

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

**Actuarial Services
"40 States" File and Use Standards and Procedures**

Reproposed New Rules: N.J.A.C. 11:4-40A

Authorized By: Holly C. Bakke, Commissioner, Department of Banking and Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1-15e, and P.L. 2001, c. 237 (codified as N.J.S.A. 17B:25-18.4).

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

Proposal Number: PRN 2002-417.

Submit comments by January 17, 2003, to:

Karen Garfing, Assistant Commissioner
Department of Banking and Insurance
Regulatory Affairs
20 West State Street
PO Box 325
Trenton, NJ 08625-0325
Fax: (609) 292-0896
Email: Legsregs@dobi.state.nj.us

The agency proposal follows:

Summary

P.L. 2001, c. 237, approved August 31, 2001 (the Act), codified at N.J.S.A. 17B:25-18.4, establishes a process whereby insurers licensed in New Jersey may make available for sale or use certain life insurance and annuity forms without obtaining prior approval of the Commissioner of the Department of Banking and

Insurance (Commissioner). The Act applies to all individual and group life, individual and group annuity, and variable life and variable annuity policy and contract forms, including related endorsements, riders and applications that have been made available for sale or use in 40 states. The Act does not apply to health insurance forms. The Act requires insurers to submit the form to the Commissioner, accompanied by a certification indicating that the form has been made available for sale or use in 40 states in accordance with current state regulations governing that particular type of product, subject to state variations that do not alter the unique product features or design of the product.

On April 15, 2002, the Department proposed new rules implementing the Act (see 34 N.J.R. 1493(a)), which set forth the "40 States" certification standards and procedures. The Department received a number of comments on its proposal. Based upon some of those comments, the Department is concerned that certain provisions of the proposed "40 States" certification process, if adopted, may impede insurers' ability to market new and innovative products. Rather than adopt its initial proposal, the Department has decided to repropose its rules implementing the Act, and to address the comments received on the original proposal and during the course of subsequent dialogue with the regulated community.

The Department received comments on its initial proposal from the following: National Association of Independent Life Brokerage Agencies (NAILBA), American Council of Life Insurers (ACLI), Travelers Life and Annuity

Company and Travelers Insurance Company, MetLife, ING Security Life, New Jersey Association of Insurance and Financial Advisors (NJIFA), Independent Insurance Agents of New Jersey (IIANJ), American Benefits Planning Group LLC, Security Benefit Life Insurance Company, and Pacific Life Insurance Company.

1. COMMENT: One of the commenters provided extensive comments concerning the Summary of the initial proposal. The commenter stated that the second paragraph of the Summary implies that if a form is submitted under the "40 States" process, "it would be deemed to comply with New Jersey 17B by courts and, therefore, insurers would need to administer the form as if it had gone through the normal prior approval process." The commenter stated that this would be inconsistent with the legislative history of the Act, which states that forms that have been " 'approved in 40 other states shall be deemed to comply with the New Jersey law and regulation applicable to those forms.' Since rules of construction dictate that a subsequent enactment takes precedence over a prior enactment, we submit that the Summary's implication is incorrect."

The commenter adds that "the sentence beginning 'Similarly. . . .' posits a scenario not at all like the one that would be before a court if called upon to rule on a filing compliant with P.L. 2001, c. 237. The language of the Summary reflects a scenario where a form that does not comply with substantive statutory rights is reformed to meet those rights. Here, P.L. 2001, c. 237 specifically deems a form filed in compliance with it as applicable to the statutes and regulations governing it."

The commenter also indicated that the third paragraph of the Summary, which states that "[i]nsurers should be aware also that forms made available for sale or use pursuant to the Act must be administered in accordance with all applicable New Jersey statutory and regulatory requirements that relate to areas other than contract language (for example, pricing, illustrations and periodic reports requirements)[,]" would create a conflict at times between the contract and the administration of the contract. The commenter asked for the basis for the Department's "assertion that the language of the contract does not prevail, when pursuant to [the Act] the contract is statutorily deemed to be fully compliant?"

RESPONSE: The Department believes that a form submitted pursuant to P.L. 2001, c. 237 should contain the standard contract provisions required by New Jersey law, and has, therefore, changed the proposed new rules to require such provisions. The requirements at repropose N.J.A.C. 11:4-40A.3(a) are consistent with the Department's revised definition of "unique product features or design." Moreover, P.L. 2001, c. 237 is a form filing law, and has no effect on New Jersey laws that deal with sales, marketing, reporting and other administration and servicing requirements.

