

Clearinghouse Rule 09-038

INITIAL REGULATORY FLEXIBILITY ANALYSIS

This rule does not impose any additional requirements on small businesses.

OCI SMALL BUSINESS REGULATORY COORDINATOR

The OCI small business coordinator is Eileen Mallow and may be reached at phone number (608) 266-7843 or at email address eileen.mallow@wisconsin.gov

CONTACT PERSON

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the OCI internet Web site at <http://oci.wi.gov/ocirules.htm> or by contacting Inger Williams, Public Information and Communications, OCI, at: inger.williams@wisconsin.gov, (608) 264-8110, 125 South Webster Street – 2nd Floor, Madison WI or PO Box 7873, Madison WI 53707-7873.

ORDER OF THE OFFICE OF THE COMMISSIONER OF INSURANCE CREATING A RULE

To create Ins 6.90, Wis. Adm. Code,

Relating to the use of designations or certifications purporting to demonstrate special expertise in the financial or retirement needs of seniors.

ANALYSIS PREPARED BY THE OFFICE OF THE COMMISSIONER OF INSURANCE (OCI)

1. Statutes interpreted:

ss. 600.01, 601.41(3), 628.34 (12), Stats.

2. Statutory authority:

ss. 600.01 (2), 601.41 (3), 601.42, 628.34 (12), Stats.

3. Explanation of OCI's authority to promulgate the proposed rule under these statutes:

The proposed rule is promulgated under the Commissioner's authority to prescribe misleading, deceptive and prohibited practices for insurers and insurance intermediaries.

4. Related statutes or rules:

The proposed rule relates to existing statutes and rules defining misleading, deceptive and prohibited practices for insurers and insurance intermediaries under s. 628, Wis. Stats., and s. Ins 6.60, Wis. Adm. Code.

5. The plain language analysis and summary of the proposed rule:

Chapter Ins. 6.90, Wis. Adm. Code, sets forth general information regarding prohibited business practices of insurers and insurance intermediaries. Recently, states have identified a possible fraudulent marketing and sales activity related to the use of senior-specific certifications in the sale of insurance products to seniors. In 2008, the National Association of Insurance Commissioners (NAIC) created a committee to establish a model rule setting standards for the use of senior specific certifications and professional designations by insurance producers in the sale of life insurance and annuities to all consumers regardless of age. The NAIC Model Rule was adopted in July of 2008. The proposed Wisconsin rule follows the NAIC Model with two exceptions. First, the proposed rule adds the term "advertising" to the list of practices and conduct to which the rule applies. Second, the proposed rule adds health insurance to life insurance and annuity products in the list of insurance products to which the rule applies.

6. Summary of and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

No federal regulation.

The North American Securities Administrators Association (NASAA) Model Rule, adopted March 20, 2008, addresses the use of senior specific certifications or designations by any person in connection with the offer, sale, or purchase of securities. The NAIC Model Rule, adopted in September of 2008, addresses the use of senior specific certifications and professional designations by insurance producers in the sale of life insurance and annuities.

7. Comparison of similar rules in adjacent states as found by OCI:

To date, Iowa is the sole state, adjacent to Wisconsin to adopt the NAIC Model Rule. Nationally, several non-adjacent states have adopted the NAIC Model Rule, including, California, Kentucky, Missouri, New Hampshire, New Jersey, and Utah. Similar legislation is pending in Alaska, Arkansas, Florida, Oklahoma, Ohio, Rhode Island, and Virginia. The degree to which each state's regulations track the Model Rule varies widely. Utah and Ohio also expanded the scope of the regulation to include health insurance.

Illinois: n/a

Iowa: Iowa Administrative Code 191-10.19, tracks the NAIC Model Rule.

Michigan: n/a

Minnesota: n/a

8. A summary of the factual data and analytical methodologies that OCI used in support of the proposed rule and how any related findings support the regulatory approach chosen for the proposed rule:

OCI review of complaints, NAIC models, similar legislation in other states, and insurer's financial information

9. Any analysis and supporting documentation that OCI used in support of OCI's determination of the rule's effect on small businesses under s. 227.114:

This rule relates to prohibited business practices of insurance intermediaries and there is no significant effect on small businesses.

10. See the attached Private Sector Fiscal Analysis.

11. A description of the Effect on Small Business:

This rule will have little or no effect on small businesses.

