

**INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF INSURANCE**

Funeral Insurance Policies; The 2001 Commissioner's Standard Ordinary (CSO) Mortality Table for Use in Determining Minimum Reserve Liabilities and Nonforfeiture Benefits; Life Insurance Illustrations

Proposed New Rule: N.J.A.C. 11:4-27.7

Proposed Amendments: N.J.A.C. 11:4-25.2, 25.5, 52.3 and 52.9

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

Authority: N.J.S.A. 17:1-8.1, 17:1-15e, and 17B:25-18.2e.

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

Proposal Number: PRN 2007-276

Submit comments by November 3, 2007 to:

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The agency proposal follows:

Summary

The Life and Health Insurance and Health Maintenance Organization Form Approval Reform Act (the Act) (P.L. 1995, c. 73; codified as N.J.S.A. 17B:25-18 et seq.), signed into law on April 10, 1995, requires all life and health insurance policies and contract forms, all annuities and all variable contracts subject to Title 17B of the New Jersey statutes to be filed with and approved by the Department of Banking and Insurance (Department) Commissioner. The

Department promulgated various rules implementing this legislation, which established form approval requirements for life and health insurance forms, annuity forms and variable contract forms. The Department has recently determined that some of these rules containing form approval requirements are in need of certain “housekeeping” changes.

N.J.A.C. 11:4-25 sets forth the Department’s standards for the approval of all life insurance and annuity forms issued in the pre-need funeral market. The Department is proposing to amend the definition of “premium fund interest rate” at N.J.A.C. 11:4-25.2 and the loss ratio standard at N.J.A.C. 11:4-25.5(c) to reflect recent legislative changes made to N.J.S.A. 17B:25-21 by the Indexed Standard Nonforfeiture Law for Individual Deferred Annuities (P.L. 2005, c. 194, effective August 18, 2005). The Department is also proposing to amend the definition of “Premium fund mortality rate” appearing at N.J.A.C. 11:4-25.2 to include a reference to the 2001 Commissioner’s Standard Ordinary (CSO) Tables that became effective following the Department’s adoption of these rules.

N.J.A.C. 11:4-27, which sets forth requirements for the use of the 2001 CSO Mortality Table, permits use of the 2001 CSO Mortality Table for determining reserves and nonforfeiture benefits. Subchapter 24 authorizes the use of certain mortality tables in determining minimum nonforfeiture standards and minimum valuation standards. Subchapter 27 is being amended to include a new section at N.J.A.C. 11:4-27.7 that addresses juvenile issues when insurers use the smoker and nonsmoker versions of the 2001 CSO Mortality Tables. These proposed requirements are the same as those currently included at N.J.A.C. 11:4-24.4 addressing juvenile insureds when the insurer is using the smoker and nonsmoker versions of the 1980 CSO mortality tables.

Current N.J.A.C. 11:4-27.7 is being recodified as N.J.A.C. 11:4-27.8.

N.J.A.C. 11:4-52 sets forth requirements regarding illustrations used with the marketing of individual life insurance policies. The subchapter is being amended to eliminate the requirement to submit certain New Jersey specific certifications. Currently, the rules require the submission of a certification in the initial form filing, along with duplicate annual certifications submitted to two separate divisions within the Department (the Life and Health Division and the Division of Enforcement and Consumer Protection). The Department is proposing to delete N.J.A.C. 11:4-52.3(a)1 as outdated. N.J.A.C. 11:4-52.3(a)2 requires that the initial form filing indicate whether the form is to be illustrated, accompanied by a certification from a responsible officer of the company. The Department proposes to recodify paragraphs (a)2 as (a)1 and eliminate the certification requirement. The Department has also determined that the annual submission of one certification submitted to the Department's Division of Enforcement and Consumer Protection is sufficient for monitoring the use of the forms and illustrations via market conduct analysis. Accordingly, N.J.A.C. 11:4-52.9(g) is being amended to eliminate the requirement that an annual certification be submitted to the Department's Life and Health Division.

A 60-day comment period is provided for this notice of proposal, and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the proposal is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2, governing rulemaking calendars.