2. COMMENT: Several commenters indicated that the Department's proposed rules are inconsistent with both the spirit and intent of the enabling legislation, which was designed to allow insurers to market certain products in New Jersey that are approved for sale in at least 40 other states notwithstanding

the provisions of any other New Jersey law to the contrary. The commenters indicated that the proposed rules are cumbersome and complicated, and appear to be a tactic by the Department to discourage companies from using the "40 States" process as a means to obtain approval of products in New Jersey.

One commenter stated that it is important for both consumers and the industry to have the opportunity to bring to market new policy products, and that companies should have the ability to gain an expedited approval of those policy forms that have already been accepted in 40 states. The commenter stated that the Department should work with the industry to address insurers' concerns and put into place a viable solution.

RESPONSE: As stated above, the Department believes that, notwithstanding "40 States" eligibility, forms should contain the standard contract provisions required by New Jersey law. The additional requirements contained in N.J.A.C. 11:4-40A.3(a) as repropoed are consistent with a revised definition of "unique product features or design." The Department has engaged in a dialogue with the regulated community, and has crafted a reproposal that is consistent with the purposes of the legislation and protects consumers.

3. COMMENT: Several commenters expressed concern with the proposed definition of "unique product features or design." The commenters stated that variations in standard contract provisions would be impermissible under the proposed rules, but that unique requirements mandated by a state's law would be permitted. The commenters indicated that many of the variations

in standard contract provisions are due to state law requirements, and should not be considered an impermissible difference. One of the commenters stated that the definition should additionally be revised to state "Permissible differences include, *but are not limited to*, the following . . . [.]"

RESPONSE: As stated previously, the Department's repropoed definition eliminates state variations in standard contract provisions, and requires that standard provisions comply with New Jersey law.

4. COMMENT: A few commenters stated that proposed N.J.A.C. 11:4-40A.4(a)2, which requires insurers to indicate the method by which a form was approved for use in other states, is unnecessary and burdensome. The commenters stated that the Department has no statutory authority for the proposed provision.

RESPONSE: Upon review of the comments, the Department has deleted the requirement.

5. COMMENT: Some of the commenters stated that proposed N.J.A.C. 11:4-40A.4(a)3, which requires insurers to indicate all variations of text for state specific versions, is unnecessary and burdensome. One commenter suggested that the certification that 40 other states have approved the form, together with a list of approval dates for each state, should be sufficient. A few commenters stated that the Department has no statutory authority for the proposed provision.

RESPONSE: In view of the revised definition of "unique product features or design," the listing of state variations is no longer necessary and the requirement has been removed.

6. COMMENT: Two comments addressed proposed N.J.A.C. 11:4-40A.4(a)4, which requires insurers to provide a statement of all filing conditions imposed by other states. One commenter stated that the requirement was unnecessary and burdensome. The commenters stated that the Department has no statutory authority for the proposed provision. One commenter suggested that the Department provide examples of such filing conditions and limit the list, or permit an insurer to limit its response to only those which are material to the policy as filed.

RESPONSE: Based on its review of the comments, the Department has deleted the requirement upon reproposal.

7. COMMENT: One commenter expressed concern with proposed N.J.A.C. 11:4-40A.3, and suggested that insurers be permitted to include the fraud warning statement on the application as required by N.J.S.A. 17:33A-6c even though such warning was not included in filings with the other 40 states included in the certification.

RESPONSE: The Department agrees with the comment, and has included the fraud warning statement in the list of statutes and regulations that insurers must comply with in soliciting, marketing, administering and servicing

forms made available for sale pursuant to P.L. 2001, c. 237 (See N.J.A.C. 11:4-40A.3(b)3).

8. COMMENT: Four commenters expressed concern with proposed N.J.A.C. 11:4-40A.3(b), which requires forms made available for sale or use pursuant to the "40 States" process to be administered in accordance with all applicable New Jersey statutes and regulations. A few commenters stated that the Department lacks statutory authority to propose the requirement. One commenter stated that "the enabling statute envisions that if a product feature contained within a policy form is sufficiently reasonable that 40 other states approved it, then the insurer should be able to offer that policy form in New Jersey notwithstanding the provisions of any other New Jersey law to the contrary."

