

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

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

Proposed Amendment: N.J.A.C. 11:2-1.4

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

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.

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

Proposal Number: PRN-2007-294

Submit comments by November 16, 2007 to:

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The agency proposal follows:

Summary

In 1995, the Department adopted N.J.A.C. 11:2-1.4 containing eligibility requirements that must be met by foreign and alien life and health insurers applying for a certificate of authority to transact the business of insurance in New Jersey. The requirements include that an applicant provide proof that it satisfies certain seasoning requirements or can qualify for a reduction in, or a waiver of, such requirements. The Department has recently become aware of certain cases and circumstances where it has determined that it would be appropriate to propose reducing its current seasoning requirements without eroding the protection these requirements afford consumers against the possibility of insurer failure and insolvency. These proposed amendments address the following situations:

In 2003, the Federal Medicare Prescription Drug, Improvement and Modernization Act (Pub. L. No. 108-173 (2003)) (MMA) was signed into law. The MMA created a new voluntary prescription drug

benefit under Section 1860(d) of the Social Security Act (Medicare Part D). In order to ensure the success of the Medicare Part D prescription drug program, the MMA permits companies to operate as insurance companies in the states pursuant to Federal waivers, instead of certificates of authority normally issued by the states. Most states have addressed this issue by waiving their seasoning requirements for insurance companies that provide only Medicare Part D products in their state. To address this issue in New Jersey, the Department is proposing to amend N.J.A.C. 11:2-1.4(a)5 to allow a foreign or alien insurer that does not hold a certificate of authority in the State to be admitted to provide only Medicare Part D plans in New Jersey if the insurer has completed at least one full year of profitable operation.

Current N.J.A.C. 11:2-1.4(a)5iii(1) also permits waiver of the five-year seasoning requirement for an applicant that is either a wholly-owned subsidiary of a life and health insurer authorized to transact the business of insurance in this State for at least five years, or is an affiliate of a life and health insurer that has the same ultimate parent and is authorized to transact the business of insurance in this State for at least five years, provided certain other criteria are also met. The Department is proposing to amend this provision by rescinding the requirement that an applicant be an affiliate of a life and health insurer having the same ultimate parent as the applicant and permitting an applicant's affiliation with any type of insurer having the same ultimate parent as the applicant.

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

The proposed amendments will have a favorable impact on consumers and foreign and alien insurers seeking admission as a life and health insurer, or a Medicare Part D insurer, in this State. By relaxing the Department's current seasoning requirements, the insurers' marketplace will expand and the number and types of products available to consumers in the State will increase. Small businesses in the State will additionally be favorably impacted because they will be able to offer more product choices. The proposed amendments will not have an unfavorable impact on consumers because the

proposed amendments merely allow for some flexibility in the Department's current admissions eligibility standards and do not jeopardize their effectiveness.

Economic Impact

The proposed amendments will have a favorable impact on affected insurers in that they will be able to expand their market and potential sale of products. Consumers may benefit in that increased competition among insurers may result in lower premiums.

Federal Standards Statement

A Federal standards analysis is not required. The Department's proposed 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 proposed amendments as they relate to Medicare Part D only insurers address only state licensure requirements and are not subject to any Federal standards or requirements.

Jobs Impact

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

Agriculture Industry Impact

The proposed amendments have no impact on the agriculture industry.

Regulatory Flexibility Statement

As the foreign and alien insurers affected by the proposed amendments are not resident in this State, they are not "small businesses" as that term is defined in the Regulatory Flexibility Act at N.J.S.A. 52:14B-16 et seq. For those foreign and alien insurers seeking admission as a life and health

insurer, the proposed amendments would relax the current seasoning requirements and would not impose any new reporting, recordkeeping or other compliance requirements on those entities. For foreign and alien insurers intending to provide only Medicare Part D plans in this State, the proposed amendments also relax the Department's seasoning requirements and additionally require such insurers to have been operating profitably for one year. However, this requirement is placed on all foreign and alien insurers seeking to provide Medicare Part D plans in this State and is necessary to ensure the solvency of insurers and to protect those consumers purchasing coverage from those insurers. Thus, no exception can be made for small businesses. Additionally, the proposed amendments would have no adverse economic impact on such small business foreign or alien insurers. Accordingly, a regulatory flexibility analysis is not required.

Smart Growth Impact

The proposed amendments will 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]):

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 [(4)] **(5)** below, if applicable, have been satisfied. These requirements relate, respectively, to the following circumstances:

(1) The applicant is a wholly-owned subsidiary of a life and health insurer which has been authorized to transact the business of insurance in this State for at least five years or is an affiliate of [a life and health] **an** insurer which has the same ultimate parent and which has been authorized to transact the business of insurance in this State for at least five years. The Commissioner shall be satisfied as to the financial condition and methods of operation of the authorized insurer who shall effectively [guaranty]**guarantee**, by a resolution in a form prescribed by the Commissioner and passed by its board of directors, the minimum capital and surplus requirements required by law of the applicant during the first 10 years of its operation in this State. In the case of an authorized affiliate with the same ultimate parent, the Commissioner may require that the guarantee be provided by the ultimate parent. The applicant shall also be required to demonstrate a sound plan of operation and that surplus has not decreased over the five-year period in question, or such shorter time as the applicant has been operating under current control, except as provided in (a)5ii(2) above.

(2) – (4) (No change.)

(5) The applicant is a Medicare Part D insurer 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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