

INSURANCE  
DEPARTMENT OF BANKING AND INSURANCE  
LIFE AND HEALTH DIVISION

Minimum Standards for Medicare Supplement Coverage  
Loss Ratio Standards, Annual Filing of Premium Rates and Refund on Credit Calculations;  
Filing Requirements for Policies, Certificates and Premium Rates

Proposed Amendments: N.J.A.C. 11:4-23.11 and 23.13

Authorized By: Steven M. Goldman, Commissioner, Department of Banking and Insurance

Authority: N.J.S.A. 17:1-8.1, 17:1-15e, 17:35C-5c and 52:27EE-1 et seq.

Calendar Reference: See Summary below for explanation of exception to the calendar requirement.

Proposal Number: PRN 2007-275

Submit comments by November 3, 2007 to:

Robert J. Melillo, Chief  
Office of Legislative and Regulatory Affairs  
Department of Banking and Insurance  
20 West State Street  
P.O. Box 325  
Trenton, NJ 08625-0325  
Fax: (609) 292-0896  
E-mail: [legsregs@dobi.state.nj.us](mailto:legsregs@dobi.state.nj.us)

The agency proposal follows:

Summary

The Department of Banking and Insurance (Department) is proposing amendments to N.J.A.C. 11:4-23 for minimum standards for Medicare supplement coverage, in order to implement the requirements of the Public Advocate Restoration Act of 2005, P.L. 2005, c. 155 (N.J.S.A. 52:27EE-1 et seq.), effective January 17, 2006, as it relates to the establishment of the Division of Rate Counsel in the Department of Public Advocate, and Medicare supplement rate

filings. The Department has already addressed personal lines and private passenger automobile rate filings in separate proposals (see 39 N.J.R. 342(a) and 344(a)).

N.J.S.A. 52:27EE-1 et seq. restored the Department of the Public Advocate as a principal department in the Executive Branch of State Government, and provides for the Division of Rate Counsel. Pursuant to N.J.S.A. 52:27EE-48b, the Division of Rate Counsel may represent and protect the public interest in significant proceedings that pertain solely to prior approval rate increases for personal lines property casualty coverage or Medicare supplement coverages. Pursuant to N.J.S.A. 52:27EE-48b, the Director of the Division of Rate Counsel shall consider the following facts in determining whether a proceeding is significant: (1) the overall dollar impact of the requested increase, considering the filer's market share and the magnitude of the requested rate change; (2) whether the increase, if granted, will increase the filer's rates significantly above market norms; (3) whether the filer is advancing a significantly different alternate ratemaking methodology to the standard methodology; and (4) whether the insurer is experiencing financial difficulties at its present rate level, as evidenced by the filing of rehabilitation proceedings, recent downgrading by insurance rating services, or significant losses reported on the filer's public financial statement.

N.J.S.A. 52:27EE-48 limits the Division of Rate Counsel's jurisdiction or authority with respect to insurance. The Division of Rate Counsel has no jurisdiction or authority to participate or intervene in: 1) expedited prior approval rate filings made by an insurer or affiliated group of insurers pursuant to N.J.S.A. 17:29A-46.6 or N.J.S.A. 17:36-5.35; 2) prior approval rate filings seeking an increase of seven percent or less; or 3) rule or form filings for any other form of insurance.

The Department is amending N.J.A.C. 11:4-23.11(d) to require that Medicare supplement rate filings that exceed seven percent shall concurrently be submitted to the Public Advocate, Division of Rate Counsel pursuant to the procedures specified in amended N.J.A.C. 11:4-23.13(c), and that the rate filings shall not be implemented until they have been submitted to and filed by the Commissioner.

The Department is also amending N.J.A.C. 11:4-23.13 to provide procedures for the Public Advocate, Division of Rate Counsel's intervention in Medicare supplement rate filings. N.J.A.C. 11:4-23.13(c) is amended to clarify that no carrier shall use or revise premium rates for Medicare supplement policies or certificates unless the rates, rating schedule and supporting documents have been submitted to and filed by the Commissioner in accordance with all applicable rules, namely N.J.A.C. 11:4-23.13 as amended and N.J.A.C. 11:4-23.11. Moreover, N.J.A.C. 11:4-23.13(c) is amended to state that the Public Advocate, Division of Rate Counsel, may only intervene in a Medicare supplement rate filing that seeks an increase that exceeds seven percent and which is filed in accordance with N.J.A.C. 11:4-23.13. As detailed below, the Department is also amending N.J.A.C. 11:4-23.13(c) to include four new paragraphs to provide the procedures for submission and review of rate increases subject to intervention by the Public Advocate, Division of Rate Counsel.

