

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

**Insurance Group**

**Admission Requirements for Foreign and Alien Life and Health Insurers**

**Adopted Amendment: N.J.A.C. 11:2-1.4**

Proposed: September 17, 2007 at 39 N.J.R. 3870(a)

Adopted: January 31, 2008 by Steven M. Goldman, Commissioner, Department of Banking and Insurance.

Filed: February 1, 2008 as R. 2008 d.45, **with a substantive change** not requiring additional public notice and opportunity for comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 17:1-8.1, 17:1-15e, 17B:17-1 et seq., 17B:21-1 et seq., 17:23-1 et seq. and 17B:23-5.

Effective Date: March 3, 2008

Expiration Date: September 21, 2010

**Summary** of Public Comments and Agency Responses:

Comments on the proposed amendments were submitted by the law firm of Burr & Forman LLP.

**COMMENT:** The commenter questioned the appropriateness of the language at proposed N.J.A.C. 11:2-1.4(a)5iii(5) stating that “[t]he applicant is a Medicare Part D insurer only. . . .” The commenter indicated that the proposed language implies that there is a separate license for this type of entity. Rather, Medicare Part D providers will be applying for a life and health license in New Jersey and will be limited to the Medicare Part D line of authority.

**RESPONSE:** The Department agrees with the commenter and is revising N.J.A.C. 11:2-1.4(a)5iii(5) to clarify that the entities addressed in this provision are licensed as health insurance companies, but the only business they actually write is Medicare Part D coverage.

**COMMENT:** The commenter questioned the language at proposed N.J.A.C. 11:2-1.4(a)5iii stating that “[i]n determining whether a reduction or waiver is appropriate in a particular case, the Commissioner shall consider whether the requirements of this section have been satisfied, and, in addition whether the requirements described in (a)5iii(1) through (4) below, if applicable, have been satisfied.” The commenter questioned whether this language means that all of the requirements listed in the rule must be satisfied, including capital and surplus, risk-based capital (RBC) calculations, etc. The commenter stated that holding Medicare Part D providers to traditional RBC calculations is not appropriate given the limited risks associated with the Medicare Part D products.

**RESPONSE:** The National Association of Insurance Commissioners (NAIC) modified the RBC calculation for Medicare Part D business. There is a specific section for Medicare Part D in the RBC calculation. Also, the capital requirements are lower than a traditional health insurer with the same dollar amount of premiums. Health insurers are required to complete the NAIC RBC calculation, which is necessary to complete the annual statement blank filed with the NAIC.

### **Federal Standards Statement**

A Federal standards analysis is not required. The Department’s adopted amendments as they relate to foreign and alien insurers seeking admission as life and health insurers are not subject to any Federal standards or requirements. The Federal Medicare Prescription Drug Improvement and Modernization Act of 2003 (P.L. 108-173) preempted all state regulation of Federally-approved Medicare Part D plans with the exception of requiring Part D companies to apply for a state license. The adopted amendments as they relate to health insurers whose only

business is writing Medicare Part D coverage addresses only state licensure requirements and are not subject to any Federal standards or requirements.

**Full text** of the adoption follows (additions to proposal indicated in boldface with asterisks **\*thus\***; deletion from proposal indicated in brackets with asterisks **\*[thus]\***):

11:2-1.4 General eligibility requirements

(a) In order for a foreign or alien insurer to be admitted as a life and health insurer in this State, the requirements in this section shall be satisfied in addition to any other requirements in this subchapter or any other provision of law.

1. – 4. (No change.)

5. The applicant shall satisfy the following seasoning requirements:

i. – ii. (No change.)

iii. The Commissioner may, upon request of an applicant, on a case by case basis, waive in the case of (a)5iii(1), (2) and (3) below, or reduce in the case of (a)5iii(4) and (5) below, the five-year seasoning requirements of (a)5i and ii above. In determining whether a reduction or waiver is appropriate in a particular case, the Commissioner shall consider whether the requirements of this section have been satisfied, and, in addition, whether the requirements described in (a)5iii(1) through (5) below, if applicable, have been satisfied. These requirements relate, respectively, to the following circumstances:

(1) – (4) (No change from proposal.)

(5) The applicant is a **\*licensed health insurer writing\*** Medicare Part D **\*[insurer]\*** **\*business\*** only. The applicant shall have completed at least one full year of operation and experienced a profitable operation for that year.

iv. (No change.)

6. (No change.)

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