

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF LIFE AND HEALTH

Individual Annuity Contract Form Standards
Definitions; Waiver of Surrender Charges

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

Proposed: January 5, 2009 at 41 N.J.R. 72(a)

Adopted: November 12, 2009 by Neil N. Jasey, Commissioner, Department of Banking and Insurance

Filed: November 12, 2009 as R. 2009 d. 367, **without change**.

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

Effective Date: December 7, 2009

Expiration Date: March 14, 2011

Summary of Public Comments and Agency Responses:

The Department received timely written comments from the American Council of Life Insurers and AXA Equitable Life Insurance Company.

COMMENT: Both commenters stated that the Department's proposed amendment provides that insurers are permitted to include a waiver of surrender charges benefit to the owner's spouse or civil union partner or the annuitant's spouse or civil union partner, if confined to a nursing home or similar institution. The commenter contends that in the Summary the Department states that the amendments to N.J.A.C. 11:4-43.2 and 43.6(a) require insurers to provide such an extended benefit. The commenter requested clarification of the proposed amendments. The commenter questioned whether an annuity contract that includes a waiver of surrender charges upon confinement to a nursing home or similar institution is required to extend the benefit to the

owner/annuitant's spouse or civil union partner or would an insurer have the option to extend this benefit to the owner/annuitant's spouse/civil union partner.

The other commenter stated that: The use of the word "which" implies that the waiver of surrender charges is optional. This is supported in the Summary section of the proposed regulation when it provides that the amendments expand the circumstances "under which waiver of surrender fees are permitted...." However, in the Economic Impact section it provides that "the proposed amendments would require insurance companies that sell individual annuities which permit the owner or annuitant to access annuity funds...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." The commenter seeks clarification on whether the waiver of surrender charges is optional or mandatory. The commenter contends that the practice has been that such waiver of surrender charges is optional.

RESPONSE: The rule is permissive, not mandatory. The Department notes that it is the company's option whether to provide the waiver at all and whether to provide it to only the owner/annuitant or also to the spouse/civil union partner. The commenter is correct that the word "which" in the rule language "an individual annuity form which includes a waiver of surrender charges..." (emphasis added) means that whether to provide a waiver of surrender charges when either the owner, the annuitant, or the spouse or civil union partner of the owner or the annuitant is confined to a nursing home is at the option of the carrier. The carrier can decline to provide the waiver in any circumstances, provide it only when the owner or annuitant is confined to a nursing home, or provide it when either the owner or annuitant or the spouse or civil union partner of the owner or annuitant is confined to a nursing home.

COMMENT: Two commenters expressed concern with the following language in the amendment: “the benefit shall be limited to the confinement of the owner, the annuitant, the owner’s spouse or civil union partner or the annuitant’s spouse or civil union partner.” Specifically, one commenter stated that he would like clarification that the waiver of surrender charges benefit can be offered as an option when either the owner, the annuitant, the owner’s spouse or civil union partner or the annuitant’s spouse or civil union partner is confined to a nursing home, but that the offer is not mandatory for all of the specified individuals. For example, an insurer may offer a waiver of surrender charge when an owner is confined to a nursing home, but is not required to offer the waiver of surrender charge when an owner’s spouse is confined to a nursing home. These would be options offered at time of policy sale.

Another commenter stated that if the DOBI’s clarification of proposed N.J.A.C. 11:4-43.6 is that the waiver of surrender charges is a mandatory benefit that must be offered to include “the owner, the annuitant, the owner’s spouse or civil union partner or the annuitant’s spouse or civil union partner,” the commenter would respectfully object to the amendments. According to the commenter, the owner/annuitant’s spouse or civil union partner is not the insured or annuitant and their need for nursing home care is not a benefit trigger. The policy is not underwritten based on the owner’s spouse or civil union partner’s potential need for nursing home care.

The Summary section of the proposal also provides that “[t]his 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 commenter is confused by this statement because the commenter asserts this expansion to spouses and civil union partners is not consistent with

other state requirements or the Interstate Insurance Product Regulation Commission's (IIPRC) Annuity Standards for waiver of surrender charges.

RESPONSE: The Department's proposal allows carriers the option of waiving surrender charges upon the confinement to a nursing home of one, any combination or all of the following: the owner, the annuitant, or the spouse/civil union partner of the owner or annuitant. This is consistent with the rules in most states. The waiver of surrender charges is not mandatory but permissive.

COMMENT: One commenter stated that its members would like some clarification on the effective date of this proposal, if it is adopted. The commenter stated that most policies are not underwritten based on the owner/annuitant's spouse or civil union partner's need for nursing home care. So, the trigger for the waiver of surrender charges is limited to the nursing home confinement of the owner or the annuitant. The commenter inquired what the effective date of the adoption of these amendments would be and whether the amendments would only be applied prospectively. The commenter respectfully suggested that the amendments be applicable only to policies sold after the effective date of the proposed regulation, as policies that have already been sold will not have been priced for the waiver of surrender charges benefit to include a nursing home confinement for these additional individuals.

RESPONSE: Again, the amended rules are permissive, not mandatory. The effective date of these rules is the date of publication of the notice of adoption in the New Jersey Register, and the amendments only apply prospectively.

Federal Standards Statement

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

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