

(C) A rate is unfairly discriminatory when a health carrier makes or permits differences in rates between individuals of the same class or of essentially the same risk when such differences are not permissible pursuant to section 375.936, RSMo, or when differences in rates do not reasonably correspond to differences in expected costs.

(D) A rate is unjustified if the health carrier provides a rate justification that is incomplete or otherwise does not provide a sufficient basis upon which the reasonableness of a rate can be determined.

(13) The director's review of rates shall, at a minimum, consider the following:

(A) The reasonableness of the assumptions used by the health carrier to develop the proposed rate increase and the validity of the historical data underlying the assumptions;

(B) The health carrier's data related to past projections and actual experience;

(C) The reasonableness of assumptions used by the health carrier to estimate the rate impact of the federal risk adjustment program under 42 U.S.C. Section 18063; and

(D) The health carrier's data related to implementation and ongoing utilization of a market-wide single risk pool, essential health benefits, actuarial values, and other market standards or rules established under state or federal law.

(14) The director's review of rates may consider the following, to the extent the director believes any to be applicable to the rate filing under review:

(A) Medical cost trend changes by major service categories;

(B) Impact of changes in utilization of services by major service categories;

(C) Impact of cost-sharing changes by major service categories, including actuarial values;

(D) Impact of changes in benefits, including essential health benefits and non-essential health benefits;

(E) Impact of changes in enrollee risk profile and pricing, including rating limitations for age and tobacco use under 42 U.S.C. Section 300gg;

(F) Impact of over- and under-estimation of medical trends in the previous three (3) years on the current premium rate;

(G) Impact of changes in reserve needs;

(H) Impact of changes in administrative costs related to programs that improve health care quality;

(I) Impact of changes in other administrative costs;

(J) Impact of changes in applicable taxes and licensing or regulatory fees;

(K) Medical loss ratio;

(L) The health carrier's capital and surplus;

(M) The impacts of geographic factors and variations;

(N) The impact of changes within a single risk pool to all products or plans within the risk pool; and

(O) The impact of risk adjustment payments and charges.

(15) Pursuant to section 376.465.10(4), RSMo, written notice of the director's determination that proposed rates are reasonable or unreasonable shall be provided within sixty (60) days after a complete rate submission to the director. This sixty- (60-) day time frame may be extended pursuant to a mutual agreement between the director and the health carrier.

(A) Proposed rates that are determined to be reasonable will be considered final and the filing will be closed upon the same date as the director's notice.

(B) Proposed rates that are determined to be unreasonable will be considered open for amendment by the carrier pursuant to section (16) of this rule.

(16) Pursuant to section 376.465.11, RSMo, after receiving written notice from the director that a proposed rate is unreasonable, if a health carrier elects to amend proposed rates or request reconsider-

ation of the director's determination, the carrier shall notify the director and submit any amendments or additions to the rate filing or rate filing justification within thirty (30) days after the date the carrier receives written notice of the director's determination. The thirty- (30-) day time frame may be extended pursuant to a mutual agreement between the director and the health carrier.

(A) If a health carrier chooses to file an amended rate, it shall file the amended rate and a rate filing justification supporting the amended rate.

(B) If a health carrier chooses to request reconsideration, it shall notify the director, in writing, of its request for reconsideration and may submit any additional rate filing justification that it believes further supports the proposed rate. The director shall review such information and make a determination as to whether the proposed rate is reasonable or unreasonable.

(17) When a health carrier receives written notice that a proposed rate is unreasonable and the health carrier decides to implement the proposed rate notwithstanding the director's determination, the health carrier shall notify the director of its decision to use the rate within thirty (30) days after receiving notice of the director's determination. The director shall make the determination that the rate is unreasonable publicly available on the department's website at the same time as final rates are posted on the department's website.

AUTHORITY: section 374.045, RSMo Supp. 2013, and section 376.465, CCS HCS SS SCS SBS 865 and 866, Second Regular Session, Ninety-eighth General Assembly 2016. Original rule filed Oct. 3, 2016.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Insurance, Financial Institutions and Professional Registration, Attention: Amy V. Hoyt, PO Box 690, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days of publication of this notice in the Missouri Register. A public hearing is scheduled for 10:00 a.m., Friday, December 2, 2016, at the Harry S Truman State Office Building, Room 530, 301 West High Street, Jefferson City, Missouri.

SPECIAL NEEDS: If you have any special needs addressed by the Americans with Disabilities Act, please notify us at (573) 751-2619 at least five (5) working days prior to the hearing.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION**

**Division 700—Insurance Licensing
Chapter 1—Insurance Producers**

PROPOSED AMENDMENT

20 CSR 700-1.145 Standards of Commercial Honor and Principles of Trade in Life, Annuity, and Long-Term Care Insurance Sales. The division is amending subsection (1)(A).

PURPOSE: This amendment clarifies the standard to which producers are held with regard to the exchange or replacement of variable life, annuity, or long-term care products.