N.J.A.C. 11:4-23.13(c)1 provides any revised rate submissions with increases exceeding seven percent shall be concurrently filed with the Public Advocate, Division of Rate Counsel at the address provided.

N.J.A.C. 11:4-23.13(c)2 provides that the Public Advocate, Division of Rate Counsel may intervene in Medicare supplement rate filing seeking increases greater than seven percent,

by filing a Notice of Intervention with the Commissioner and the filer within 30 days of its receipt of the rate submission. Additionally, N.J.A.C. 11:4-23.13(c)2 further reiterates that, if the Public Advocate, Division of Rate Counsel, decides to intervene, the Commissioner shall automatically have an additional 30 days from the date of receipt of the Public Advocate, Division of Rate Counsel's Notice of Invention to disapprove the Medicare supplement rate filing. This automatic 30-day extension provides additional time to allow for receipt by the Commissioner of the Division of Rate Counsel's report and recommendations and for consideration of the same during the Commissioner's review of the requested rate revision. Lastly, N.J.A.C. 11:4-23.13(c)2 also provides that the Commissioner may extend the time for review an additional 30 days as set forth in N.J.A.C. 11:4-23.13(a)3.

N.J.A.C. 11:4-23.13(c)3 provides that the Public Advocate, Division of Rate Counsel shall provide the Commissioner with its report and recommendations no later than 30 days after its receipt of the rate increase submission.

N.J.A.C. 11:4-23.13(c)4 permits the Public Advocate, Division of Rate Counsel, to intervene in a hearing held pursuant to N.J.A.C. 11:4-23.11(f).

As the Department provided a 60-day comment period on this notice of proposal, this notice is exempted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

#### Social Impact

The proposed amendments will affect the Department, the Public Advocate, Division of Rate Counsel, and insurers that file Medicare supplement rate filings. The proposed

amendments provide for the Public Advocate, Division of Rate Counsel's intervention in an already established rate filing review process utilized by the Department, which currently only includes insurers. The Department believes that the proposed amendments will have a positive impact on all parties in that they provide an orderly process for review by the Department of medicare supplement rate filings in which the Public Advocate, Division of Rate Counsel may intervene. The proposed amendments also clarify the manner in which parties may participate in the process and provide reasonable notice requirements and timeframes for the taking of specific actions. The Public Advocate, Division of Rate Counsel's inclusion in this process will provide an additional layer of scrutiny on requests for Medicare supplement rate increases that exceed seven percent, which will better ensure that only genuinely warranted rate increases in excess of seven percent will be permitted.

#### Economic Impact

These amendments reflect the requirements of N.J.S.A. 52:27EE-46 et seq. which established the Division of Rate Counsel in the Department of the Public Advocate. Although the proposed amendments include the Public Advocate, Division of Rate Counsel in the Department's existing Medicare supplement rate review process, the amendments are essentially procedural in nature and will not have a significant economic impact on the Department or insurers. These amendments may cause insurance companies to incur minimal costs associated with providing copies of certain filings to the Public Advocate, Division of Rate Counsel. It is also not anticipated that policyholders will be significantly impacted economically as it has been the Department's historic practice to closely scrutinize Medicare supplement rate increase

requests to ensure that unwarranted increases are not approved. The additional level of review established by the amended rules will, however, provide an even higher degree of protection against potential excessive rate increase requests.

#### Federal Standards Statement

A Federal standards analysis is not required because the proposed amendments are not subject to any Federal requirements or standards.

#### Jobs Impact

The Department does not anticipate the creation of any jobs as a result of the proposed amendments. The Department invites commenters to submit any data or studies regarding the jobs impact of this proposal together with any written comments on other aspects of this proposal.

#### Agriculture Industry Impact

The proposed amendments will not have any impact on the agriculture industry in New Jersey.

#### Regulatory Flexibility Analysis

The proposed amendments apply to “small businesses” as that term is defined on the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These “small businesses” would include

insurance companies authorized to write Medicare supplement insurance which file requests for certain rate increases.

