

MAR 15 2023

SCOTT SCHWAB
SECRETARY OF STATE

State of Kansas
Insurance Department
Notice of Public Hearing on Proposed Administrative Regulations
May 25, 2023

A public hearing will be conducted on Thursday, May 25, 2023, at 8:30 a.m. at the Kansas Insurance Department, 1300 SW Arrowhead Road, Topeka, Kansas, to consider the adoption of proposed rules and regulations of the Insurance Department on a permanent basis. Anyone desiring to participate via teleconference or virtual format should visit the Insurance Department's website <https://insurance.kansas.gov/legal-issues/> for information on registering.

This 60-day notice of the public hearing shall constitute a public comment period for the purpose of receiving written public comments on the proposed rules and regulations. All interested parties may submit written comments prior to the hearing to the Kansas Insurance Department, 1300 SW Arrowhead Road, Topeka, Kansas 66604 or by email to KID.publiccomment@ks.gov. All interested parties will be given a reasonable opportunity to present their views orally regarding the adoption of the proposed regulations during the public hearing. In order to provide all parties an opportunity to present their views, it may be necessary to request that each participant limit any oral presentation to five (5) minutes.

Any individual with a disability may request an accommodation in order to participate in the public hearing and may request the proposed regulations and economic impact statements in an accessible format. Requests for accommodation to participate in the hearing should be made at least five working days in advance of the hearing by contacting Bobbi Mariani at (785) 296-7802 or bobbi.mariani@ks.gov or the Kansas Relay Center at 1-800-766-3777. The west entrance to the Insurance Department is accessible. Handicapped parking is located on the west side of the Insurance Department.

Summaries of the proposed regulations and their economic impact follow. (Note: Statements indicating that a regulation is "not anticipated to have any economic impact" are intended to indicate that no economic impact on the Insurance Department, other state agencies, state employees, or the general public has been identified.)

Copies of the proposed regulations and the Economic Impact Statements for the proposed regulations can be viewed at the following website: <https://insurance.kansas.gov/legal-issues/>

K.A.R. 40-1-53 – Suitability in annuity transactions. This is a new regulation adopting the Kansas Insurance Department's Policy and Procedure Regarding Suitability in Annuity Transactions, dated January 29, 2022. The policy and procedure is based upon model language from the National Association of Insurance Commissioners' ("NAIC") model regulation #275. The regulation will replace existing K.A.R. 40-2-14a. This regulation will have no anticipated economic impact.

K.A.R. 40-2-31 – Minimum requirements for viaticating a policy. This is a new regulation that establishes minimum percentage requirements for payments to an insured when they sell a policy to a viatical settlement provider. The Insurance Department does not anticipate any significant

economic impact to this agency, other governmental agencies, or to the public as a result of the implementation of this regulation.

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40-1-53. Suitability in annuity transactions. The Kansas insurance department's policy and procedure regarding suitability in annuity transactions," including the appendices, dated January 10, 2023, is hereby adopted by reference. This regulation shall be effective on and after January 1, 2024. (Authorized by K.S.A. 40-103, K.S.A. 2022 Supp. 40-2404, and K.S.A. 40-4916; implementing K.S.A. 40-222, K.S.A. 40-2403, K.S.A. 2022 Supp. 40-2404, K.S.A. 40-2406, K.S.A. 40-2407, and K.S.A. 40-4916; effective P-_____.)

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K.A.R. 40-2-31. Minimum requirements for viaticating a policy. (a) As used in this regulation, each of the following terms shall have the meaning specified in this subsection:

- (1) "Insured" means the person covered under a policy being considered for viatication.
- (2) "Life expectancy" means the average number of months that the insured can be expected to live as determined by the viatical settlement provider, as defined in K.S.A. 40-5002 and amendments thereto, considering medical records and appropriate experiential data.
- (3) "Policy" has the meaning specified in K.S.A. 40-5002, and amendments thereto.
- (4) "Viaticating a policy" means selling a policy to a viatical settlement provider pursuant to a viatical settlement contract.
- (5) "Viator" has the meaning specified in K.S.A. 40-5002, and amendments thereto.

(b)(1) The viatical settlement provider shall apply the following schedule and pay the viator at least the minimum of one of the following, after deducting any outstanding loans against the policy:

(A) 80 percent of the remaining death benefit, if the insured has a life expectancy of less than six months;

(B) 70 percent of the remaining death benefit, if the insured has a life expectancy of at least six months but less than 12 months;

(C) 65 percent of the remaining death benefit, if the insured has a life expectancy of at least 12 months but less than 18 months; or

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(D) 60 percent of the remaining death benefit, if the insured has a life expectancy of 18 months but less than 25 months.

(2) If the insured has a life expectancy of 25 months or more, the viatical settlement provider shall pay the viator the greater of the cash surrender value or the accelerated death benefit of the policy, after deducting any outstanding loans.

(3) Unless the cash surrender value is paid, any percentage or amount specified in this subsection may be reduced by five percent for viaticating a policy written by an insurer rated less than the highest four categories by a rating agency. (Authorized by K.S.A. 40-103, K.S.A. 40-5015; implementing K.S.A. 40-5015; effective P-_____.)

