

INSURANCE

DEPARTMENT OF BANKING AND INSURANCE

DIVISION OF INSURANCE

Actuarial Services

Proposed Readoption with Amendments: N.J.A.C. 11:4

Authorized By: Thomas B. Considine, Commissioner, Department of Banking and Insurance.

Authority: N.J.S.A. 17:1-8.1 and 17:1-15(e).

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

Proposal Number PRN 2011-086.

Submit comments by June 3, 2011 to:

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The agency proposal follows:

Summary

Pursuant to the sunset provisions of N.J.S.A. 52:14B-5.1, the Department of Banking and Insurance (Department) proposes to readopt N.J.A.C. 11:4, Actuarial Services. This chapter is scheduled to expire on September 10, 2011, pursuant to N.J.S.A. 52:14B-5.1c.

This chapter primarily, but not exclusively, includes rules concerning life and health insurance and contains the following subchapters:

Subchapter 1, New Jersey Insolvent Health Maintenance Organization Assistance Association;

Subchapter 2, Life Insurance and Annuities Replacement;

Subchapter 3, Coupon Policies and Policies Containing Guaranteed Annual Endowment Benefits;

Subchapter 4, Passbooks Used in Connection with Coupon Policies or Policies Containing Guaranteed Annual Endowment Benefits;

Subchapter 6, Minimum Reserve Standards for Individual and Group Health Insurance Contracts;

Subchapter 7, Procedure for the Regulation of Consent to Higher Rate Filings;

Subchapter 8, Charitable Annuities;

Subchapter 9, Personal Lines Insurance: Prospective Loss Costs Filing Procedures;

Subchapter 11, Life Insurance Disclosure;

Subchapter 12, Student Life Insurance;

Subchapter 13, Group Student Health Insurance;

Subchapter 14, Home Health Care Insurance Coverage;

Subchapter 15, Alcoholism Benefits;

Subchapter 16, Minimum Standards for Individual Health Insurance;

Subchapter 17, Health Insurance Solicitation;

Subchapter 18, Individual Health Insurance Rate Filings;

Subchapter 19, Optional Coverage for Pregnancy and Childbirth Benefits;

Subchapter 20, Blindness: Partial Blindness or Other Physical or Mental Impairments; Unfair Discrimination;

Subchapter 21, Limited Death Benefits Forms;

Subchapter 22, Individual Life Insurance: Use of Gender Blended Mortality Tables;

Subchapter 23, Minimum Standards for Medicare Supplement Coverage;

Subchapter 23A, Medicare Supplement – Under 50 Coverage;

Subchapter 23B, Medicare Supplement – Age 50 Through 64 Coverage;

Subchapter 24, Smoker and Nonsmoker Mortality Tables;

Subchapter 25, Funeral Insurance Policies;

Subchapter 26, Annuity Mortality Tables;

Subchapter 27, The 2001 Commissioner's Standard Ordinary (CSO) Mortality Table for Use in Determining Minimum Reserve Liabilities and Nonforfeiture Benefits;

Subchapter 27A, Preferred Mortality Tables for Use in Determining Minimum Reserve Liabilities;

Subchapter 28, Group Coordination of Benefits;

Subchapter 29, Homeowners Comparison Survey;

Subchapter 30, Accelerated Death Benefits;

Subchapter 32, Valuation of Life Insurance Policies;

Subchapter 33, Excess Interest Reserve Adjustment;

Subchapter 34, Long-Term Care Insurance;

Subchapter 35, Viatical Settlements;

Subchapter 37, Selective Contracting Arrangements of Insurers;

Subchapter 40, Life/Health/Annuity Forms;

Subchapter 40A, "40 States" File and Use Standards and Procedures;

Subchapter 41, Standards for Individual Life Insurance Policy Forms;

Subchapter 42, Group Life, Group Health and Blanket Insurance: General
Standards for Contract Provisions;

Subchapter 43, Individual Annuity Contract Form Standards;

Subchapter 44, Standards for Contracts on a Variable Basis;

Subchapter 45, Periodic Reports;

Subchapter 46, Synthetic Guaranteed Investment Contract Forms;

Subchapter 47, Actuarial Requirements for Flexible-Factor Policy Forms;

Subchapter 48, Unfair Discrimination;

Subchapter 49, Mandated Diabetes Benefits;

Subchapter 50, Reimbursement of Inmate Health Care Costs;

Subchapter 52, Life Insurance Illustrations;

Subchapter 53, Minimum Standards for Specified Disease and Critical Illness Coverages;

Subchapter 54, Benefits Standards for Infertility Coverage;

Subchapter 55, Pharmacy Cards;

Subchapter 56, Self-Funded Multiple Employer Welfare Arrangements and Insured Multiple Employer Arrangements;

Subchapter 57, Mandated Benefits for Biologically-Based Mental Illness; and

Subchapter 58, Discretionary Clauses.