12. Agency contact person:

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the Web site at: <http://oci.wi.gov/ocirules.htm>

or by contacting Inger Williams, OCI Services Section, at:

Phone: (608) 264-8110

Email: inger.williams@wisconsin.gov

Address: 125 South Webster St – 2nd Floor, Madison WI 53703-3474

Mail: PO Box 7873, Madison, WI 53707-7873

13. Place where comments are to be submitted and deadline for submission:

The deadline for submitting comments is 4:00 p.m. on the 14th day after the date for the hearing stated in the Notice of Hearing.

Mailing address:

Holly L. Strop
Legal Unit - OCI Rule Comment for Rule Ins 690
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Street address:

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Email address:

Holly L. Strop
holly.strop@wisconsin.gov

Web site: <http://oci.wi.gov/ocirules.htm>

The rule changes are:

SECTION 1. Ins 6.90 is created to read:

Ins. 6.90 Prohibited Uses of Senior-Specific Designations

(1) PURPOSE. The purpose of this rule is to set forth standards to protect consumers from advertising and trade practices that are deceptive, misleading, or restrain competition unreasonably, with respect to the use of senior-specific certifications and professional designations in the advertising, solicitation, sale or purchase of, or advice made in connection with, life or health insurance, or an annuity product.

(2) AUTHORITY. (a) This rule is adopted pursuant to the Office of the Commissioner of Insurance's authority under ss. 601.42(3) and 628.34(12), Stats.

(b) Nothing in this rule shall limit the commissioner's authority to enforce existing provisions of law.

(3) SCOPE. This rule shall apply to any advertising, solicitation, or sale or purchase of, or advice made in connection with, a life or health insurance policy, or annuity product by an insurance producer.

(4) DEFINITIONS. In this section:

(a) "Advertising" means all of the following:

1. Printed and published material, audio visual material and descriptive literature of an insurer or intermediary used in direct mail, newspapers, magazines, other periodicals, radio and television scripts, billboards and similar displays, excluding advertisements prepared for the sole purpose of recruiting employees, intermediaries or agencies.

2. Descriptive literature and sales aids of all kinds authored, issued, distributed or used by an insurer, intermediary or third party for presentation to members of the public, including circulars, leaflets, booklets, depictions, illustrations and form letters. Descriptive literature and sales aids do not include material in house organs of insurers, communications within an insurer's own organization not intended for dissemination to the public, individual communications of a personal nature, and correspondence between a prospective group or blanket policyholder and an insurer in the course of negotiating a group or blanket policy, and general announcements from group or blanket policyholders to eligible individuals that a contract has been written.

3. Prepared sales talks, presentations and material for use by intermediaries and representations made by intermediaries in accordance therewith, excluding materials to be used solely by an insurer for the training and education of its employees or intermediaries; and

4. Packaging, including envelopes, used in connection with subs. 1., 2., and 3.

5. "Advertising" does not include a policy summary as defined in s. Ins 2.14 (3) (f), the "life insurance buyer's guide" as set forth in s. Ins 2.14 (3) (d), an illustration as defined in s. Ins 2.17 (3) (i), a contract summary as defined in s. Ins 2.15 (4) (a), a preliminary contract summary as defined in s. Ins 2.15 (4)

(b), and the "Wisconsin Buyer's Guide to Annuities" as defined in s. Ins 2.15 (4) (c).

(b) "Health insurance" includes any policy of individual or group sickness and accident insurance, long term care insurance, Medicare advantage, Medicare supplement, and Medicare part D.

(c) "Insurance producer" means a person required to be licensed under chapters 600 to 655 to advertise, sell, solicit or negotiate insurance, including life insurance, health insurance and annuities.

(5) PROHIBITED USES OF SENIOR-SPECIFIC CERTIFICATIONS AND PROFESSIONAL DESIGNATIONS. (a) It is an unfair and deceptive trade practice under s. 628.34(12), Stats., for an insurance producer to use a senior-specific certification or professional designation that indicates or implies in such a way as to mislead a purchaser or prospective purchaser that the insurance producer has special certification or training in advising or providing services to seniors in connection with the advertising, solicitation, sale, or purchase of a life or health insurance policy, or annuity product or in the provision of advice as to the value of or the advisability of purchasing or selling a life or health insurance policy or annuity product, either directly or indirectly, through publications or writings, or by issuing or promulgating analyses or reports related to a life or health insurance policy or annuity product as follows:

1. Use of a certification or professional designation by an insurance producer who has not actually earned or is otherwise ineligible to use such certification or designation.