(1) Grounds for the discipline or disqualification of producers shall include, in addition to other grounds specified in section 375.141, RSMo, failure to comply with or violation of the following professional standards of conduct:

(A) Producers, in the conduct of variable life, annuity, and long-term care insurance business, shall observe high standards of commercial honor and just and equitable principles of trade. Implicit in a producer's relationship with customers is the fundamental responsibility of fair dealing. Practices that violate this responsibility of fair dealing include, but are not limited to, the following:

1. Inducing an exchange or replacement of variable life, annuity, or long-term care insurance contract with *[insignificant]* no tangible net benefit to the consumer, but for the purpose of accumulating commissions by the producer; and

2. Causing the execution of transactions that are not authorized by customers or the sending of confirmations in order to cause customers to accept transactions not actually agreed upon; and

AUTHORITY: sections 374.040[,] and 375.013, RSMo 2000, and sections 374.045, 375.143, and 376.309.6, RSMo Supp. [2007] 2013. Emergency rule filed April 14, 2005, effective April 26, 2005, expired Jan. 1, 2006. Original rule filed Sept. 30, 2005, effective March 30, 2006. Amended: Filed Nov. 30, 2007, effective July 30, 2008. Amended: Filed Sept. 30, 2016.

PUBLIC COST: The proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: The proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Insurance, Financial Institutions and Professional Registration, Attention: Tamara W. Kopp, Receivership Counsel, Director's Office, PO Box 690, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION**

**Division 700—Insurance Licensing
Chapter 1—Insurance Producers**

PROPOSED AMENDMENT

20 CSR 700-1.146 Recommendations of [Annuities or] Variable Life Insurance to Customers (Suitability). The division is amending the title, purpose, section (1), removing section (2), and renumbering thereafter.

PURPOSE: This amendment makes this rule only applicable to the offer, sale, or exchange of variable life contracts. The department is amending this rule by removing all language that relates to annuity recommendations. The department's proposed rule, 20 CSR 400-5.900 Suitability in Annuity Transactions, is replacing the language contained in this rule.

PURPOSE: This rule [implements the requirements] effectuates and aids in the interpretation of section[s] 375.141.1(8) [and 375.143], RSMo, with respect to the codification of professional standards of conduct in the recommendation of [annuities and] variable life insurance contracts. Failure to meet these standards [would] constitutes the demonstration of incompetence, untrustwor-

thiness, or financial irresponsibility of producers in the offer, sale, or exchange of [annuities and] variable life contracts.

(1) The standards of conduct codified in this rule reflect the professionalism of a licensed insurance producer. Grounds for the discipline or disqualification of producers shall include, in addition to other grounds specified in section 375.141, RSMo, failure to comply with or violation of the following professional standards of conduct:

[(A) Variable Annuities and Variable Life Insurance.]

[1.](A) In recommending to an individual customer the purchase, sale, or exchange of any variable life *[or variable annuity]* product, a producer shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other investment holdings and as to his financial situation and needs.

[2.](B) Prior to the execution of a variable life *[or variable annuity]* transaction recommended to an individual customer, a producer shall make reasonable efforts to obtain information concerning—

[A.](1) The customer's financial status, including annual income, financial situation and needs, and existing assets;

[B.](2) The customer's tax status;

[C.](3) The customer's financial objectives, including investment objectives, reasonably anticipated income needs, and risk tolerance;

[D.](4) The customer's investment time horizon, liquid net worth, and current and reasonably anticipated needs for liquidity; and

[E.](5) Such other information used or considered to be reasonable by such producer in making recommendations to the customer.

[3. No producer shall recommend to any customer the purchase or exchange of any deferred variable annuity, unless the producer has a reasonable basis to believe:

A. That the transaction is suitable in accordance with this rule and, in particular, that there is a reasonable basis to believe that—

(I) The customer has been informed, in general terms, of various features of deferred variable annuities, such as the potential surrender period and surrender charge; potential tax penalty if the customer sells or redeems deferred variable annuities before reaching the age of fifty-nine and one half (59½); mortality and expense fees; investment advisory fees; potential charges for and features of riders; the benefit and investment components of deferred variable annuities; and market risk;

(II) The customer would benefit from certain features of deferred variable annuities, such as tax-deferred growth, annuitization, or a death or living benefit; and

(III) The particular deferred variable annuity as a whole, the underlying subaccounts to which funds are allocated at the time of the purchase or exchange of the deferred variable annuity, and riders and similar product enhancements, if any, are suitable (and, in the case of an exchange, the transaction as a whole also is suitable) for the particular customer based on the information required by this rule; and

B. In the case of an exchange of a deferred variable annuity, the exchange also is consistent with the suitability determination required by subparagraph (1)(A)3.A. of this rule, taking into consideration whether—

(I) The customer would incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits (such as death, living, or other contractual benefits), or be subject to increased fees or charges (such as mortality and expense fees, investment advisory fees, or charges for riders and similar product enhancements);

(II) The customer would benefit from product enhancements and improvements; and