RESPONSE: The Department believes that notwithstanding "40 States" eligibility, a policy form is required to comply with New Jersey law regarding solicitation, marketing, administration and servicing of life insurance policies. The Department has revised N.J.A.C. 11:4-40A.3 to set forth explicitly such requirements, which apply to all forms delivered or issued for delivery in New Jersey.

9. COMMENT: One commenter stated that proposed N.J.A.C. 11:4-40A.4(a)6, which requires a submittal letter specifying the issue ages and intended market for the form, is beyond the Department's scope of statutory authority granted by the Act.

RESPONSE: The Department has retained this requirement, which is already included in the general form filing requirements for policy forms. The issue ages and market of a product are pertinent information necessary to determine the applicability of statutes and regulations, such as the Standard Nonforfeiture Law.

10. COMMENT: Two commenters stated that proposed N.J.A.C. 11:4-40A.4(b) is beyond the Department's scope of statutory authority and would require insurers to change the generic form to include any state variation provision that would comply with New Jersey law, in instances where the provision in the generic form would not.

RESPONSE: The new definition of "unique product features or design" now requires standard provisions to be compliant with New Jersey law.

11. COMMENT: Several of the comments concerned proposed N.J.A.C. 11:4-40A.4(d). That provision states that if the Department is not able to determine whether a form submitted pursuant to the "40 States" process meets all of the proposed rules' eligibility requirements, the submission would be converted to a prior approval submission. Some of the commenters questioned why the Department would not be able to make such a determination. Some commenters stated that a filing that does not satisfy the proposed rule's eligibility requirements should be returned to the insurer, and that the addition of 30 days to a filing review period would cause the Department to be out of compliance with both the Act and prior existing statutory law. Some of the

commenters questioned how insurers would know whether their "40 States" filing was converted to a regular filing. One commenter stated that the proposed provision appears to be "inconsistent with the [Department's] statement that this Act permits insurers to make available for sale in New Jersey certain products that might not otherwise be granted approval pursuant to the Department's prior approval process, and with the [Department's] statement that any non-complying form is deemed to be amended to be, and must be administered, in compliance with all applicable New Jersey statutes and regulations." A few commenters stated that no evaluation of a filing by the Department is permitted by the Act other than whether it meets the stated requirements of the Act. The commenters stated that examples of noncompliance would be that the certification is not made by the prescribed level of management, and that the certification states that the form was available for sale and use in 39 states rather than 40.

RESPONSE: The Department is revising this provision to state that a submission shall be returned to the insurer for non-action if the forms fail to satisfy the rule's eligibility requirements.

12. COMMENT: Several of the comments concerned proposed N.J.A.C. 11:4-40A.4(e), which states that the Department would return a form to the insurer for non-action if it were unable to determine whether the submission satisfies the proposed rule's procedural requirements. Some of the commenters questioned why the Department would not be able to make such a

determination. One commenter stated that the Department's explicit responsibility with respect to filings under the Act "is to acknowledge them if they are complete, and (implicitly) to reject them if they are not complete; 'cannot determine' is not an action contemplated by the statute." One commenter stated that the result of this proposed provision could be that forms would never be approved or disapproved under the "40 States" process, but would simply be returned for non-action.

RESPONSE: The Department is revising this proposed provision to state that the Department may return for non-action any form that fails to satisfy the rule's submission procedure requirements, and shall specify the deficiencies in the filing. The revised provision also states that a submission may be resubmitted after the identified deficiencies are cured.

13. COMMENT: One commenter stated that the intent of the Act was to give carriers a reasonable format for certification, "not a penance for using this system." As an example, the commenter stated "[w]hat about the \$50,000 fine for 'improper' certification." The commenter also questioned what would make a certification improper.

RESPONSE: Proposed N.J.A.C. 11:4-40A.5 states that a fine *not to exceed* \$50,000 could be imposed for submission of an improper certification. An "improper certification" as defined in the Act and in the Department's initial proposal means "providing any misrepresentation or false statement material to a certification form."