Social Impact

These proposed amendments and new rule should have a favorable impact on insurers, policyholders and the Department. Use of consistent criteria among the States allows insurers to develop forms and administrative systems that are usable in numerous venues, thereby benefiting

consumers. The removal of New Jersey specific review criteria will improve the efficiency of the form filing process, resulting in insurers being able to market their products more readily. The Department will not be required to use its limited resources conducting unnecessary reviews of redundant certifications, thus enabling it to more effectively regulate other aspects of the insurance business. The updates for the new mortality tables and Indexed Standard Nonforfeiture Law will allow product development.

Economic Impact

These proposed amendments and new rule should have a favorable economic impact on insurers, policyholders and the Department. Insurer costs related to filing the forms with the Department will be reduced, as will the Department's costs to review such forms. Speedier entry of such forms into the marketplace may be economically advantageous to policyholders as well as insurers.

The amendments to N.J.A.C. 11:4-27 should not negatively affect insurers since the standards have been in place for prior mortality tables and are already being applied to the 2001 CSO pursuant to the Department's Bulletin 04-26 issued in December 2004. Those standards apply to the use of smoker and nonsmoker mortality tables in connection with policy form filings in the event an insurer chooses to file forms that provide for differentiation between smoker and nonsmoker juvenile insureds. Insurers who have elected to do so are required to bear the expenses involved with meeting the standards set forth in the rule -- notifying affected insureds of their option to elect nonsmoker status at least 30 days prior to the effective date of the change; preparing and filing an actuarial memorandum that describes the basis for extrapolation from accepted tables; and accurately describing the mortality tables used in the policy. Insurers may

be economically disadvantaged if a 15-year-old under a juvenile issue policy is a tobacco user, but under these rules cannot be so classified until age 18. In that case, insurers would bear the risk of an improper classification for an additional three years. However, insurers are permitted to apply the smoking default classification if the insured fails to respond to the election notice.

Federal Standards Statement

The proposed amendments and new rule do not contain standards or requirements that are the subject of any Federal standards or requirements.

Jobs Impact

The Department does not anticipate that these proposed amendments and new rule will result in the generation or loss of jobs.

Agriculture Industry Impact

The proposed amendments have no impact on the agriculture industry.

Regulatory Flexibility Analysis

The Department believes that these proposed amendments and new rule will apply to few, if any, “small businesses” as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 2:14B-16 et seq. because the affected insurers do not employ fewer than 100 fulltime employees. However, the proposed amendments and new rule would impose additional reporting, recordkeeping or other compliance requirements on insurers choosing to use the composite and smoker and nonsmoker mortality tables for juvenile insureds. Those insurers would have to bear

the costs set forth in the Economic Impact statement above, and may have to employ actuarial consultants to make the filing required if such resources are not available in-house. The new rule may result in amendatory or new submissions by insurers of their policy forms relative to juvenile insureds. Since the rule requires no annual submissions, extensive reporting or recordkeeping, no continuing expense to insurers is foreseen. While some of the requirements of the rule may impose additional costs on insurers as described in the Economic Impact statement above, there are no different requirements based on insurer size. The Department does not believe that any such differentiation would be appropriate or feasible since the purpose of this rule is to codify existing standards applicable to all insurers for the use of insurance mortality tables with respect to juvenile insureds. Therefore, no differentiation in compliance requirements is appropriate based on business size.

Smart Growth Impact

The proposed amendments and new rule have no impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

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

SUBCHAPTER 25. FUNERAL INSURANCE POLICIES

11:4-25.2 Definitions

The following words and terms, where used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

“Premium fund interest rate” means the interest rate specified at N.J.S.A. 17B:25-20 **or 21, as applicable**, for calculating the minimum nonforfeiture values for deferred annuities.

“Premium fund mortality rate” means the mortality rate used in calculating the minimum cash values required by law. This mortality rate is based on the 1980 CSO table **or 2001 CSO Table, as applicable** (with or without smoker differentiation, as applicable).

11:4-25.5 Loss ratio standard

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

(c) A funeral insurance policy designated as an annuity contract shall provide a death and surrender benefit. The benefit payable on death or surrender shall not be less than the amount required by the standard nonforfeiture law for individual deferred annuities at N.J.S.A. 17B:25-20 **or 21, as applicable**.

