306.05(a)(6)². The name, age and sex of the proposed annuitant was not a requirement in Ins 306.06 Disclosure Requirements.

¹ Ins 306.04 Standards for the Disclosure Document and Buyer's Guide.

(e) The name, age, and sex of the proposed annuitant and the date on which the disclosure document was prepared. New #12521, eff. 4-28-18

² Ins 306.05 Contract Summary.

(a) The contract summary shall include, but not be limited to the following:

(6) The name, age and sex of the proposed annuitant;

EXPIRED 2-18-2009

In 2018 New Hampshire re-adopted rules with the intention of aligning with the NAIC Annuity Disclosure Model Regulation 245. The Model Regulation sets forth in much greater detail the requirements for full disclosure and standards for annuity illustrations. See Ins 306.04 and 306.05 eff. 4-28-18. During the rulemaking process of Ins 306, the Department made one modification to the Model Regulation. This modification *added* the ‘name, age and sex of the proposed annuitant’ Contract Summary requirement to the Standards for the Disclosure Document and Buyer’s Guide.

III. Legal Authority

The New Hampshire Insurance Commissioner “is charged with the rights, powers, and duties pertaining to the enforcement and execution of the insurance laws” of New Hampshire under NH RSA 400-A:3. The Commissioner has general rulemaking and enforcement authority with respect to the regulation of the business of insurance in the state pursuant to NH RSA 400-A:15, 16. The Commissioner, upon the commissioner’s own initiative or upon request by an insurer, shall waive any requirement of Ins 306 if such waiver does not contradict the objective or intent of the rule and strict compliance with the rule would be onerous without promoting the object or intent of the rule provision. See Ins 306.08.³

IV. Discussion

The Standards for the Disclosure Document and Buyer’s Guide are codified in Ins 306.04 and related form filings under Ins 401.05 Individual Life and Annuity. The purpose of Ins 306 Annuity Disclosure is to provide for the disclosure of minimum standards in order to foster consumer education regarding the basic features of annuity contracts. See Ins 306.01. This is accomplished within the rule by requiring the disclosure of both the *Buyer’s Guide* and, if used, illustrations. These documents delineate the substantive nature of the content and the timing of such disclosure. The rules account for several methods of sales and distribution, including face-to-face, direct and indirect. Often, industry and consumers consummate research and transactions via the internet.

The ‘name, age and sex’ requirement identifies the consumer rather than providing substantive information which will foster consumer education. This requirement does not promote consumer education. The information is, however, required to be contained within the suitability review documents, the application and contract summary. Per Ins 401.05(a)(5) Form and Rate Filing, “The entire contract between the parties shall consist of the policy together with a copy of the signed and completed application.” Under this comprehensive process, the ‘name, age and sex’ requirement within Ins 306.04(e) is redundant and onerous. It would be impractical and burdensome for industry to place the ‘name, age and sex’ on the disclosure documents prior to receiving an application. This

³ Ins 306.08 Waiver or Suspension of Rules.

- (a) The commissioner, upon the commissioner’s own initiate or upon request by an insurer, shall waive any requirement of Ins 306 if such waiver does not contradict the objective or intent of the rule and;
 - (1) Applying the rule provision would cause confusion or would be misleading to consumers;
 - (2) The rule provision is in whole or in part inapplicable to the given circumstances;
 - (3) There are specific circumstances unique to the situation such that strict compliance with the rule would be onerous without promoting the objective or intent of the rule provision; or
 - (4) Any other similar extenuating circumstances exist such that application of an alternative standard or procedure better promotes the objective or intent of the rule provision.
 - (b) No requirement prescribed by statute shall be waived unless expressly authorized by law.
 - (c) Any person or entity seeking a waiver shall make a request in writing.
 - (d) A request for a waiver shall specify the basis for the waiver and proposed alternative, if any
- #12521, eff 4-28-18

is particularly impractical in instances where much of the transaction may be taking place over the internet. In those scenarios, it is sufficient that the company take reasonable steps to make the Buyer's Guide and disclosure document available for viewing and printing on the insurer's website. See Ins 306.04(a)(2)(b)⁴. A review of neighboring jurisdictions, Maine and Rhode Island, shows that those states adopted Model Regulation 245 without any modifications. As a result, there is no requirement for the 'name, age and sex of the proposed annuitant and the date on which the disclosure document was prepared' within their respective Standards for the Disclosure Document and Buyer's Guide section.

V. Conclusion

As discussed above, Ins 306.04(e) does not promote the purpose of the rule provision (i.e. promoting consumer education). Waiving the requirement will not contradict the objective or intent of the rule and will alleviate the burden and disparate impact on industry. Until the rule can be amended, it is appropriate to waive the requirement of Ins 306.04(e) as to future filings and sales of applicable annuity contracts. This will save time and resources for our licensees, as well as Department staff, by avoiding the filing and review of multiple waiver applications of Ins 306.04(e), pursuant to Ins 306.08, that would occur. This waiver of Ins 306.04(e) is effective immediately and will remain in effect until such time as the Department has formally amended the rule.

⁴ Ins 306.04(a)(2)(b) With respect to an application received via the Internet:

1. Taking reasonable steps to make the Buyer's Guide available for viewing and printing on the insurer's website shall be deemed to satisfy the requirement that the Buyer's Guide be provided no later than 5 business days after receipt of the application; and
2. Taking reasonable steps to make the disclosure document available for viewing and printing on the insurer's website shall be deemed to satisfy the requirement that the disclosure document be provided no later than 5 business days after receipt of the application;

New #12521, eff 4-28-18