

INSURANCE

DEPARTMENT OF BANKING AND INSURANCE

OFFICE OF LIFE AND HEALTH

Long-Term Care Insurance

Filing Requirements for Advertising

Proposed Repeal: N.J.A.C. 11:4-34.20

Proposed Amendment: N.J.A.C. 11:4-34 Appendix J

Authorized By: Neil N. Jasey, Commissioner, Department of Banking and Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1-15e and 17B:27E-1 et seq.

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

Proposal Number: PRN 2009-336

Submit comment by January 1, 2010 to:

Robert J. Melillo, Chief  
Legislative and Regulatory Affairs  
Department of Banking and Insurance  
20 West State Street  
P.O. Box 325  
Trenton, NJ 08625-0325  
Fax: (609) 292-0896  
E-mail: [legsregs@dobi.state.nj.us](mailto:legsregs@dobi.state.nj.us)

The agency proposal follows:

**Summary**

N.J.A.C. 11:4-34 was originally adopted in 1989 and amended in 2005 to implement N.J.S.A. 17B:27E-1 et seq. and set forth the requirements for the provision of long-term care (LTC) insurance in this State. Amendments to this subchapter also were adopted in 2009. The rules and amendments are generally based on a model adopted by the National Association of Insurance Commissioners (NAIC). N.J.A.C. 11:4-34.20, which was not previously amended, provides that all advertising materials, in whatever form, shall be filed with the Commissioner of Banking and Insurance (Commissioner) for review. The rule also provides that the Commissioner may subsequently disapprove the use of such advertising materials if he or she finds that they violate the trade practices requirements in N.J.S.A. 17B:30-1 et seq. or N.J.A.C. 11:2-11. Advertising materials are not subject to prior approval under the rule.

After almost five years of experience with this rule, the Department of Banking and Insurance (Department) has determined that it is no longer necessary to require the filing of all advertising materials for review by the Department and is proposing to repeal N.J.A.C. 11:4-34.20. Almost no advertising materials that have been filed heretofore have been subsequently disapproved by the Department during the time the rules have been in effect. In addition, advertising materials may be reviewed by the Department at any time during a market conduct examination of the insurer. Moreover, advertising materials continue to be subject to the requirements of N.J.S.A. 17B:30-1 et seq. and N.J.A.C. 11:2-11. Accordingly, notwithstanding the repeal of N.J.A.C. 11:4-34.20, adequate safeguards will continue in effect for consumers of this State, while unnecessary filings with the Department will be eliminated.

The Department is also proposing to amend Appendix J to delete question M in Part II related to the filing requirements for marketing under N.J.A.C. 11:4-34.20, as it will be no longer applicable, and to redesignate the remaining questions in Part II.

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), 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 repeal and amendment eliminates the unnecessary filing requirements related to advertising materials for LTC insurance, thereby reducing burdens on both insurers and the Department. Safeguards continue in place to ensure that advertising is not false or misleading in that advertising for LTC insurance will continue to be subject to the requirements of N.J.S.A. 17B:30-1 et seq. and N.J.A.C. 11:2-11.

### **Economic Impact**

The proposed repeal and amendment will eliminate unnecessary filings with the Department related to advertising materials for LTC insurance, thereby reducing unnecessary costs to insurers in filing such information and to the Department in reviewing such information, which costs are ultimately borne by policyholders.

### **Federal Standards Statement**

A Federal standards analysis is not required because the proposed repeal and amendment 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 amendment. The Department invites commenters to submit any data or studies on the potential jobs impact of the proposed repeal and amendment together with their comments on other aspects of the proposal.

### **Agriculture Industry Impact**

The proposed repeal and amendment will not have an impact on the agriculture industry in New Jersey.

### **Regulatory Flexibility Statement**

A regulatory flexibility analysis is not required because the proposed repeal and amendment do not 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. As was noted above, the proposed repeal and amendment eliminate the requirement that LTC insurers file all advertising materials with the Department for review.