14. COMMENT: Three comments concerned proposed N.J.A.C. 11:4-40A.6 setting forth the effect of the proposed rule on previously acknowledged forms. One commenter stated that the Department has no statutory authority for the proposed provision, and that the Department is not instructed to propose regulations for withdrawal of acknowledged forms; regulations for withdrawal of approved forms already exist. One commenter stated that insurers who have received an acknowledgment from the Commissioner prior to the effective date of the new rules should not be required to re-submit. Those submissions were based upon each insurer's compliance with the requirements of the statute. Section 1.d. of P.L. 2001, c. 237 states that "[u]pon receipt of an acknowledgment from the commissioner that the form and the certification memorandum which conforms to the requirements of this section have been received, the form so submitted may be used in this State by the insurer." The commenter stated that resubmissions will be duplicative in nature and will not advance the interests of insurance consumers in the State. Further, insurers have relied on the acknowledgments received and would be harmed by any delays or periods during which the products in question could not be sold.

RESPONSE: The repropoed rules are substantially different from those initially proposed, and forms previously acknowledged may not satisfy the requirements of whatever rules are finally adopted. Accordingly, the reproposal allows previously acknowledged noncomplying forms to be used for only 90 days after the effective date, and to be resubmitted. This procedure is commonly

used when rules are adopted that impact previously-filed forms (see, for example, N.J.A.C. 11:4-41.13).

15. COMMENT: One commenter stated that the "40 States" process would be greatly improved for insureds by repealing the memoranda and certification requirements of N.J.A.C. 11:4-47 (flexible factor policy forms).

RESPONSE: In this reproposal, the Department has eliminated the requirement that "40 States" forms comply with N.J.A.C. 11:4-47.

These proposed new rules implement the Act by setting forth the "40 States" certification standards and procedures. The new subchapter contains the following provisions:

N.J.A.C. 11:4-40A.1 establishes the purpose and scope of the subchapter.

N.J.A.C. 11:4-40A.2 contains definitions of terms used throughout the subchapter. The definitions differ from the Department's original proposal in that the definition of "unique product features and design" has been revised.

N.J.A.C. 11:4-40A.3 sets forth the eligibility criteria for forms under the "40 States" process. The repropose section requires such forms, notwithstanding eligibility, to comply with New Jersey law regarding standard contract provisions specifically identified in the section. N.J.A.C. 11:4-40A.3(a) as repropose contains additional requirements consistent with the revised definition of "unique product features or design."

N.J.A.C. 11:4-40A.4 contains the procedures for proper submission of forms pursuant to the "40 States" process. Several provisions within this section

that appeared in the Department's original proposal have been deleted or revised.

The Department deleted the following provisions: N.J.A.C. 11:4-40A.4(a)2, which required a listing by state that indicates the method of approval in other states; N.J.A.C. 11:4-40A.4(a)3, which required a statement of all variations of text for state specific versions; N.J.A.C. 11:4-40A.4(a)4, which required a statement of all filing conditions imposed by other states that approved a form; and N.J.A.C. 11:4-40A.4(a)6(b), which stated that any state specific variation in form text modifying a provision that is not in compliance with New Jersey law results in the provision becoming compliant with New Jersey law, then such variation shall be included in the version of the form submitted.

The Department revised N.J.A.C. 11:4-40A.4(d) (recodified as N.J.A.C. 11:4-40A.4(c)) to state that a form that fails to meet the subchapter's eligibility requirements shall be returned to the insurer for non-action. Also, the revised subsection states that the Department may return for non-action a submission that fails to meet the subchapter's submission procedures requirements. Such a return shall specify the deficiencies in the submission, and resubmission shall be permitted after the deficiencies have been cured.

N.J.A.C. 11:4-40A.5 sets forth the penalties for an improper certification.

N.J.A.C. 11:4-40A.6 describes the effect of these new rules on forms previously submitted to and acknowledged by the Department pursuant to the "40 States" process. This repropose section requires forms and certifications

that were submitted pursuant to the Act prior to the effective date of this subchapter, and acknowledged by the Commissioner, but which do not meet the requirements of this subchapter, to be deemed withdrawn 90 days after the effective date of this subchapter and not available for sale or use after that date. Withdrawn forms may be resubmitted. This repropose section further requires insurers that submitted forms pursuant to the Act prior to the effective date of this subchapter, and which were acknowledged by the Commissioner, and which do meet the requirements of this subchapter, to submit a new certification memorandum within 90 days of the effective date of the subchapter. Insurers may continue to make the form available for sale or use during this period, and any condition that may have been specified in the Department's previous letter of acknowledgement that is inconsistent with this subchapter, is invalidated and of no force or effect.

