

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
OFFICE OF SOLVENCY REGULATION

Loss Reserve Opinions

Adopted Repeal and New Rules: N.J.A.C. 11:1-21

Proposed: March 5, 2007 at 39 N.J.R. 752(a)

Adopted: July 10, 2007 by Steven M. Goldman, Commissioner, Department of Banking and Insurance

Filed: July 11, 2007 as R. 2007 d. 232, **without change**

Authority: N.J.S.A. 17:1-8.1, 17:1-15e, 17:23-1 and 17:23-20 et seq.

Effective Date: August 6, 2007

Expiration Date: July 30, 2011

Summary of Public Comment and Agency Response:

The Department of Banking and Insurance (Department) timely received one written comment from the Reinsurance Association of America.

COMMENT: The commenter generally noted that, while the proposed new rules incorporate the majority of the Property and Casualty Actuarial Opinion Model Law adopted by the National Association of Insurance Commissioners (NAIC), they omit language in Sections 3(B) and (C) of the NAIC Model regarding confidentiality, and Section 2(D) of the NAIC Model regarding the liability of appointed actuaries.

First, the commenter noted that proposed N.J.A.C. 11:1-21.6(b) omits the Model language providing that the actuarial report, work papers, actuarial opinion summary, and other materials provided in connection with these documents “shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.” The rule

states that such documents shall be confidential pursuant to N.J.S.A. 17:23-24f, which provides for confidentiality and protection from subpoena, but does not provide that documents shall not be subject to discovery or admissible in evidence in any private civil action, as provided in the Model. The commenter suggested that the rule be revised to read as follows: "... shall be confidential pursuant to N.J.S.A. 17:23-24f, **shall be privileged, shall not be subject to subpoena, shall not be subject to discovery or admissible in evidence in any private civil action,** and shall not be considered a public record for purposes of the Open Public Records Act, N.J.S.A. 47:1A-1 et seq." (suggested additional language in boldface.)

Secondly, this rule omits Section 3(C) of the Model, which states that "neither the Commissioner nor any person who received documents, materials or other information while acting under the authority of the Commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials or information subject to Subsection B." The commenter suggested that a new subsection be added to N.J.A.C. 11:1-21.6 to include this language.

Finally, the commenter noted that the rule omits Section 2(D) the Model, which provides that "the appointed actuary shall not be liable for damages for any person (other than the insurance company and the Commissioner) for any act, error, omission, decision or conduct with respect to the actuary's opinion, except in cases of fraud or willful misconduct on the part of the appointed actuary." As the rule in the NAIC Annual Statement instructions place additional requirements on an appointed actuary, the commenter recommended that this language be adopted in full as envisioned by the NAIC. The commenter thus suggested that N.J.A.C. 11:1-21.5 be revised to include a new subsection to incorporate this language.

RESPONSE: Upon review, the Department has determined not to make these changes. The Department recognizes that the provisions of the NAIC Model cited by the commenter were not incorporated in the proposed new rules. The Department does not have the authority to, by rule, establish an evidentiary privilege, provide that documents shall not be subject to discovery or admissible in evidence in a judicial proceeding, limit who shall be permitted or required to testify in a civil action concerning documents required by the rules, nor limit the liability of appointed actuaries for damages. Such changes would have to be instituted by statute. The purpose of the proposed amendments is to ensure that the Department receives actuarial opinions related to property and casualty insurers that satisfy current national standards as reflected in the current NAIC Model. The Department has provided for the confidentiality of the information provided consistent with existing law, N.J.S.A. 17:23-24f and the Open Public Records Act, N.J.S.A. 47:1A-1 et seq. The commenter may wish to seek statutory changes to addresses its issues.

Federal Standards Statement

A Federal standards analysis is not required because the adopted repeal and new rules are not subject to any Federal requirements or standards.

Full text of the adopted new rules follows:

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