

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

**Actuarial Services
"40 States" File and Use Standards and Procedures**

Adopted New Rules: N.J.A.C. 11:4-40A

Proposed: November 18, 2002 at 34 N.J.R. 3916(a).

Adopted: March 6, 2003 by Holly C. Bakke, Commissioner, Department of Banking and Insurance.

Filed: March 7, 2003 as R. 2003 d. 140, **with substantive and technical changes** not requiring additional public notice and opportunity for comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 17:1-8.1, 17:1-15e and P.L. 2001, c. 237 (codified as N.J.S.A. 17B:25-18.4).

Effective Date: April 7, 2003.

Expiration Date: November 30, 2005.

Summary of Public Comments and Agency Responses:

The Department received comments from the American Council of Life Insurers (ACLI), the New Jersey Association of Insurance and Financial Advisors (NJAIFA) and Security Benefit Life Insurance Company.

COMMENT: Two commenters expressed their support for the Department's reproposal. One of the commenters was encouraged by the steps taken to address the form filing problems presently encountered by insurers doing business in this State, and equally encouraged by elimination of the requirements contained in N.J.A.C. 11:4-40A.4(a)2, 3 and 4 of the original proposal. One of the commenters thanked the Department for its reproposal,

stating that the reproposal was more consistent with the intent and spirit of P.L. 2001, c. 237.

RESPONSE: The Department thanks the commenters for their support.

COMMENT: One commenter expressed concern with N.J.A.C. 11:4-40A.3(a). The commenter stated that the language in N.J.S.A. 17B:25-18.4 is clear that the enabling statute was designed to allow insurers to market certain products in New Jersey that are approved for sale in at least 40 other states notwithstanding the provisions of any other New Jersey law to the contrary. The commenter states that the Department's reproposal reverses that language and intent by stating in that "notwithstanding eligibility under this statute, a policy form must still comply with New Jersey law regarding solicitation, marketing, administration and servicing of life insurance policies." According to the commenter, that language negates the very intent of the statute, and in essence turns the regulation into a prior approval process by which insurers must still meet very specific New Jersey requirements. As an example, the commenter states that N.J.A.C. 11:4-40A.3(a)1xiii and (a)3i add significant restrictions to the standard nonforfeiture law, which applies to both life and annuity products and is the standard for the other states. Imposing additional restrictions in New Jersey will result in either a form unique to New Jersey or, more likely, a product available in 40+ states that is not available in New Jersey.

RESPONSE: The implementing legislation, P.L. 2001, c. 237 (N.J.S.A. 17:B-25-18.4), provides that, subject to the fulfillment of the filing requirements,

an insurer authorized to do business in this State may make available for sale or use "any form of life insurance policy, annuity, variable contract, endorsement, riders and application forms" in New Jersey that are available for sale or use in 40 states, subject to state variations that do not alter the unique product features or design of the product described in the form or contract.

N.J.A.C. 11:4-40A.3 reflects the Department's determination that, notwithstanding such a form being rendered "available" for sale or use in New Jersey by virtue of the fulfillment of the filing requirements and its having been deemed available for sale or use in 40 other states, certain provisions of New Jersey law applicable to the particular type of form in question would continue to apply. For example, a person who was unlicensed to sell life insurance could not legally do so merely because the form he or she was utilizing had been deemed "available for sale or use" pursuant to N.J.S.A. 17B:25-18.4.

Moreover, the text of N.J.A.C. 11:4-40A.3 as proposed recognizes that the New Jersey laws listed therein mirror, to a significant extent, provisions in the laws of a substantial majority of other states, based upon model legislative provisions promulgated by the National Association of Insurance Commissioners. Thus forms or contracts that did not comply with New Jersey law pertaining to the standard contract provisions enumerated in N.J.A.C. 11:4-40A.3 as proposed would, per force, contain provisions that did alter the unique product features or design of the product, as that product is contemplated under New Jersey's

insurance regulatory scheme and the insurance regulatory scheme of a substantial majority of states.

Through the reproposal process, the Department engaged in a dialogue with the regulated community. N.J.A.C. 11:4-40A.3 represents the product of that dialogue and is consistent with the legislative intent of N.J.S.A. 17B-25-18.4 and the mission of the Department to protect the interest of New Jersey consumers of insurance products.

COMMENT: One commenter stated that N.J.A.C. 11:4-40A.3(b) requires carriers to administer forms made available for sale in accordance with all applicable New Jersey statutes and rules. The commenter questioned if the policy or contract that was approved in 40 states and becomes available for use in New Jersey does not conform with New Jersey statutes and rules, would the carrier be required to disregard the contract language and apply the New Jersey statutes and rules?