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

Social Impact

These proposed new rules may have a favorable impact on insurers. These rules implement the Act, which establishes a process whereby insurers may make certain life insurance and annuity forms available for sale or use in New Jersey without obtaining prior approval of the Commissioner. This

procedure will enable insurers to bring certain products to the market more readily, thereby benefiting both insurers and policyholders. These rules should likewise have a favorable impact on consumers in that they will have the ability to purchase new and innovative products.

The Department may be favorably impacted by these rules because the amount of time spent by Department personnel in reviewing certain forms may be reduced.

Economic Impact

The Department does not anticipate that these proposed new rules will result in an adverse economic impact on insurers, policyholders or the Department. The proposed new rules will not adversely impact the public at large. As discussed in the Summary above, these new rules contain standards and procedures for a process by which certain eligible life insurance, annuity and variable contract forms may be made available for sale or use in New Jersey without obtaining the Commissioner's prior approval. Although these rules may not reduce insurer costs associated with form filings, they may reduce the time and/or paperwork insurers currently expend in filing such forms. The Department will continue to incur certain costs associated with reviewing these forms, but may spend less time reviewing forms submitted pursuant to this special process.

Federal Standards Statement

A Federal standards analysis is not required because the Department's proposed new rules are not subject to any Federal standards or requirements.

Jobs Impact

The Department does not anticipate that the proposed new rules 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 agriculture impact from the proposed new rules.

Regulatory Flexibility Analysis

Some of the insurers who can take advantage of the proposed file and use procedure may be small businesses as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The new rules set forth the certification requirements and procedures related to this special file and use process. The costs that these requirements might cause to be incurred are discussed in the Economic Impact above. The Department does not anticipate that insurers will need to engage professional services to comply with these requirements. As this procedure is intended as a voluntary alternative to the

process for prior approval by the Commissioner of qualifying life insurance, annuity and variable contract forms, no lesser requirements or exceptions are provided for small businesses.

Smart Growth Impact Statement

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

Full text of the proposed new rules follows:

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

11:4-40A.1 Purpose and scope

(a) The purpose of this subchapter is to implement P.L. 2001, c. 237 (N.J.S.A. 17B:25-18.4), which establishes a special procedure whereby insurers may forego prior approval of certain life insurance, annuity and variable contract forms.

(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.

11:4-40A.2 Definitions

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

"Annuity" means all contracts meeting the definition set forth at N.J.S.A. 17B:17-5.

"Available for sale or use" means that the insurer has complied with the state's laws, regulations, and procedures to allow the insurer to sell or use the form in that state.

"Commissioner" means the Commissioner of the Department of Banking and Insurance.

"Department" means the Department of Banking and Insurance.

"Form," "contract form" and "policy form" mean all annuity contract forms; all life insurance policy and contract forms; all variable contract forms; and all group insurance certificates as defined within this subchapter, including endorsements, riders and application forms.

"Health insurance" means all policies, contracts and benefits meeting the definition set forth at N.J.S.A. 17B:17-4, including specified disease and critical illness policies, contracts and benefits as defined at N.J.A.C. 11:4-53.

"Improper certification" means providing any misrepresentation or false statement material to a certification form.

"Life insurance" means all policies and contracts meeting the definition set forth at N.J.S.A. 17B:17-3.

"Responsible officer of the insurer" means a corporate officer of the level of vice president or higher, or of equivalent title within the insurer's structure, who is either the actuary of the insurer with responsibility for the type of form filed, or the individual with responsibility for managing the form filing process for the insurer with regard to the type of form filed.

"Unique product features or design" means that the contract language that expresses the methodology used to calculate values, benefits and rates is materially the same. Nonmaterial differences include unique requirements mandated by a state's law (for example, mandated use of a unisex mortality table); synonyms used (for example, "period" instead of "term," "face amount" instead of "insurance amount"); and quantitative differences of no more than 10 percent (for example, one policy contains a \$50.00 charge, while another contains a \$55.00 charge). Standard contract provisions are not considered part of the unique product feature or design.

"Variable contracts" means all contracts meeting the definition set forth at N.J.S.A. 17B:28-1 et seq.

