

**INSURANCE**

**DEPARTMENT OF BANKING AND INSURANCE**

**OFFICE OF LIFE AND HEALTH**

**Life/Health/Annuity Forms**

**Proposed Amendment: N.J.A.C. 11:4-40.2**

Authorized By: Richard J. Badolato, Commissioner, Department of Banking and Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1-15.e, and 17B:25-18 et seq.

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

Proposal Number: PRN 2017-002.

Submit written comments by March 4, 2017, to:

Denise Illes, Chief

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The agency proposal follows:

**Summary**

N.J.S.A. 17B:25-18.2 provides that, except as otherwise required in N.J.S.A. 17B:27A-2 et seq. (with respect to individual health policies), and N.J.S.A. 17B:27A-17 et seq. (with respect to small employer health policies), any life, health, or annuity policy or contract subject to Title

17B of the New Jersey Statutes shall be filed with the Commissioner of Banking and Insurance (Commissioner) for approval. This statute further provides that any disapproval by the Commissioner shall be based on specific provisions of applicable statutes or rules adopted by the Commissioner, or guidelines published by the Commissioner as of the effective date of the Act, April 10, 1995. The Department of Banking and Insurance (Department) adopted N.J.A.C. 11:4-40 to set forth standards for the approval of life, health, and annuity forms. In the health insurance context, the definition of “stop loss or excess risk insurance” determines whether a policy is subject to the myriad requirements of law applicable to health insurance policies sold in this State, including, but not limited to, minimum mandated benefits, or whether a policy is an excess insurance policy designed to cover excess loss of a self-funded health plan that is not otherwise subject to the same regulation.

N.J.A.C. 11:4-40.2 currently defines “stop loss or excess risk insurance” to mean “insurance designated to reimburse a self-funded arrangement for catastrophic and unexpected expenses exceeding specified person retention limits of no less than \$25,000 per year and/or aggregate retention limits of no less than 125 percent of expected claims per year, wherein neither the employees nor other individuals are third party beneficiaries under the policy, contract or plan.” With respect to the small employer health market, N.J.S.A. 17B:27A-17 defines stop loss insurance as a policy that establishes a per person attachment point or retention of not less than \$20,000 per covered person of a plan year; and with an aggregate attachment point or retention of not less than 125 percent of expected claims per plan year.

For large-group health plans subject to N.J.A.C. 11:4-40, the Department has determined to modify the definition of “stop-loss or excess risk insurance” to change the specified per person retention limits from \$25,000 to \$20,000 per year, and the aggregate retention limit of 125

percent to 110 percent of expected claims per year, and to clarify that the definition applies unless subject to the definition at N.J.S.A. 17B:27A-17. This change will broaden the stop-loss or excess risk coverage available to large groups with self-funded plans and bring New Jersey's definition in line with the National Association of Insurance Commissioners (NAIC) Stop Loss Insurance Model Act, while not expanding it so much as to essentially exempt policies of health insurance from the requirements of Title 17B of the New Jersey Statutes.

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 excepted from the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

### **Social Impact**

As noted in the Summary above, the proposed amendment reduces the attachment point and retention limits for the purposes of determining whether a large group policy is a health insurance policy, or a stop-loss or excess risk insurance policy, in a manner consistent with the national standard set forth in the NAIC Model. This change may allow more large groups to self-fund their insurance obligations, while not reducing the limits and attachment points to such an extent that these policies are not subject to regulation by the Department.

The proposed amendment, thus, will have a positive social impact by providing large employers with more options to determine their health insurance needs, consistent with the national standard adopted by the NAIC.

### **Economic Impact**

As noted in the Summary above, the proposed amendment may enable more large employers to self-fund their health insurance obligations. This will provide large groups more choice to determine the appropriate means to fund their health insurance, either through self-

funding or the purchase of insurance. This will have a positive economic impact by enabling large groups to more effectively determine the manner by which their health insurance needs and obligations may be met. No additional professional services should be required to comply with the proposed amendments. No negative economic impact should result to insurers or the public as a result of the proposed amendments.

### **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 that any jobs will be generated or lost as a result of the proposed amendments.

The Department invites commenters to submit any data or studies on the potential jobs impact of the proposed amendments together with their comments on other aspects of the notice of proposal.

### **Agriculture Industry Impact**

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

### **Regulatory Flexibility Statement**

The proposed amendments do not directly impose reporting, recordkeeping, or other compliance requirements on “small businesses,” as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. As noted in the Summary above, the proposed amendments lower the retention level and attachment points for purposes of determining whether a policy is a policy of health insurance or a policy of stop-loss or excess risk insurance in the

large group health insurance market, reflecting the national standard adopted by the NAIC. By lowering the retention level and attachment points, more large groups may be in a position to self-fund their health insurance obligations. No additional professional services should be required to comply with the proposed amendments.

The proposed amendments provide no differentiation in compliance requirements based on business size. As noted in the Summary above, the proposed amendments relate to the definition of “stop-loss or excess risk insurance” for purposes of determining whether a policy is “health insurance” or “stop-loss or excess risk insurance.”

### **Housing Affordability Impact Analysis**

The proposed amendments will not have an impact on housing affordability in this State because the proposed amendments relate to the provision of stop-loss or excess risk insurance for large groups self-funding their health insurance coverage and it is an extreme unlikelihood they would invoke a change in the average costs associated with housing.

### **Smart Growth Development Impact Analysis**

The proposed amendments will not have an impact on smart growth in this State and there is an extreme unlikelihood that the proposed amendments would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the proposed amendments relate the provision of stop-loss or excess risk insurance for large groups self-funding their health insurance coverage.

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

SUBCHAPTER 40. LIFE/HEALTH/ANNUITY FORMS

## 11:4-40.2 Definitions

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

...

“Stop loss or excess risk insurance,” **unless a small employer subject to the stop loss or excess risk insurance definition at N.J.S.A. 17B:27A-17**, means insurance designed to reimburse a self-funded arrangement for catastrophic and unexpected expenses exceeding specified per person retention limits of no less than \$[25,000]**20,000** per year and/or aggregate retention limits of no less than [125] **110** percent of expected claims per year, wherein neither the employees nor other individuals are [third party] **third-party** beneficiaries under the policy, contract or plan.

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