

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
OFFICE OF SOLVENCY REGULATION

Loss Reserve Opinions

Proposed Repeal and New Rules: N.J.A.C. 11:1-21

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

Authority: N.J.S.A. 17:1-8.1, 17:1-15e, 17:23-1, and 17:23-20 et seq.

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

Proposal Number: PRN 2007-72

Submit written comments by May 4, 2007 to:

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The agency proposal follows:

Summary

N.J.A.C. 11:1-21, originally adopted in 1986, and amended in 1996 and 2001, requires that all licensed property and casualty insurers in New Jersey submit, as an addendum to the annual statement required to be filed pursuant to N.J.S.A. 17:23-1, a statement of opinion relating to loss and loss adjustment reserves for all lines of business written by the insurer. The rules set forth the requirements for the statement of opinion, including statements in the opening paragraph, scope paragraph, and opinion paragraph. In addition, the rules establish requirements for qualified actuaries. Since the time that the rules were originally adopted, the National

Association of Insurance commissioners (NAIC) has established requirements for the filing of loss reserve opinions in the instructions to the property and casualty annual statement, with which insurers must comply pursuant to N.J.S.A. 17:23-1. Accordingly, the requirements set forth in the NAIC annual statement instructions will be utilized for purposes of providing the loss reserve opinion required to be filed.

The Department of Banking and Insurance (Department) is now proposing to repeal the existing rules and propose new rules to reflect requirements adopted by the NAIC in the loss reserve opinion model law adopted in 2003. The rules proposed to be repealed relate to the loss reserve opinions to be filed by property/casualty insurers, including qualifications for actuaries to file such opinions, and specific requirements for the identification, scope and opinion paragraphs. The rules proposed to be repealed also set forth exemptions from those filing requirements. The proposed new rules reflect the current NAIC model and provide that insurers shall file such opinions in accordance with the NAIC annual statement instructions, which will be utilized to establish the requirements for the actuarial opinion as set forth above. In addition, the proposed new rules reflect the current NAIC model and address the filing of an actuarial opinion summary, and an actuarial report and workpapers. The proposed new rules also address the confidentiality of certain filed documents. A summary of the proposed new rules follows.

Proposed N.J.A.C. 11:1-21.1 sets forth the purpose and scope of the proposed new rules.

Proposed N.J.A.C. 11:1-21.2 sets forth the definitions of terms used in the subchapter.

Proposed N.J.A.C. 11:1-21.3 provides that every property and casualty insurer doing business in this State shall annually submit the opinion of an appointed actuary entitled “Statement of Actuarial Opinion” in accordance with the appropriate NAIC property and

casualty annual statement instructions. This reflects the current national standard for such opinions and ensures consistency with other states' requirements.

Proposed new N.J.A.C. 11:1-21.4 requires every property and casualty insurer domiciled in this State that is required to submit a statement of actuarial opinion to annually submit an actuarial opinion summary. Insurers not domiciled in this State are required to provide the actuarial opinion summary upon request.

Proposed new N.J.A.C. 11:1-21.5 requires every property and casualty insurer domiciled in this State that is required to submit a statement of actuarial opinion to annually file, by May 1 of each year, an actuarial report and work papers, as required to be prepared by the appropriate NAIC Property and Casualty Annual Statement instructions with which insurers must comply pursuant to N.J.S.A. 17:23-1, to support each actuarial opinion. Insurers licensed but not domiciled in this State are required to file an actuarial report and work papers upon request. In addition, the proposed new rule provides that, to the extent that an insurer fails to provide a supporting actuarial report and/or work papers at the request of the Commissioner of Banking and Insurance (Commissioner) or the Commissioner determines that the supporting actuarial report or work papers provided by the insurer are otherwise unacceptable to the Commissioner, the Commissioner may, pursuant to N.J.S.A. 17:23-20 et seq., engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare the supporting actuarial report or work papers.

Proposed new N.J.A.C. 11:1-21.6 establishes the confidentiality of the actuarial report, work papers, and actuarial opinion summary provided pursuant to the subchapter.

The proposed repeal and new rules reflect the current standards for actuarial opinions, and provide additional documentation for actuarial opinions currently required to be filed so as to

better enable the Department to evaluate an insurer's financial condition and help ensure that they are operating in a sound financial condition. The proposed new rules essentially track the requirements in the NAIC annual statement instructions, with which insurers are required to comply pursuant to N.J.S.A. 17:23-1, and reflect the national standard as adopted by the NAIC.

A 60-day comment period has been 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 noted in the Summary above, the proposed repeal and new rules will better enable the Department to evaluate an insurer's financial condition to determine whether they are operating in a sound financial condition. The additional information provided will enable the Department to require insurers to take appropriate remedial action in a timely manner to help avoid the disruptions that frequently occur when insurers operate in an unsound condition and that can adversely impact insureds and the market generally.

Economic Impact

Property and casualty insurers transacting business in this State will be required to submit an actuarial opinion in accordance with the NAIC annual statement instructions, consistent with the requirements in other states, and also provide an actuarial opinion summary, actuarial report and work papers pursuant to the proposed new rules, and incur any costs related thereto. However, the Department does not believe that such costs will impose an undue burden on insurers. Insurers currently are required to develop and maintain these documents in accordance

with the NAIC annual statement instructions with which insurers are required to comply pursuant to N.J.S.A 17:23-1. Accordingly, the Department does not believe that any additional professional services would need to be utilized in order for insurers to comply with the proposed new rules. The professional services that will continue to be required will be actuarial services.

The Department will be required to incur any costs associated with the review of the additional information to be filed.