### **Smart Growth Impact**

The proposed repeal and amendment do 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 repeal and amendment will not have an impact on housing affordability in this State because the proposed repeal and amendment relate to the filing of advertising materials for LTC insurance with the Department.

### **Smart Growth Development Impact**

The Department believes that there is an extreme unlikelihood that the proposed repeal and amendment would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan because the proposed repeal and amendment relate to the filing of advertising materials for LTC insurance with the Department.

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

11:4-34.20 [Filing requirements for advertising] (*Reserved*)

[(a) Every carrier issuing long-term care insurance or benefits in this State shall provide a copy of any long-term care insurance advertisement intended for use in this State, whether through written, radio or television medium, to the Commissioner for review. The Commissioner may disapprove an advertisement at any time if the advertisement is not in compliance with this rule or is in violation of the Trade Practices Act, N.J.S.A. 17B:30-1 et seq., or N.J.A.C. 11:2-11. An advertisement which has been disapproved by the Commissioner shall continue to be disapproved until the disapproval is withdrawn by the Commissioner. In addition, copies of all advertisements shall be retained by the carrier for at least three years from the date the advertisement was first used.

(b) The Commissioner may exempt from these requirements any advertising form or material when, in the Commissioner's opinion, this requirement may not be reasonably applied.]

APPENDIX J

**STATE OF NEW JERSEY  
LONG-TERM CARE INSURANCE PARTNERSHIP PROGRAM  
POLICY CERTIFICATION FORM**

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Part II. QUESTIONS REGARDING APPLICABLE PROVISIONS OF THE 2000  
MODEL REGULATION AND 2000 MODEL ACT

Please answer each of the questions below with respect to the policy form identified in Part I above. For purposes of answering the questions below, any provision of the 2000 NAIC Model Regulation or 2000 NAIC Model Act listed below shall be treated as including any other provision of the 2000 NAIC Model Regulation or 2000 NAIC Model Act necessary to implement the provision.

Are the following requirements of the 2000 NAIC Model Regulation met with respect to the policy (including certificates issued under a group insurance contract) intended to be covered under the New Jersey Long-Term Care Insurance Partnership Program that are issued on the policy form identified in Part I above?

. . . .

[Yes \_\_\_ No \_\_\_ N/A \_\_\_ M. Section 22 (relating to filing requirements for marketing). (N.J.A.C. 11:4-34.20)]

Yes \_\_\_ No \_\_\_ N/A \_\_\_ [N.] **M.** Section 23 (relating to standards for marketing), including inaccurate completion of medical histories, other than paragraphs (1), (6), and (9) of section 23C. (N.J.A.C. 11:4-34.21)

Yes \_\_\_ No \_\_\_ N/A \_\_\_ [O.] **N.** Section 24 (relating to suitability). (N.J.A.C. 11:4-34.22)

Yes \_\_\_ No \_\_\_ N/A \_\_\_ [P.] **O.** Section 25 (relating to prohibition against preexisting conditions and probationary periods in replacement policies or certificates). (N.J.A.C. 11:4-34.23)

Yes \_\_\_ No \_\_\_ N/A \_\_\_ [Q.] **P.** The provisions of section 26 relating to contingent nonforfeiture benefits, if the policyholder declines the offer of a nonforfeiture provision described in section 7702B(g)(4) of the Internal Revenue Code of 1986 (26 U.S.C. 7702B(g)(4)). (N.J.A.C. 11:4-34.24)

Yes \_\_\_ No \_\_\_ N/A \_\_\_ [R.] **Q.** Section 29 (relating to standard format outline of coverage). (N.J.A.C. 11:4-34.27)

Yes \_\_\_ No \_\_\_ N/A \_\_\_ [S.] **R.** Section 30 (relating to requirement to deliver shopper's guide). (N.J.A.C. 11:4-34.28)

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