The rules in this chapter were promulgated to implement many of the statutory requirements in Titles 17 and 17B of the New Jersey Statutes. The rules serve two general purposes. First, they protect consumers by addressing issues such as unfair discrimination, minimum standards for health insurance coverage, mandatory disclosures to purchasers of life insurance, solicitation of health insurance, and replacement of life insurance and annuities. Second, they provide guidance to the insurance industry regarding such business-related matters as form filings, reserve standards, reporting of expense experience and use of mortality tables.

The Department has undertaken a review of these rules at several levels to determine their current effectiveness and viability. This review has included the Division of Life and Health, Property and Casualty, Enforcement and Consumer Protection, and Legislative and Regulatory Affairs.

These rules continue to provide the insurance industry and consumers with vital information and useful standards concerning many aspects of life and health and other

insurance. The Department believes that the original purpose for each rule, as stated in the rule itself, continues to exist with the following exceptions:

Recently, the Department repealed several provisions in this chapter, which had imposed unnecessary burdens on insurers. (See 42 N.J.R. 2965(a) and 43 N.J.R. 54(b).) In addition, the Department has proposed for repeal N.J.A.C. 11:4-29, Homeowners Comparison Survey. The Department has determined that due to the complexity of current homeowners rating systems, it is difficult to specify representative sample policies that are meaningful to individual prospective insureds. Accordingly, the Department has determined that the premium data insurers are required to report pursuant to this subchapter is no longer useful. This proposal appeared in the November 15, 2010 New Jersey Register (see 42 N.J.R. 2700(a)).

The Department intends to repeal in the near future Subchapter 35, Viatical Settlements, and propose new rules that will implement life insurance viatical settlements legislation that was enacted in 2005 (see P.L. 2005, c. 229, codified at N.J.S.A. 17B:30B-1 et seq.).

The Department is amending certain subchapters in this proposal to reflect the recent enactment of the Interstate Insurance Product Regulation Compact (P.L. 2010, c. 120, approved January 5, 2011) (the Compact). The Compact was designed to promote and protect the interests of consumers of individual and group annuity, life insurance, disability income, and long-term care insurance products; develop uniform standards for these insurance products; establish a central clearinghouse to receive and provide prompt review of insurance products covered under the compact and, in certain

cases, advertisements related to those insurance products submitted by insurers authorized to do business in one or more compacting states; give appropriate regulatory approval to those product filings and advertisements satisfying applicable uniform standards; and improve coordination of regulatory resources and expertise among state insurance departments regarding the setting of uniform standards and review of insurance products covered under the compact. Any state is eligible to become a compacting state to the Compact, which came into existence in 2004. The Compact provides that the compacting states establish the Interstate Insurance Product Regulation Commission (Commission) to develop uniform standards for product lines, receive and provide prompt review of products filed with the Commission and give approval to those product filings satisfying applicable uniform standards as developed by the Commission. Insurers and third-party filers seeking to have a product approved by the Commission must file the product with, and pay applicable fees to, the Commission. However, insurers and third-party filers may choose to continue to file a product with the department in any state wherein the insurer is licensed to conduct the business of insurance, and that filing shall be subject to the laws of the states where filed. Any product approved by the Commission may be sold or otherwise issued in those compacting states for which the insurer is legally authorized to do business. Compacting states may choose to "opt out" of certain uniform standards, and may prospectively opt out of all uniform standards pertaining to long-term care insurance products by expressly providing for that opt-out in the Act. New Jersey has opted out of any future uniform standards established by the Commission for long-term care