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Kansas Administrative Regulations Economic Impact Statement (EIS)

Kansas Insurance Department
Agency

Justin McFarland
Agency Contact

785-338-0959
Contact Phone Number

40-1-53
K.A.R. Number(s)

☒ Permanent ☐ Temporary

Is/Are the proposed rule(s) and regulation(s) mandated by the federal government as a requirement for participating in or implementing a federally subsidized or assisted program?

☐ Yes If yes, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration and the Attorney General. Budget approval is not required; however, the Division of the Budget will require submission of a copy of the EIS at the end of the review process.

☒ No If no, do the total annual implementation and compliance costs for the proposed rule(s) and regulation(s), calculated from the effective date of the rule(s) and regulation(s), exceed \$1.0 million over any two-year period through June 30, 2024, or exceed \$3.0 million over any two-year period on or after July 1, 2024 (as calculated in Section III, F)?

☐ Yes If yes, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration, the Attorney General, AND the Division of the Budget. The regulation(s) and the EIS will require Budget approval.

☒ No If no, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration and the Attorney General. Budget approval is not required; however, the Division of the Budget will require submission of a copy of the EIS at the end of the review process.

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Section I

Brief description of the proposed rule(s) and regulation(s).

K.A.R. 40-1-53 adopts the Kansas Insurance Department's Policy and Procedure Regarding Suitability in Annuity Transactions, which, in turn, adopts the National Association of Insurance Commissioners' ("NAIC") Annuity Suitability Model Regulation

Section II

Statement by the agency if the rule(s) and regulation(s) exceed the requirements of applicable federal law, and a statement if the approach chosen to address the policy issue(s) is different from that utilized by agencies of contiguous states or the federal government. *(If the approach is different or exceeds federal law, then include a statement of why the proposed Kansas rule and regulation is different.)*

Click here to enter agency response.

Section III

Agency analysis specifically addressing the following:

- A. The extent to which the rule(s) and regulation(s) will enhance or restrict business activities and growth;

The proposed regulation will enhance business activity by providing clear standards for sales and recommendations of annuities.

- B. The economic effect, including a detailed quantification of implementation and compliance costs, on the specific businesses, sectors, public utility ratepayers, individuals, and local governments that would be affected by the proposed rule(s) and regulation(s) and on the state economy as a whole;

There should be no economic effect due to implementation or compliance costs. The NAIC model regulation has been adopted either through legislation or regulation in a majority of states.

- C. Businesses that would be directly affected by the proposed rule(s) and regulation(s);

Insurance companies and agencies.

- D. Benefits of the proposed rule(s) and regulation(s) compared to the costs;

The suitability standards will be harmonized with a majority of states.
Adoption will avoid federal preemption pursuant to the Harkin amendment.

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- E. Measures taken by the agency to minimize the cost and impact of the proposed rule(s) and regulation(s) on business and economic development within the State of Kansas, local government, and individuals;

The Department consulted with key stakeholders, including the largest annuity provider in Kansas, as well as a national association of life insurers. The entities were very supportive of the regulation, but asked for at least a six-month lead-in to effectiveness. Thus, the regulation takes effect January 2024.

- F. An estimate of the total annual implementation and compliance costs that are reasonably expected to be incurred by or passed along to businesses, local governments, or members of the public.

Note: Do not account for any actual or estimated cost savings that may be realized.

Costs to Affected Businesses – \$N/A

Costs to Local Governmental Units – \$N/A

Costs to Members of the Public – \$N/A

Total Annual Costs – \$N/A

(sum of above amounts)

Give a detailed statement of the data and methodology used in estimating the above cost estimate.

[Click here to enter agency response.](#)

- ☐ Yes If the total implementation and compliance costs exceed \$1.0 million over any two-year period through June 30, 2024, or exceed \$3.0 million over any two-year period on or after July 1, 2024, and prior to the submission or resubmission of the proposed rule(s) and regulation(s), did the agency hold a public hearing to find that the estimated costs have been accurately determined and are necessary for achieving legislative intent? If applicable, document when the public hearing was held, those in attendance, and any pertinent information from the hearing.
- ☒ No
- ☐ Not Applicable

If applicable, click here to enter public hearing information.

Provide an estimate to any changes in aggregate state revenues and expenditures for the implementation of the proposed rule(s) and regulation(s), for both the current fiscal year and next fiscal year.

None

Provide an estimate of any immediate or long-range economic impact of the proposed rule(s) and regulation(s) on any individual(s), small employers, and the general public. If no dollar estimate can be given for any individual(s), small employers, and the general public, give specific reasons why no estimate is possible.

None

- G. If the proposed rule(s) and regulation(s) increases or decreases revenues of cities, counties or school districts, or imposes functions or responsibilities on cities, counties or school districts that will

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Revised 05/03/2022

increase expenditures or fiscal liability, describe how the state agency consulted with the League of Kansas Municipalities, Kansas Association of Counties, and/or the Kansas Association of School Boards.

None.