11:4-40A.3 Eligibility

(a) Forms submitted to the Commissioner on the basis that they have been made available for sale or use in 40 states, subject to state variations that do not alter the unique features or design of the product, shall be eligible for sale or use pursuant to the requirements of this subchapter. Notwithstanding

eligibility, any such form shall comply with New Jersey law regarding standard contract provisions as identified below.

1. Individual Life:

- i. Free Look as set forth in N.J.S.A. 17B:25-2.1;
- ii. Grace Period as set forth in N.J.S.A. 17B:25-3;
- iii. Incontestability as set forth in N.J.S.A. 17B:25-4, 25-16 and 25-17;
- iv. Entire Contract as set forth in N.J.S.A. 17B:25-5;
- v. Misstatement of Age as set forth in N.J.S.A. 17B:25-6;
- vi. Dividends as set forth in N.J.S.A. 17B:25-7;
- vii. Policy Loan as set forth in N.J.S.A. 17B:25-8;
- viii. Reinstatement as set forth in N.J.S.A. 17B:25-9;
- ix. Payment of Premium as set forth in N.J.S.A. 17B:25-10;
- x. Automatic Premium Loan Notice as set forth in N.J.S.A. 17B:25-10.1;
- xi. Payment of Claims as set forth in N.J.S.A. 17B:25-11;
- xii. Beneficiary as set forth in N.J.S.A. 17B:25-12;
- xiii. Nonforfeiture Benefits as set forth in N.J.S.A 17B:25-19(a) and (l);
- xiv. Title as set forth in N.J.S.A. 17B:25-14; and
- xv. Period in Which to Commence Cause of Action as set forth in N.J.S.A. 17B:25-15;

2. Group Life:

- i. Requirements for Eligible Groups as set forth in N.J.S.A. 17B: 27-1;
- ii. Dependents as set forth in N.J.S.A. 17B:27-9;
- iii. Grace Period as set forth in N.J.S.A. 17B:27-11;
- iv. Incontestability as set forth in N.J.S.A. 17B:27-12;
- v. Application, Representations not Warranties, Entire Contract as set forth in N.J.S.A. 17B:27-13;
- vi. Evidence of Insurability as set forth in N.J.S.A. 17B:27-14;
- vii. Age Adjustments as set forth in N.J.S.A. 17B:27-15;
- viii. Participating Policies as set forth in N.J.S.A. 17B:27-16;
- ix. Beneficiary and Facility of Payment as set forth in N.J.S.A. 17B:27-17;
- x. Certificates as set forth in N.J.S.A. 17B:27-18;
- xi. Conversion as set forth in N.J.S.A. 17B:27-19 and 27-20;
- xii. Death within Conversion Period as set forth in N.J.S.A. 17B:27-21;
- xiii. Certificate to Debtors as set forth in N.J.S.A. 17B:27-22; and
- xiv. Conversion of Debtors as set forth in N.J.S.A. 17B:27-23;

3. Individual Annuity:

- i. Standard Nonforfeiture Law as set forth in N.J.S.A. 17B:25-20(f), (l), (o) and (p); and

ii. Misstatement of Age or Sex as set forth in N.J.A.C. 11:4-43.3(c)4; and

iii. Premium payments as set forth in N.J.A.C. 11:4-43.5(a); and

4. Variable Contracts:

i. Required statements as set forth in N.J.S.A. 17B:28-4; and

ii. Form of contract as set forth in N.J.S.A. 17B:28-5(c) and (d), except that a periodic report that complies with N.J.A.C. 11:4-45 shall be considered to be approved by the Commissioner as required by N.J.S.A. 17B:28-5(c)(iii).

(b) Carriers shall solicit, market, administer and service forms made available for sale or use pursuant to P.L. 2001, c. 237 in accordance with all applicable New Jersey statutes and rules, including as of (the effective date of this rule):

