

**Subchapter PP. Annuity Disclosures**  
**Division 2. Annuity Suitability Disclosures**  
**28 TAC §3.9721 and §3.9722**

**INTRODUCTION.** The Commissioner of Insurance adopts new Division 2, consisting of new §3.9721 and §3.9722, in Chapter 3, Subchapter PP. These sections concern annuity suitability disclosures. Section 3.9722 is adopted with nonsubstantive changes to the proposed text as published in the August 27, 2021, issue of the Texas Register (46 TexReg 5347). The rule will be republished. Section 3.9721 is adopted without changes and will not be republished. To improve clarity when referencing new forms, the date the forms were created, 07/21, was added in parentheses after each form name: FIN 194 in §3.9722(a)(1), FIN 195 in §3.9722(b)(1), and FIN 196 in §3.9722(c)(1). The goal of this nonsubstantive change is to account for possible future revisions to the forms and make it easier to discern the most recent form version adopted by the rule.

**REASONED JUSTIFICATION.** The new sections are necessary to implement House Bill 1777, 87th Legislature, 2021. 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 adopted new sections, which implement §1115.0514 and §1115.0516, are described in the following paragraphs.

**Division 2. Annuity Suitability Disclosures.** The Commissioner adopts 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 NAIC in its Suitability in Annuity Transactions Model Regulation (Model 275), which, at the date of publication of this adoption, 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 forms developed by the Texas Department of Insurance (TDI) 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).

**SUMMARY OF COMMENTS AND AGENCY RESPONSE.**

**Commenters:** There was one commenter, the Insured Retirement Institute, in support of the proposal.

**Comment on §3.9721 and §3.9722**

**Comment.** A commenter communicates general support of the proposal, stating that the adoption of these proposed rules is "important for the sake of uniformity and consistency," and states its appreciation that Texas has promulgated the NAIC suitability disclosure forms.

**Agency Response.** TDI thanks the commenter for its support.

**STATUTORY AUTHORITY.** The Commissioner adopts 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.

**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 (07/21), 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 (07/21), 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 (07/21), 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;

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(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 adoption and found it to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas, on October 14, 2021.

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Allison Eberhart  
Deputy General Counsel  
Texas Department of Insurance

The Commissioner adopts new 28 TAC §3.9721 and §3.9722.

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Cassie Brown  
Commissioner of Insurance

Commissioner's Order No. **2021-7020**