The proposed amendments implement the requirements imposed pursuant to N.J.S.A. 52:27EE-46 et seq., which established the Division of Rate Counsel in the Department of the Public Advocate and outlined its authority and jurisdiction for intervening in Medicare supplement rate filings. The Department does not believe that these amendments will impose any undue burden on small business because they implement the notification requirements imposed by N.J.S.A. 52:27EE-46 et seq., and establish reasonable timeframes for complying with those requirements. These proposed amendments will not require small business to use any professional services beyond those currently utilized in order to comply with the Department's current internal review process. The proposed amendments do not provide for any differentiation in compliance requirements based on an insurer's size because the required notifications and specified timeframes are designed to ensure a decision by the Department in accordance with the requirements of N.J.A.C. 11:4-23.

#### Smart Growth Impact

The proposed amendments will not have an impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

**Full text** of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

11:4-23.11 Loss ratio standards, annual filing of premium rates and refund or credit calculation

(a) – (c) (No change.)

(d) Carriers shall submit revised rates for filing by the Commissioner **in accordance with N.J.A.C. 11:4-23.1. For any submission of revised rates which implement a rate increase exceeding seven percent, a concurrent submission shall be made with the Department of the Public Advocate, Division of Rate Counsel, pursuant to the procedures specified in N.J.A.C. 11:4-23.13(c).** No carrier shall implement any rate revision until such rate revision has been **submitted to and** filed **by the Commissioner.** The same supporting documentation required by (c) above shall be submitted with the revised rates. Paid or written premiums and earned premiums as described by (c)2 above, and present value of future paid or written premiums and the sum of future paid or written premiums as described in (c)4 above shall be submitted both with, and without, the requested rate revision. The supporting documentation shall use reasonable assumptions. The supporting documentation shall demonstrate that the anticipated loss ratio over the entire future period for which the revised rates are computed to provide coverage and the aggregate loss ratio are at least as great as the originally anticipated loss ratio. The demonstration shall provide the required information and assumptions for each policy form, and shall provide them on a New Jersey basis and, if required by (g) below, shall also provide them on a national basis. Premiums on a national basis shall not be adjusted to reflect the difference, if any, between New Jersey rate levels and national rate levels.

1. - 6. (No change.)

(e) - (g) (No change.)



11:4-23.13 Filing requirements for policies, certificates and premium rates, **including procedures for review and intervention by the Public Advocate, Division of Rate Counsel**

(a) - (b) (No change.)

(c) No carrier shall use or revise premium rates for a Medicare supplement policy or certificate unless the rates, rating schedule and supporting documentation have been submitted to and filed by the Commissioner in accordance with **the provisions of this subsection**, (a) and (b) above, **and N.J.A.C. 11:4-23.11**. Pursuant to N.J.S.A. 17:29A-53, and in accordance with N.J.A.C. 11:1-45, notices of requests for prior approval rate increases shall be given to individual policyholders, and to group policyholders so as to enable them to notify certificateholders of the filing of the rate increase request. **As set forth in N.J.S.A. 52:27EE-48, the Public Advocate, Division of Rate Counsel may intervene in Medicare supplement rate filings which seek a rate increase in excess of seven percent. Intervention by the Public Advocate, Division of Rate Counsel shall be in accordance with the procedures set forth below.**

**1. Pursuant to N.J.S.A. 52:27EE-48, any revised rate submissions which implement a rate increase exceeding seven percent shall be concurrently submitted to the Department of the Public Advocate, Division of Rate Counsel, at the following address:**

**Department of the Public Advocate**

**Division of Rate Counsel**

**31 Clinton Street**

**11th Floor**

**P.O. Box 46005**

**Newark, NJ 07101**

**2. The Public Advocate, Division of Rate Counsel, may intervene in Medicare supplement rate filings seeking increases of more than seven percent, by filing a**

Notice of Intervention with the Commissioner and the filer no later than 30 days after its receipt of the rate submission. If a Notice of Intervention is filed by the Public Advocate, Division of Rate Counsel, the Commissioner shall automatically receive an additional 30 days to review the rate submission, thus creating a total 60-day period for review of rate increases where the Public Advocate has intervened. The Public Advocate's Notice of Intervention shall constitute written notice of this automatic 30-day extension to the filer. The Commissioner may extend the review period for an additional 30 days upon written notice to the filer and the Public Advocate before expiration of the 60-day automatic extension period, pursuant to (a)3 below.

3. The Public Advocate, Division of Rate Counsel, shall provide the Commissioner and the filer with its report and recommendations no later than 30 days after its receipt of the rate increase submission.

4. After the filing of its Notice to Intervention, the Public Advocate, Division of Rate Counsel, shall have the authority to participate as an intervenor in any hearings conducted by the Commissioner pursuant to N.J.A.C. 11:4-23.11(f).

(d) - (g) (No change.)