RESPONSE: The requirements in proposed N.J.A.C. 11:4-40A.3(b) relate to solicitation, marketing, administration and servicing of policies rather than contract language. The Department would not expect contract language to conflict with the laws relating to these areas. However, if there were a conflict, the Department would expect the policy to be administered in compliance with the statutes and regulations cited in this section.

COMMENT: One commenter stated that both the statute and N.J.A.C. 11:4-40A.4(a)1i are confusing as to exactly what is required regarding the

certification memorandum acknowledgment. The commenter stated that the statutory citation is to a confusing real property statute that insurers will be unfamiliar with, and that the exact requirements should be contained in the regulation.

RESPONSE: N.J.S.A. 17B:25-18.4c requires an acknowledgement in the same manner in which documents for recording instruments conveying or affecting interests in real estate in New Jersey must be acknowledged to be eligible for recording. These requirements are set forth at N.J.S.A. 46:14-2.1a and 46:14-6.1, and require a responsible officer of the insurer to appear before an attorney-at-law, notary public, county clerk or deputy county clerk, register of deeds and mortgages or deputy register, or surrogate or deputy surrogate. One of the above-described persons shall acknowledge that the officer of the insurer was authorized to make the certification on behalf of the insurer, and that the officer executed the instrument as the act of the insurer. Since these are statutory requirements, the Department does not believe that it is necessary to repeat them in this rule.

COMMENT: Two of the comments concerned N.J.A.C. 11:4-40A.6 regarding previously acknowledged forms. One of the commenters agreed with the requirement that forms to be issued in New Jersey shall comply with New Jersey standard contract provision requirements, but stated that the 90-day timeframe for submission of a new certification may not be adequate. The commenter believed that six months would be a more appropriate timeframe.

The second commenter stated that insurers remain concerned with the resubmission requirement for forms that no longer are in total compliance with the new regulation. According to the commenter, resubmissions may well be duplicative in nature, unduly burdensome on both the insurers and the Department, and harmful to consumers by delaying products offered in the market.

RESPONSE: The Department agrees that there is a need to extend the time period in which new certifications with regard to previously acknowledged forms can be submitted to six months from the effective date of this rule, and is revising the rule at N.J.A.C. 11:4-40A.6(b) to reflect this change. This extension will not adversely affect consumers, but merely allows companies a longer period of time in which to prepare and submit the certifications.

With respect to the second comment, resubmission of a noncompliant form will not be duplicative of the initial submission because the standards of review have changed. Moreover, the submission requirements have been streamlined so that the amount of material required to be included in a 40 States submission is not excessive. Finally, consumers will not be harmed by delay because these 40 States filings are unrelated to rates and submissions, and are reviewed within 30 days.

Federal Standards Statement

A Federal standards analysis is not required because the Department's adopted new rules are not subject to any Federal standards or requirements.

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

SUBCHAPTER 40A. "40 STATES" FILE AND USE STANDARDS AND PROCEDURES

11:4-40A.1 Purpose and scope

(a) The purpose of this subchapter is to implement P.L. 2001, c. 237 (N.J.S.A. 17B:25-18.4), which establishes a special procedure whereby insurers may forego prior approval of certain life insurance, annuity and variable contract forms.

(b) This subchapter shall apply to all individual life insurance, individual annuity, group annuity, group life, variable life and variable annuity contract forms to be issued by an insurer authorized to do business in this State. This subchapter shall not apply to any health insurance policy, or contract forms or benefits, including specified disease or critical illness policies, contracts or benefits.

11:4-40A.2 Definitions

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

"Annuity" means all contracts meeting the definition set forth at N.J.S.A. 17B:17-5.

"Available for sale or use" means that the insurer has complied with the state's laws, regulations, and procedures to allow the insurer to sell or use the form in that state.

"Commissioner" means the Commissioner of the Department of Banking and Insurance.

"Department" means the Department of Banking and Insurance.

"Form," "contract form" and "policy form" mean all annuity contract forms; all life insurance policy and contract forms; all variable contract forms; and all group insurance certificates as defined within this subchapter, including endorsements, riders and application forms.

"Health insurance" means all policies, contracts and benefits meeting the definition set forth at N.J.S.A. 17B:17-4, including specified disease and critical illness policies, contracts and benefits as defined at N.J.A.C. 11:4-53.

"Improper certification" means providing any misrepresentation or false statement material to a certification form.

"Life insurance" means all policies and contracts meeting the definition set forth at N.J.S.A. 17B:17-3.

"Responsible officer of the insurer" means a corporate officer of the level of vice president or higher, or of equivalent title within the insurer's structure, who is either the actuary of the insurer with responsibility for the type of form

filed, or the individual with responsibility for managing the form filing process for the insurer with regard to the type of form filed.

