

INSURANCE  
DEPARTMENT OF BANKING AND INSURANCE  
DIVISION OF LIFE AND HEALTH

Individual Annuity Contract Form Standards

Definitions; Waiver of Surrender Charges

Proposed Amendments: N.J.A.C. 11:4-43.2 and 43.6

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

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

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

Proposal Number: PRN 2009-4

Submit comments by March 6, 2009 to:

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The agency proposal follows:

Summary

The Department is proposing amendments to N.J.A.C. 11:4-43.2 and 43.6. N.J.A.C. 11:4-43.6 currently permits insurance companies to waive annuity surrender charges if the owner or annuitant enters a nursing home, but not if their spouse or civil union partner enters a nursing home. The Department's amendments to N.J.A.C. 11:4-43.2 and 43.6(a) expand the circumstances under which waiver of surrender fees are permitted to include the confinement of spouses and civil union partners to nursing homes, and the amendments also define the term

“civil union partner.” Specifically, the amendments to N.J.A.C. 11:4-43.6(a)1 require individual annuities that allow the owner or annuitant to access annuity funds without a surrender charge to pay for nursing home care for the owner or annuitant to also allow access to such funds without a surrender charge for nursing home care for the owner’s or annuitant’s spouse or civil union partner. This amendment makes New Jersey’s rule regarding waiver of annuity surrender charges due to entry into a nursing home consistent with the rule in most states. The Department is also amending this provision by deleting language in order to clarify that confinement of any other family member not identified in the contract shall not qualify for the benefit.

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 Department believes that the proposed amendments will have positive effects on society. Allowing the sale of individual annuities where the owner or annuitant can access annuity funds without penalty to pay for nursing home care if the owner or annuitant’s spouse or civil union partner is confined to a nursing home may increase access to needed nursing home care and so benefit society.

#### Economic Impact

The proposed amendments would require insurance companies that sell individual annuities which permit the owner or annuitant to access annuity funds without paying a surrender charge to pay for nursing home care of the annuitant or owner to also allow access to such funds

without charge if the owner's or annuitant's spouse or civil union partner is confined to a nursing home. This would ease the financial burden individual who remains in the community and who must bear the burden of meeting the cost of nursing home care for the spouse or civil union partner who is confined to a nursing home. The Department believes that the proposed amendments will not have a significant economic impact on insurance companies that offer the waiver and would not be able to collect the surrender charges under these circumstances.

#### Federal Standards Statement

A Federal standards analysis is not required because these proposed amendments regulate the business of insurance and are not subject to any Federal requirements or standards.

#### Jobs Impact

The Department does not believe that these proposed amendments will cause any jobs to be generated or lost.

#### Agriculture Industry Impact

The Department does not expect any impact on the agriculture industry as a result of these proposed amendments.

#### Regulatory Flexibility Analysis

The proposed amendments will apply to "small businesses" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These "small businesses" include insurers that are authorized to write annuity contracts. Insurers should not need to utilize any

professional services in order to comply with the proposed amendments. The proposed amendment provides no different reporting, recordkeeping or other compliance requirements based on business size. The proposed amendment broadens the circumstances under which insurers are allowed to waive annuity surrender charges to include the confinement of spouses and civil union partners to nursing homes. The Department does not believe that different compliance requirements are feasible, as the societal objectives sought to be obtained through the proposed amendment are desirable regardless of the size of the insurer that issued the annuity. Therefore, for the reasons discussed above, and to continue to ensure consistency and uniformity, no differentiation in compliance requirements is provided based on business size.

#### Smart Growth Impact

The proposed amendments will not have an impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

#### Housing Affordability Impact

The proposed amendments will not have an impact on housing affordability because the proposed amendments address broadening the waiver circumstances of annuity surrender charges to include spouses and civil union partners.

#### Smart Growth Development Impact

The Department believes that there is an extreme unlikelihood that these proposed amendments would evoke a change in the housing production in Planning Areas 1 and 2 or

within the designated centers under the State Development and Redevelopment Plan in New Jersey because the proposed amendments address individual annuity forms.

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

11:4-43.2 Definitions

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

. . .

**“Civil union partner” means any person who participates in a civil union as defined and established pursuant to N.J.S.A. 37:1-28 et seq. and its implementing rules.**

. . .

11:4-43.6 Waiver of surrender charges

(a) An individual annuity form which includes a waiver of surrender charges upon confinement to a nursing home or similar institution shall comply with the following requirements:

1. The benefit shall be limited to the confinement of the owner, [or] the annuitant, **the owner’s spouse or civil union partner or the annuitant’s spouse or civil union partner**. Confinement of any other family member [who is] not [an owner or annuitant] identified in the contract shall not qualify for the benefit.

(b) - (d) (No change.)