insurance products because of the existence of the New Jersey Long-Term Care Insurance Act enacted in 2003 (P.L. 2003, c. 207, codified at N.J.S.A. 17B:27E-1 et seq.). However, the Compact provides that the Commissioner of Banking and Insurance must report to the Legislature within one year as to whether New Jersey should participate in the Compact with respect to the Compact's long-term care standards; the Commissioner's recommendation to the Legislature is non-binding. Compacting states may also withdraw from the Compact altogether. The Department is amending N.J.A.C. 11:4-40, Life/Health/Annuity Forms; N.J.A.C. 11:4-40A, "40 States" File and Use Standards and Procedures; N.J.A.C. 11:4-41, Standards for Individual Life Insurance Policy Forms; N.J.A.C. 11:4-42, Group Life, Group Health and Blanket Insurance: General Standards for Contract Provisions; N.J.A.C. 11:4-43, Individual Annuity Contract Form Standards; N.J.A.C. 11:4-44, Standards for Contracts on a Variable Basis; and N.J.A.C. 11:4-48, Unfair Discrimination, to add language stating that the standards, procedures and other requirements contained in those subchapters shall not apply to any forms filed with and approved by the Commission pursuant to the Compact (P.L. 2010, c. 120).

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

As mentioned above, many of the rules contained in this chapter protect consumers. Readoption of these rules, such as those regarding mandatory disclosures

to purchasers of life insurance, minimum standards for life and health insurance and annuities, solicitation of health insurance, and replacement of life insurance and annuities, will allow for the continuing protection of consumers. The benefits derived by the public from these rules continue to be significant; thus, the rules continue to be necessary.

As noted above, the rules in this chapter provide insurers with certain standards and procedures for their reserves, rate filings and policy and contract form filings. These rules continue to be necessary so that insurers may continue to rely on them in their everyday operations, and continue to remain assured that they are in compliance with the law.

As mentioned in the Summary above, the recent enactment of the Interstate Insurance Product Regulation Compact (P.L. 2010, c. 116, approved January 5, 2011) will provide insurers and third-party filers with the option to continue to subject their policy forms to approval by the Department pursuant to this chapter, or to seek approval through the Commission established by the Compact. Approval of forms by the Commission will help to ensure consumers that uniform standards are being applied to the products they intend to purchase, and to ensure insurers and third-party filers that they will obtain a prompt review of their policy forms.

The rules in this chapter also enable the Department to fulfill its regulatory responsibilities under the law. Failure to readopt these rules would impair the Department's regulatory oversight capability, and would be unsettling to both

consumers and insurers who have relied on these rules for protection and guidance. Accordingly, their continued effectiveness is necessary.

Economic Impact

Failure to readopt the rules in this chapter would prove costly to insurers who have relied on them for guidance in establishing standards and procedures in order to remain in compliance with the law. Without these rules, insurers would expose themselves to huge expenditures in issuing policy forms and contracts, submitting certain form filings and other data and reports to the Department, and maintaining reserves, without any assurance that they would in fact be complying with statutory or Department requirements. Accordingly, these rules remain necessary so that insurers may continue to operate efficiently and effectively.

The rules in this chapter clearly impact consumers. As noted above, several of these rules address industry trade practices that directly relate to consumer expenditures of their limited insurance dollars. Accordingly, continuing effectiveness of these rules (including, for example, health insurance solicitation, life insurance disclosures, life insurance and annuities replacement, minimum standards for individual health insurance, and minimum standards for Medicare supplement coverage) is necessary so that consumers may remain confident that they are spending their insurance dollars wisely and to help ensure that consumers obtain the benefits to which they are entitled. Insurers and third-party filers choosing to have their policy forms approved pursuant to the Compact may be favorably impacted in that the central

clearinghouse established by the Compact obviates the necessity for New Jersey and multi-state filings of group annuity, life insurance and disability income forms.

The compliance requirements contained in these rules to which insurers are subjected are minimal in nature and, as stated above, are necessary for insurers to operate effectively and efficiently. Moreover, as stated above, the rules are necessary to ensure that consumers are spending their insurance dollars wisely and obtaining the benefits they properly expect. Accordingly, the minimal cost to insurers to continue to comply with these rules is far outweighed by their significance to consumers.

The Department will continue to incur the costs involved in implementing the rules currently contained in this chapter.