"Unique product features or design" means that the contract language that expresses the methodology used to calculate values, benefits and rates is materially the same. Nonmaterial differences include unique requirements mandated by a state's law (for example, mandated use of a unisex mortality table); synonyms used (for example, "period" instead of "term," "face amount" instead of "insurance amount"); and quantitative differences of no more than 10 percent (for example, one policy contains a \$50.00 charge, while another contains a \$55.00 charge). Standard contract provisions are not considered part of the unique product feature or design.

"Variable contracts" means all contracts meeting the definition set forth at N.J.S.A. 17B:28-1 et seq.

11:4-40A.3 Eligibility

(a) Forms submitted to the Commissioner on the basis that they have been made available for sale or use in 40 states, subject to state variations that do not alter the unique features or design of the product, shall be eligible for sale or use pursuant to the requirements of this subchapter. Notwithstanding eligibility, any such form shall comply with New Jersey law regarding standard contract provisions as identified below.

1. Individual Life:

- i. Free Look as set forth in N.J.S.A. 17B:25-2.1;
- ii. Grace Period as set forth in N.J.S.A. 17B:25-3;
- iii. Incontestability as set forth in N.J.S.A. 17B:25-4, 25-16 and 25-17;
- iv. Entire Contract as set forth in N.J.S.A. 17B:25-5;
- v. Misstatement of Age as set forth in N.J.S.A. 17B:25-6;
- vi. Dividends as set forth in N.J.S.A. 17B:25-7;
- vii. Policy Loan as set forth in N.J.S.A. 17B:25-8;
- viii. Reinstatement as set forth in N.J.S.A. 17B:25-9;
- ix. Payment of Premium as set forth in N.J.S.A. 17B:25-10;
- x. Automatic Premium Loan Notice as set forth in N.J.S.A. 17B:25-10.1;
- xi. Payment of Claims as set forth in N.J.S.A. 17B:25-11;
- xii. Beneficiary as set forth in N.J.S.A. 17B:25-12;
- xiii. Nonforfeiture Benefits as set forth in N.J.S.A 17B:25-19(a) and (l);
- xiv. Title as set forth in N.J.S.A. 17B:25-14; and
- xv. Period in Which to Commence Cause of Action as set forth in N.J.S.A. 17B:25-15;

2. Group Life:

- i. Requirements for Eligible Groups as set forth in N.J.S.A. 17B: 27-1;

- ii. Dependents as set forth in N.J.S.A. 17B:27-9;
 - iii. Grace Period as set forth in N.J.S.A. 17B:27-11;
 - iv. Incontestability as set forth in N.J.S.A. 17B:27-12;
 - v. Application, Representations not Warranties, Entire Contract as set forth in N.J.S.A. 17B:27-13;
 - vi. Evidence of Insurability as set forth in N.J.S.A. 17B:27-14;
 - vii. Age Adjustments as set forth in N.J.S.A. 17B:27-15;
 - viii. Participating Policies as set forth in N.J.S.A. 17B:27-16;
 - ix. Beneficiary and Facility of Payment as set forth in N.J.S.A. 17B:27-17;
 - x. Certificates as set forth in N.J.S.A. 17B:27-18;
 - xi. Conversion as set forth in N.J.S.A. 17B:27-19 and 27-20;
 - xii. Death within Conversion Period as set forth in N.J.S.A. 17B:27-21;
 - xiii. Certificate to Debtors as set forth in N.J.S.A. 17B:27-22; and
 - xiv. Conversion of Debtors as set forth in N.J.S.A. 17B:27-23;
3. Individual Annuity:
- i. Standard Nonforfeiture Law as set forth in N.J.S.A. 17B:25-20(f), (l), (o) and (p); and
 - ii. Misstatement of Age or Sex as set forth in N.J.A.C. 11:4-43.3(c)4; and
 - iii. Premium payments as set forth in N.J.A.C. 11:4-43.5(a); and

4. Variable Contracts:

- i. Required statements as set forth in N.J.S.A. 17B:28-4; and
- ii. Form of contract as set forth in N.J.S.A. 17B:28-5(c) and (d), except that a periodic report that complies with N.J.A.C. 11:4-45 shall be considered to be approved by the Commissioner as required by N.J.S.A. 17B:28-5(c)(iii).