The Department believes that the potential benefits to be achieved outweigh any additional costs that may be imposed. As noted in the Summary above, the proposed new rules will better enable the Department to evaluate an insurer's financial condition, and thereby enable it to take or order remedial action as necessary to address any unsound financial condition. This, in turn, will help avoid costs to policyholders and the market generally related thereto.

Federal Standards Statement

A Federal standards analysis is not required because the proposed repeal and new rules 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 repeal and new rules.

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

Agriculture Industry Impact

The proposed repeal and new rules will not have any impact on the agriculture industry in New Jersey.

Regulatory Flexibility Analysis

The proposed repeal and new rules impose recording, 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. To the extent that the proposed new rules apply to small businesses, they will apply to property and casualty insurers domiciled in this State. The proposed new rules provide no differentiation in compliance requirements based on business size. As noted above, the proposed new rules should impose minimal additional costs on insurers, in that insurers are currently required to develop and maintain an actuarial opinion summary, and actuarial report and work papers, in accordance with the NAIC annual statement instructions with which insurers are required to comply pursuant to N.J.S.A. 17:23-1. Insurers should be able to utilize existing professional services and no additional professional services should be required in order to comply with the proposed new rules. As noted above, the goal of these rules is to reflect the national standard for the filing of such documents established by the NAIC to better enable the Department to evaluate an insurer's financial condition and take remedial action in a more timely manner, so as to avoid or minimize disruptions resulting from an insurer operating in an unsafe or unsound financial condition. These goals do not vary based on business size.

Smart Growth Impact

The proposed repeal and new rules will not have an impact on the achievement of smart growth with the implementation of the State Development and Redevelopment Plan.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 11:1-21.

Full text of the proposed new rules follows:

SUBCHAPTER 21. LOSS RESERVE OPINIONS

11:1-21.1 Purpose and scope

(a) This subchapter sets forth the requirements for the filing of loss reserve actuarial opinions, actuarial opinion summary, and actuarial report and workpapers by property casualty insurers.

(b) This subchapter shall apply to all property and casualty insurers authorized or admitted to transact business in this State.

11:1-21.2 Definitions

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

“Commissioner” means the Commissioner of the New Jersey Department of Banking and Insurance.

“Department” means the New Jersey Department of Banking and Insurance.

“NAIC” means the National Association of Insurance Commissioners.

11:1-21.3 Statement of actuarial opinion

(a) Every property and casualty insurer authorized or admitted to transact business in this State shall annually submit the opinion of an appointed actuary entitled “Statement of Actuarial Opinion.”

(b) The opinion required pursuant to (a) above shall be filed in accordance with the appropriate NAIC Property And Casualty Annual Statement Instructions.

11:1-21.4 Actuarial opinion summary

(a) Every property and casualty insurance company domiciled in this State that is required to annually submit a statement of actuarial opinion shall also annually submit an actuarial opinion summary, written by the company's appointed actuary. This actuarial opinion summary shall be filed in accordance with the appropriate NAIC Property and Casualty Annual Statement Instructions and considered a document supporting the actuarial opinion required by this subchapter.

(b) A company licensed but not domiciled in this State shall provide the actuarial opinion summary upon request.

11:1-21.5 Actuarial report and workpapers

(a) Every property and casualty insurance company domiciled in this State that is required to annually submit a statement of actuarial opinion shall annually file, by May 1 of each year, an actuarial report and underlying workpapers that are required to be prepared by the appropriate NAIC Property and Casualty Annual Statement Instructions to support each actuarial opinion. A company licensed but not domiciled in this State shall provide the actuarial report and workpapers upon request.

(b) If any insurer fails to provide a supporting actuarial report and/or workpapers as set forth in (a) above, or the Commissioner determines that the supporting actuarial report and/or workpapers provided by the insurance company are otherwise unacceptable, the Commissioner shall so notify the insurer. If the insurer fails to provide the requested information within 30 days of the date of the request, the Commissioner may, pursuant to N.J.S.A. 17:23-20 et seq.,

engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare the supporting actuarial report and/or workpapers.

11:1-21.6 Confidentiality

(a) The statement of actuarial opinion shall be provided with the annual statement in accordance with the appropriate NAIC Property and Casualty Annual Statement Instructions and shall be treated as a public document.

(b) Documents, materials or other information in the possession or control of the Department that are considered an actuarial report, workpapers or actuarial opinion summary provided in support of the opinion, and any other material provided by the company to the Commissioner in connection with the actuarial report, workpapers or actuarial opinion summary, shall be confidential pursuant to N.J.S.A. 17:23-24f and shall not be considered a public record for purposes of the Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

(c) This section shall not be construed to limit the Commissioner's authority to release the documents to the Actuarial Board for Counseling and Discipline (ABCD) so long as the material is required for the purpose of professional disciplinary proceedings and that the ABCD establishes procedures satisfactory to the Commissioner for preserving the confidentiality of the documents, nor shall this section be construed to limit the Commissioner's authority to use the documents, materials or other information in furtherance of any regulatory or legal action brought as part of the Commissioner's official duties.

(d) In order to assist in the performance of the Commissioner's duties, the Commissioner may:

1. Share documents, materials or other information, including the confidential and privileged documents, materials or information subject to (b) above with other state, federal and international regulatory agencies, with the National Association of Insurance Commissioners and its affiliates and subsidiaries, and with state, federal and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material or other information and has the legal authority to maintain confidentiality;

2. Receive documents, materials or information, including otherwise confidential and privileged documents, materials or information, from the National Association of Insurance Commissioners and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; and

3. Enter into agreements governing the sharing and use of information consistent with (b) and (c) above and this subsection.

(e) No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the Commissioner under this section or as a result of the sharing of information as authorized in (d) above.