Federal Standards Statement

A Federal standards analysis is not necessary because, with the exception of Subchapters 16 and 23 as they relate to Medicare, the rules contained in this chapter are not subject to any Federal requirements or standards. Minimum standards for individual health insurance at N.J.A.C. 11:4-16.5 as they relate to Medicare supplement policies reflect, but are no more restrictive than, existing Federal standards as set forth in the Medicare statute at 42 U.S.C. § 1395. Additionally, Subchapter 23, relating to Medicare supplement coverage, complies with, but does not exceed, any Federal standards or requirements set forth at 42 U.S.C. § 1395.

Jobs Impact

The Department does not anticipate that the rules proposed for re adoption with amendments will result in the generation or loss of jobs.

Agriculture Industry Impact

Pursuant to N.J.S.A. 4:1C-10.3, the Right to Farm Act, and N.J.S.A. 52:14B-4(a)2 of the Administrative Procedure Act, the Department does not expect any impact on the agriculture industry from the rules proposed for readoption with amendments.

Regulatory Flexibility Analysis

Few, if any, of the insurers regulated by the rules contained in this chapter are "small businesses" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Several rules (for example, life insurance and annuities replacement) relate to the conduct of insurance producers, most of whom are "small businesses." The compliance, recordkeeping and reporting requirements imposed by the rules are clearly defined in the rules themselves. Examples of current recordkeeping and/or reporting requirements imposed by this chapter include the following: providing health insurance solicitation notices to applicants and maintenance of complaint records; providing life insurance buyer's guides to prospective purchasers; providing notices to purchasers in the replacement of life insurance and annuities; and requiring commercial and personal lines insurers to submit a specific application form to the Department for requesting higher rates. These compliance requirements, however, are imposed in the nature of minimal standards and procedures. Further, as noted in the Summary, the Department is in the process of repealing N.J.A.C. 11:4-29, which will eliminate the necessity for insurers to submit data on homeowners coverage for the Department's use in compiling an annual price comparison survey.

The Department has determined that the current requirements continue to be necessary. The rules apply to all insurers or insurance producers, as the case may be, without regard to size. The Department considers the requirements imposed to be the minimum necessary to implement the applicable statutory mandates. As such, no differentiation in requirements can be provided based upon business size. The Department is unaware that any provisions of these rules are excessively burdensome to "small businesses" or unnecessary.

Future annual costs of compliance with these rules are not expected to differ from current annual costs. The use of professional services currently required by the rules (for example, actuaries and underwriting professionals) will continue to be necessary.

Smart Growth Impact

The rules proposed for readoption with amendments have no impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan.

Housing Affordability Impact

The Department does not expect the rules proposed for readoption with amendments to have any impact on housing affordability because the rules proposed for readoption with amendments address the protection of consumers primarily in the areas of life and health insurance and annuities, and provide guidance to the insurance industry regarding certain business-related matters.

Smart Growth Development Impact

The Department does not expect the rules proposed for readoption with amendments to evoke a change in the housing production in Planning Areas 1 and 2 or within the designated centers under the State Development and Redevelopment Plan in New Jersey because the rules proposed for readoption with amendments address the protection of consumers primarily in the areas of life and health insurance and annuities, and provide guidance to the insurance industry regarding certain business-related matters.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 11:4.

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

SUBCHAPTER 40. LIFE/HEALTH/ANNUITY FORMS

11:4-40.1 Purpose and scope

(a) The purpose of this subchapter is to implement P.L. 1995, c.73 (the Life and Health Insurance and Health Maintenance Organization Form Approval Reform Act) by setting forth standards and procedures whereby all life insurance, health insurance, and annuity forms, and rates where applicable, **other than forms approved pursuant to the Interstate Insurance Product Regulation Compact established by P.L. 2010, c. 120**, are to be submitted to the Commissioner for his or her approval prior to use. This subchapter also establishes a file and use system for certain forms deemed

eligible by the Commissioner provided that a certification is filed that the particular form complies with the law and rules applicable to it.