(b) Carriers shall solicit, market, administer and service forms made available for sale or use pursuant to P.L. 2001, c. 237 in accordance with all applicable New Jersey statutes and rules, including as of ***[(the effective date of this rule)]* *April 7, 2003*** :

1. Advertisement of life insurance and annuity, N.J.A.C. 11:2-23;
2. Accelerated death benefit, N.J.A.C. 11:4-30;
3. Fraud warning statement, N.J.S.A. 17:33A-6c;
4. Funeral insurance policy, N.J.A.C. 11:4-25;
5. Group coverage discontinuance and replacement, N.J.A.C. 11:2-13;
6. Illustrations, N.J.A.C. 11:4-52 and N.J.S.A. 17B:28-5(b);
7. Juvenile insureds, N.J.A.C. 11:4-24.4;
8. Life Insurance Solicitation, N.J.A.C. 11:4-11;
9. Life and Health Insurance Policy Language Simplification Act, N.J.S.A. 17B:17-17 et seq.;
10. Limited Death Benefit Form, N.J.A.C. 11:4-21;

11. Loan notices, N.J.A.C. 11:4-41.3(b)7;
12. New Jersey Fair Credit Reporting Act, N.J.S.A. 56:11-33;
13. Periodic reports, N.J.A.C. 11:4-45;
14. Replacement of life insurance policy, N.J.A.C. 11:4-2;
15. Standards for smoker/nonsmoker and/or tobacco/nontobacco reclassification, N.J.A.C. 11:4-41.14;
16. Trade practices and discrimination, N.J.S.A. 17B:30-1 et seq.;
and
17. Unfair claims settlement practices, N.J.A.C. 11: 2-17.

11:4-40A.4 Submission procedures

(a) Submissions pursuant to N.J.A.C. 11:4-40A.3(a) shall include the following:

1. For each form submitted, a separate certification memorandum signed by a responsible officer of the insurer, which shall include: a statement that the form has been made available for sale or use in 40 states, subject to state variations that do not alter the unique features or design of the product; and the form number of the form to which it applies.

i. The certification shall be acknowledged by a responsible officer of the insurer. The acknowledgement process shall be the same as that which applies to documents for recording instruments conveying or

affecting interests in real estate in this State pursuant to N.J.S.A. 46:14-2.1 et seq;

2. An Initial Submission Data form required by N.J.A.C. 11:4-40. The Request Type Code referred to in the Data Form shall be "40." The form shall be filled in for complete specimen issue, including any necessary schedule(s); and

3. A submittal letter, which shall specify the issue ages and intended market for the form.

(b) The Department shall acknowledge receipt of the form and a proper certification by providing the insurer with such acknowledgement by first class mail within 30 days of receipt.

(c) If the Department determines that the form submitted fails to satisfy all of the eligibility requirements set forth at N.J.A.C. 11:4-40A.3, the Department shall return the submission to the insurer for non-action within 30 days of receipt. Additionally, if the submission fails to satisfy the submission procedures set forth in this section, the Department may return the submission to the insurer for non-action. Any return for non-action shall specify the deficiencies in the submission. Any submission returned for non-action may be resubmitted pursuant to P.L. 2001, c. 237 after the identified deficiencies have been cured.

11:4-40A.5 Penalties

(a) If the Commissioner determines that a certification submitted to the Department by an insurer pursuant to this subchapter is an improper certification, the insurer shall be subject to the following penalties specifically determined by the Commissioner in consideration of the severity of the violation based on the potential adverse impact to the public and whether it is the insurer's first such violation:

1. A fine not to exceed \$50,000; and
2. A maximum penalty of \$1,000 per policy issued on a form determined to be improperly certified pursuant to this subchapter.

(b) If, after notice and a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, an insurer is found by the Commissioner to be in violation of this subchapter, the form may be disapproved, and, in addition to any other penalties that may be imposed pursuant to law, the Commissioner may bar the insurer from participating in the certification process pursuant to this subchapter for a period not to exceed one year.

11:4-40A.6 Effect on previously acknowledged forms

(a) Any form and certification submitted pursuant to P.L. 2001, c. 237 prior to ***[(the effective date of this subchapter)]* *April 7, 2003***, which was acknowledged by the Commissioner but does not meet the requirements of this subchapter, shall be deemed withdrawn ***[(90 days after the effective date of this subchapter)]* *July 6, 2003***, and the form may not be available for sale or use after that date. Forms deemed withdrawn may be resubmitted pursuant to P.L. 2001, c. 237, but shall include a new form number.

(b) With respect to forms and certifications submitted pursuant to P.L. 2001, c. 237 prior to ***[(the effective date of this subchapter)]* *April 7, 2003***, which were acknowledged by the Commissioner and which do meet the requirements of this subchapter, the insurer shall submit a new certification memorandum pursuant to N.J.A.C. 11:4-40A.4(a)1 ***[within 90 days of the effective date of this subchapter]* *by October 4, 2003***. The insurer may continue to make the previously acknowledged form available for sale or use during this period. Any condition specified in the Department's prior letter of acknowledgement which is inconsistent with this subchapter is invalidated and of no force or effect.

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