SUBCHAPTER 21. THE 2001 COMMISSIONER’S STANDARD ORDINARY (CSO) MORTALITY TABLE FOR USE IN DETERMINING MINIMUM RESERVE LIABILITIES AND NONFORFEITURE BENEFITS

11:4-27.7 Juvenile insureds

(a) Because the smoker and nonsmoker mortality tables do not extend below age 15, the Department shall permit the following uses of the composite and smoker and nonsmoker mortality tables for juvenile insureds, as hereafter provided:

1. Insurers may use the composite mortality table for juvenile issues and continue to use such table for all future attained ages; or

2. Insurers may use the composite mortality table for juvenile issues and change to use of a smoker and nonsmoker mortality table when the insured's attained age is a specified age between 15 and 23.

i. When the insured reaches the attained age, the insurer shall notify the insured in writing at least 30 days prior to the effective date of the change in mortality tables of his or her option to elect smoker or nonsmoker status.

ii. Each insurer shall adopt a uniform default classification of either smoker or nonsmoker to which the insurer shall assign an insured who fails to respond to the notice described in (a)2i above.

iii. An insurer may only apply a default classification of smoker pursuant to ii above to an insured whose attained age is at least 18.

iv. The insurer shall identify such adopted uniform default classification in the notice described in (a)2i above and advise the insured therein that the insured shall be assigned the uniform default classification if the insured fails to respond to the notice.

v. Alternatively, at the insurer's option, the insurer may reclassify the insured as a nonsmoker upon reaching the attained age.

3. Insurers may use a reasonable extrapolation of the smoker and nonsmoker mortality tables for ages 15 and below. The submission shall include an actuarial memorandum which describes the basis for the extrapolation.

(b) Insurers may classify a juvenile as a smoker only if, at the time of the application, the juvenile responds to a smoking question in the affirmative.

1. Insurers may contest the response to the question concerning smoking status only if the contract specifically reserves such right, there is an entire contract provision in the policy which states that the application for the change in smoking status is attached to and made a part of the policy, and the submission describes the settlement payable upon a successful contest. A contest shall be limited to the difference between the smoker and nonsmoker rates for the amount of coverage purchased.

2. If the insurer intends to waive the right to contest, the submission should include a statement to that effect from a company officer.

(c) The policy must accurately describe all mortality tables used as composite, smoker and nonsmoker, or extrapolation for all ages.

(d) The policy form shall accurately describe the process set forth at (a)2 above relating to insurer notification, insured election of smoker or nonsmoker status, the default classification resulting from failure to elect, and any automatic reclassification to nonsmoker.

(e) In fixed premium contracts, a change in smoker/nonsmoker classification pursuant to (a)2 above shall affect premium rates only and not the guaranteed nonforfeiture benefits. A fixed premium contract which provides for changes in smoker/nonsmoker classification pursuant to (a)2 above shall specify the guaranteed maximum smoker and nonsmoker premium.

11:4-[27.7]**27.8** (No change in text.)

SUBCHAPTER 52. LIFE INSURANCE ILLUSTRATIONS

11:4-52.3 Policies to be illustrated

(a) Each insurer marketing policies to which these rules are applicable shall notify the Commissioner whether a policy form is to be marketed with or without an illustration.

[1. For all policy forms being actively marketed on July 6, 1998, the insurer shall identify in writing by October 4, 1998 those forms and whether or not an illustration will be used with them. Such notice shall be sent to the Department at the address appearing at N.J.A.C.

11:4-52.8(g).]

[2] 1. For policy forms filed after July 6, 1998, the identification shall be made at the time of filing [and shall be accompanied by a certification for that policy form that satisfies the requirements of N.J.A.C 11:4-52.9(f)]. Any previous identification may be changed by notice to the Commissioner.

11:4-52.9 Annual certifications

(a) - (f) (No change.)

(g) The annual certifications shall be provided to the Commissioner each year by a date determined by the insurer. Subsequent annual certifications shall be provided by the anniversary date of the initial annual certification, or a request to change the date of certification with a full explanation of the basis of the request shall be filed by that date. The original certification[s] shall be mailed to the following address:

[New Jersey Department of Banking and Insurance
Life and Health Division
Life Bureau Actuary
PO Box 470
Trenton, New Jersey 08625-0470

One copy of the certifications shall be mailed to the following address:]

New Jersey Department of Banking and Insurance
Division of Enforcement and Consumer Protection
P.O. Box 329
Trenton, New Jersey 08625-0329

(h) If an insurer changes the illustration actuary responsible for all or a portion of the company's policy forms, the insurer shall notify the Commissioner [of the fact] within 10 days and disclose the reason for the change.

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