(b) This subchapter shall apply to all life insurance, health insurance and annuity forms issued pursuant to N.J.S.A. 17B:17-1 et seq.; all hospital service corporation contracts issued pursuant to N.J.S.A. 17:48-1 et seq.; all medical service corporation contracts issued pursuant to N.J.S.A. 17:48A-1 et seq.; all health service corporation contracts issued pursuant to N.J.S.A. 17:48E-1 et seq.; and all health maintenance organization contracts, evidence of coverage and related forms issued pursuant to N.J.S.A. 26:2J-1 et seq. This subchapter shall not apply to any forms issued pursuant to N.J.S.A. 17B:27A-2 et seq. or 17B:27A-17 et seq., but shall apply to all forms issued pursuant to N.J.S.A. 17B:27A-7 and N.J.S.A. 17B:27A-19. **This subchapter shall not apply to individual and group annuity, life insurance and disability income forms approved by the Interstate Insurance Product Regulation Commission created pursuant to the Interstate Insurance Product Regulation Compact established by P.L. 2010, c. 120.**

SUBCHAPTER 40A. "40 STATES" FILE AND USE STANDARDS AND PROCEDURES

11:4-40A.1 Purpose and scope

(a) (No change.)

(b) This subchapter shall apply to all individual life insurance, individual annuity, group annuity, group life, variable life and variable annuity contract forms to be issued by an insurer authorized to do business in this State. This subchapter shall not apply to

any health insurance policy, or contract forms or benefits, including specified disease or critical illness policies, contracts or benefits. **This subchapter shall not apply to individual and group annuity or life insurance forms approved by the Interstate Insurance Product Regulation Commission created pursuant to the Interstate Insurance Product Regulation Compact established by P.L. 2010, c. 120.**

SUBCHAPTER 41. STANDARDS FOR INDIVIDUAL LIFE INSURANCE POLICY FORMS

11:4-41.1 Purpose and scope

(a) (No change.)

(b) These rules shall apply to all individual life insurance forms issued pursuant to N.J.S.A. 17B:25-1 et seq. **This subchapter shall not apply to individual life insurance forms approved by the Interstate Insurance Product Regulation Commission created pursuant to the Interstate Insurance Product Regulation Compact established by P.L. 2010, c. 120.**

SUBCHAPTER 42. GROUP LIFE, GROUP HEALTH AND BLANKET INSURANCE:

GENERAL STANDARDS FOR CONTRACT PROVISIONS

11:4-42.1 Purpose and scope

(a) (No change.)

(b) This subchapter shall apply to all group life, group health and blanket insurance contracts and policies delivered or issued for delivery in this State on or after

April 15, 1996, including any group life, group health and blanket insurance policies and contracts the forms of which the Commissioner has determined are eligible for file and use in accordance with N.J.A.C. 11:4-40. **This subchapter shall not apply to group life insurance forms approved by the Interstate Insurance Product Regulation Commission created pursuant to the Interstate Insurance Product Regulation Compact established by P.L. 2010, c. 120.**

SUBCHAPTER 43. INDIVIDUAL ANNUITY CONTRACT FORM STANDARDS

11:4-43.1 Purpose and scope

(a) (No change.)

(b) This subchapter shall apply to all individual annuities issued pursuant to N.J.S.A. 17B:25-18 and P.L. 1995, c.73, sections 16 and 17. **This subchapter shall not apply to individual annuity forms approved by the Interstate Insurance Product Regulation Commission created pursuant to the Interstate Insurance Product Regulation Compact established by P.L. 2010, c. 120.**

SUBCHAPTER 44. STANDARDS FOR CONTRACTS ON A VARIABLE BASIS

11:4-44.1 Purpose and scope

(a) (No change.)

(b) This subchapter shall apply to all life insurance and annuities contracts on a variable basis and any certificate evidencing variable benefits pursuant to such contracts, which are issued pursuant to N.J.S.A. 17B:28-1 et seq. and delivered or

issued for delivery in this State. **This subchapter shall not apply to variable life insurance and annuities forms approved by the Interstate Insurance Product Regulation Commission created pursuant to the Interstate Insurance Product Regulation Compact established by P.L. 2010, c. 120.**

SUBCHAPTER 48. UNFAIR DISCRIMINATION

11:4-48.1 Purpose and scope

(a) (No change.)

(b) These rules shall apply to all insurers delivering or issuing for delivery life insurance and health insurance policies or annuity contracts in this State. **This subchapter shall not apply to life insurance and annuities forms approved by the Interstate Insurance Product Regulation Commission created pursuant to the Interstate Insurance Product Regulation Compact established by P.L. 2010, c. 120.**