1. Advertisement of life insurance and annuity, N.J.A.C. 11:2-23;

2. Accelerated death benefit, N.J.A.C. 11:4-30;

3. Fraud warning statement, N.J.S.A. 17:33A-6c;

4. Funeral insurance policy, N.J.A.C. 11:4-25;

5. Group coverage discontinuance and replacement, N.J.A.C. 11:2-13;

6. Illustrations, N.J.A.C. 11:4-52 and N.J.S.A. 17B:28-5(b);

7. Juvenile insureds, N.J.A.C. 11:4-24.4;

8. Life Insurance Solicitation, N.J.A.C. 11:4-11;

9. Life and Health Insurance Policy Language Simplification Act, N.J.S.A. 17B:17-17 et seq.;

10. Limited Death Benefit Form, N.J.A.C. 11:4-21;

11. Loan notices, N.J.A.C. 11:4-41.3(b)7;

12. New Jersey Fair Credit Reporting Act, N.J.S.A. 56:11-33;

13. Periodic reports, N.J.A.C. 11:4-45;

14. Replacement of life insurance policy, N.J.A.C. 11:4-2;

15. Standards for smoker/nonsmoker and/or tobacco/nontobacco reclassification, N.J.A.C. 11:4-41.14;

16. Trade practices and discrimination, N.J.S.A. 17B:30-1 et seq.;

and

17. Unfair claims settlement practices, N.J.A.C. 11: 2-17.

11:4-40A.4 Submission procedures

(a) Submissions pursuant to N.J.A.C. 11:4-40A.3(a) shall include the following:

1. For each form submitted, a separate certification memorandum signed by a responsible officer of the insurer, which shall include: a statement that the form has been made available for sale or use in 40 states, subject to state variations that do not alter the unique features or design of the product; and the form number of the form to which it applies.

i. The certification shall be acknowledged by a responsible officer of the insurer. The acknowledgement process shall be the same as that which applies to documents for recording instruments conveying or affecting interests in real estate in this State pursuant to N.J.S.A. 46:14-2.1 et seq;

2. An Initial Submission Data form required by N.J.A.C. 11:4-40. The Request Type Code referred to in the Data Form shall be "40." The form shall be filled in for complete specimen issue, including any necessary schedule(s); and

3. A submittal letter, which shall specify the issue ages and intended market for the form.

(b) The Department shall acknowledge receipt of the form and a proper certification by providing the insurer with such acknowledgement by first class mail within 30 days of receipt.

(c) If the Department determines that the form submitted fails to satisfy all of the eligibility requirements set forth at N.J.A.C. 11:4-40A.3, the Department shall return the submission to the insurer for non-action within 30 days of receipt. Additionally, if the submission fails to satisfy the submission procedures set forth in this section, the Department may return the submission to the insurer for non-action. Any return for non-action shall specify the deficiencies in the submission. Any submission returned for non-action may be resubmitted pursuant to P.L. 2001, c. 237 after the identified deficiencies have been cured.

11:4-40A.5 Penalties

(a) If the Commissioner determines that a certification submitted to the Department by an insurer pursuant to this subchapter is an improper certification, the insurer shall be subject to the following penalties specifically determined by the Commissioner in consideration of the severity of the violation based on the potential adverse impact to the public and whether it is the insurer's first such violation:

1. A fine not to exceed \$50,000; and
2. A maximum penalty of \$1,000 per policy issued on a form determined to be improperly certified pursuant to this subchapter.

(b) If, after notice and a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, an insurer is found by the Commissioner to be in violation of this subchapter, the form may be disapproved, and, in addition to any other penalties that may be imposed pursuant to law, the Commissioner may bar the insurer from participating in the certification process pursuant to this subchapter for a period not to exceed one year.

11:4-40A.6 Effect on previously acknowledged forms

(a) Any form and certification submitted pursuant to P.L. 2001, c. 237 prior to (the effective date of this subchapter), which was acknowledged by the Commissioner but does not meet the requirements of this subchapter, shall be deemed withdrawn (90 days after the effective date of this subchapter), and the form may not be available for sale or use after that date. Forms deemed withdrawn may be resubmitted pursuant to P.L. 2001, c. 237, but shall include a new form number.

(b) With respect to forms and certifications submitted pursuant to P.L. 2001, c. 237 prior to (the effective date of this subchapter), which were acknowledged by the Commissioner and which do meet the requirements of this subchapter, the insurer shall submit a new certification memorandum pursuant to N.J.A.C. 11:4-40.A(a)1 within (90 days of the effective date of this subchapter). The insurer may continue to make the previously acknowledged form available for sale or use during this period. Any condition specified in the Department's prior letter of acknowledgement which is inconsistent with this subchapter is invalidated and of no force or effect.