2. Use of a nonexistent or self-conferred certification or professional designation.

3. Use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training or experience that the insurance producer using the certification or designation does not have.

4. Use of a certification or professional designation that was obtained from a certifying or designating organization that:

- a. Is primarily engaged in the business of instruction in sales or marketing; or

- b. Does not have reasonable standards or procedures for assuring the competency of its certificants or designees; or

- c. Does not have reasonable standards or procedures for monitoring and disciplining its certificants or designees for improper or unethical conduct; or

- d. Does not have reasonable continuing education requirements for its certificants or designees in order to maintain the certificate or designation.

(b) There is a rebuttable presumption that a certifying or designating organization is not disqualified solely for the purposes of subd. (5)(a)4., when the certification or designation issued from the organization does not primarily apply to sales or marketing and when the organization or the certification or designation in question has been accredited by:

1. The American National Standards Institute (ANSI);
2. The National Commission for Certifying Agencies; or
3. Any organization that is on the U.S. Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes."

(c) In determining whether a combination of words or an acronym standing for a combination of words constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing seniors, factors to be considered shall include:

1. Use of one or more words such as "senior," "retirement," "elder," or like words combined with one or more words such as "certified," "registered," "chartered," "advisor," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and
2. The manner in which those words are combined.

(d) 1. For purposes of this section, a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency is not a certification or professional designation, unless it is used in a manner that would confuse or mislead a reasonable consumer, when the job title:

- a. Indicates seniority or standing within the organization; or
- b. Specifies an individual's area of specialization within the organization.

2. For the purpose of this paragraph, financial services regulatory agency includes an agency that regulates insurers, insurance producers, broker-dealers, investment advisers, or investment companies as defined under the Investment Company Act of 1940 (15 USC 2d).

(6) PENALTIES. A violation of this section is an unfair and deceptive trade practice under s. 628.34(12), Wis. Stats., and shall subject the violator to ss. 601.41, 601.62, 601.64, 601.65 and 628.10, Wis. Stats.

SECTION 2. This rule may be enforced under ss. 601.41, 601.64, 601.65, Stats., or ch. 645, Stats., or any other enforcement provision of chs. 600 to 646, Stats.

SECTION 3. These changes will take effect on the first day of the month after publication, as provided in s. 227.22(2)(intro.), Stats.

Dated at Madison, Wisconsin, this ____ day of _____, 2009.

Sean Dilweg
Commissioner of Insurance

Office of the Commissioner of Insurance
Private Sector Fiscal Analysis

for Section Ins 6.90 relating to designations or certifications purporting to demonstrate special expertise in the financial or retirement needs of seniors.

This rule change will have no significant effect on the private sector regulated by OCI.

FISCAL ESTIMATE WORKSHEET

Detailed Estimate of Annual Fiscal Effect

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB Number	Amendment No. if Applicable
Bill Number	Administrative Rule Number INS 690

Subject designations or certifications purporting to demonstrate special expertise in the financial or retirement needs of seniors

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):
None

Annualized Costs:	Annualized Fiscal impact on State funds from:	
	Increased Costs	Decreased Costs
A. State Costs by Category		
State Operations - Salaries and Fringes	\$ 0	\$ -0
(FTE Position Changes)	(0 FTE)	(-0 FTE)
State Operations - Other Costs	0	-0
Local Assistance	0	-0
Aids to Individuals or Organizations	0	-0
TOTAL State Costs by Category	\$ 0	\$ -0
B. State Costs by Source of Funds		
GPR	\$ 0	\$ -0
FED	0	-0
PRO/PRS	0	-0
SEG/SEG-S	0	-0
C. State Revenues <small>Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)</small>		
GPR Taxes	\$ 0	\$ -0
GPR Earned	0	-0
FED	0	-0
PRO/PRS	0	-0
SEG/SEG-S	0	-0
TOTAL State Revenues	\$ 0 None	\$ -0 None

NET ANNUALIZED FISCAL IMPACT

	<u>STATE</u>	<u>LOCAL</u>
NET CHANGE IN COSTS	\$ <u>None 0</u>	\$ <u>None 0</u>
NET CHANGE IN REVENUES	\$ <u>None 0</u>	\$ <u>None 0</u>

Prepared by: Holly L. Strop	Telephone No. (608) 261-8283	Agency Insurance
Authorized Signature:	Telephone No.	Date (mm/dd/ccyy)

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