- H. Describe how the agency consulted and solicited information from businesses, associations, local governments, state agencies, or institutions and members of the public that may be affected by the proposed rule(s) and regulation(s).

[Click here to enter agency response.](#)

Section IV

Does the Economic Impact Statement involve any environmental rule(s) and regulation(s)?

☐ Yes If yes, complete the remainder of Section IV.

☒ No If no, skip the remainder of Section IV.

- A. Describe the capital and annual costs of compliance with the proposed rule(s) and regulation(s), and the persons who would bear the costs.

[Click here to enter agency response.](#)

- B. Describe the initial and annual costs of implementing and enforcing the proposed rule(s) and regulation(s), including the estimated amount of paperwork, and the state agencies, other governmental agencies, or other persons who would bear the costs.

[Click here to enter agency response.](#)

- C. Describe the costs that would likely accrue if the proposed rule(s) and regulation(s) are not adopted, as well as the persons who would bear the costs and would be affected by the failure to adopt the rule(s) and regulation(s).

[Click here to enter agency response.](#)

- D. Provide a detailed statement of the data and methodology used in estimating the costs used.

[Click here to enter agency response.](#)

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Kansas Administrative Regulations Economic Impact Statement (EIS)

Kansas Insurance Department

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Justin McFarland

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785-338-0959

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K.A.R. Number(s)

☒ Permanent ☐ Temporary

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- ☐ Yes If yes, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration and the Attorney General. Budget approval is not required; however, the Division of the Budget will require submission of a copy of the EIS at the end of the review process.
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- ☐ Yes If yes, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration, the Attorney General, AND the Division of the Budget. The regulation(s) and the EIS will require Budget approval.
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Section I

Brief description of the proposed rule(s) and regulation(s).

K.A.R. 40-2-31 establishes minimum requirements for viaticating a policy.

Section II

Statement by the agency if the rule(s) and regulation(s) exceed the requirements of applicable federal law, and a statement if the approach chosen to address the policy issue(s) is different from that utilized by agencies of contiguous states or the federal government. *(If the approach is different or exceeds federal law, then include a statement of why the proposed Kansas rule and regulation is different.)*

[Click here to enter agency response.](#)

Section III

Agency analysis specifically addressing the following:

- A. The extent to which the rule(s) and regulation(s) will enhance or restrict business activities and growth;

The proposed regulation sets minimum payments to viators, which will make the transaction more appealing to consumers, while offering them protections.

- B. The economic effect, including a detailed quantification of implementation and compliance costs, on the specific businesses, sectors, public utility ratepayers, individuals, and local governments that would be affected by the proposed rule(s) and regulation(s) and on the state economy as a whole;

There should be no economic effect due to implementation or compliance costs.

- C. Businesses that would be directly affected by the proposed rule(s) and regulation(s);

Viatical settlement providers.

- D. Benefits of the proposed rule(s) and regulation(s) compared to the costs;

Consumers will receive reasonable value for viaticating their policy. The minimum standards may make the transaction more appealing to consumers.

- E. Measures taken by the agency to minimize the cost and impact of the proposed rule(s) and regulation(s) on business and economic development within the State of Kansas, local government, and individuals;

N/A

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- F. An estimate of the total annual implementation and compliance costs that are reasonably expected to be incurred by or passed along to businesses, local governments, or members of the public.
Note: Do not account for any actual or estimated cost savings that may be realized.

Costs to Affected Businesses – \$N/A

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Costs to Members of the Public – \$N/A

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(sum of above amounts)

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- ☒ No
- ☐ Not Applicable

If applicable, click here to enter public hearing information.

Provide an estimate to any changes in aggregate state revenues and expenditures for the implementation of the proposed rule(s) and regulation(s), for both the current fiscal year and next fiscal year.

None

Provide an estimate of any immediate or long-range economic impact of the proposed rule(s) and regulation(s) on any individual(s), small employers, and the general public. If no dollar estimate can be given for any individual(s), small employers, and the general public, give specific reasons why no estimate is possible.

None

- G. If the proposed rule(s) and regulation(s) increases or decreases revenues of cities, counties or school districts, or imposes functions or responsibilities on cities, counties or school districts that will increase expenditures or fiscal liability, describe how the state agency consulted with the League of Kansas Municipalities, Kansas Association of Counties, and/or the Kansas Association of School Boards.

None.

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- H. Describe how the agency consulted and solicited information from businesses, associations, local governments, state agencies, or institutions and members of the public that may be affected by the proposed rule(s) and regulation(s).

[Click here to enter agency response.](#)

Section IV

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- ☐ Yes If yes, complete the remainder of Section IV.
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- A. Describe the capital and annual costs of compliance with the proposed rule(s) and regulation(s), and the persons who would bear the costs.

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- B. Describe the initial and annual costs of implementing and enforcing the proposed rule(s) and regulation(s), including the estimated amount of paperwork, and the state agencies, other governmental agencies, or other persons who would bear the costs.

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- C. Describe the costs that would likely accrue if the proposed rule(s) and regulation(s) are not adopted, as well as the persons who would bear the costs and would be affected by the failure to adopt the rule(s) and regulation(s).

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