

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF INSURANCE

Life Insurance and Annuities Replacement

Adopted Amendments: N.J.A.C. 11:4-2.1 and 2.2

Adopted Repeals and New Rules: N.J.A.C 11:4-2.3 through 2.8, Exhibits A through C

Adopted Repeal: N.J.A.C. 11:4-2, Appendix D

Proposed: May 3, 2004 at 36 N.J.R 2147

Adopted: October 8, 2004 by Holly C. Bakke, Commissioner,
Department of Banking and Insurance

Filed: October 8, 2004 as R. 2004 d.414, **with substantive changes** not
requiring additional public notice and comment (see N.J.A.C. 1:30-6.3)

Authority: N.J.S.A. 17:1-8.1, 17:1-15e, 17:29B-1 et seq. and 17B:30-1 et seq.

Effective Date: November 1, 2004

Operative Date: January 30, 2005

Expiration Date: November 30, 2005

Summary of Public Comments and Agency Responses:

The Department received three comments from: the American Council of Life Insurers, the Prudential Financial Company and the New Jersey State Funeral Directors Association, Inc.

COMMENT: The commenter applauded the Department for proposing the regulation but expressed concern that two provisions of the NAIC model rule Section 8, Severability and Section 9, Effective Date, were not made part of the New Jersey replacement regulation. The commenter suggested revising the proposal to include these provisions. The commenter also

suggested that the effective date be delayed at least 90 days in order to allow insurers the opportunity to make the necessary system changes to comply with the proposed regulation.

RESPONSE: The Department appreciates the commenter's favorable review of the proposal. The Severability section of the rules is provided for in N.J.A.C. 11:4-2.9 and the effective date is the date that the rules are adopted. However, as was mentioned in recently issued Bulletin No. 04-11, the Department will provide for a reasonable period of transition subsequent to the effective date. Accordingly, upon adoption, the operative date shall be 90 days after the effective date of the adopted new rules, amendments and repeals.

COMMENT: The commenter expressed support for the proposal, but suggested that the Department insert the following language relating to electronic presentation of replacement notices at the end of N.J.A.C. 11:4-2.3(b)1:

“If the notice is presented electronically, the insurer shall mail the applicant a copy of the notice within three business days after the application is submitted to the insurer.”

RESPONSE: The Department agrees with the commenter regarding the issue of electronic presentation of replacement notices and has, upon adoption, revised N.J.A.C. 11:4-2.3(b) to include the above suggested text, with a minor revision, as new paragraph (b)1. Paragraphs (b)1 and 2 as proposed are being recodified as paragraphs (b)2 and 3, and paragraph (b)2 as adopted is being revised to have its text provide for situations where the notice is presented electronically. The amendments are not so substantive as to require publication of a new notice of proposal because they merely provide another means by which insurers may provide to applicants the notice referenced in N.J.A.C. 11:4-2.3(b) as proposed. The electronic notice option is consistent with the twin purposes of the proposal. As described in the Summary, those purposes were to

regulate the activities of insurers and producers and to protect the interests of life insurance and annuity purchasers by establishing minimum standards of conduct on replacement and purchase finance transactions. Finally, the amendments being made upon adoption do not enlarge or curtail the scope of the new rules and amendments as proposed nor do they impose any new mandates upon producers or insurers, as delivery of the notice via computer is merely recognized as an available option.

COMMENT: The commenter stated that N.J.A.C. 11:4-2.1(c)3 is inconsistent with existing statutory definitions and with the contractual process involved in entering into a prepaid funeral agreement.

The commenter further opined that while the NAIC model replacement regulation exempts all group policies used to fund prearranged funeral contracts, the proposed New Jersey regulation only exempts those with producer involvement.

The commenter noted that the NAIC term “prearranged funeral contract” confuses the statutory scheme provided for within N.J.S.A. 17B: 17-5.1, and it is not an existing statutory definition. The commenter opined that the statute governing the use of insurance and annuity products to fund prepaid funerals uses the term “funeral insurance policy,” and it is used within the meaning of “prepaid funeral agreement.” The commenter believes that N.J.A.C. 11:4-2.1(c) is general enough to cover products used to fund funeral agreements. Therefore, in the commenter’s view, there is no need to carve out the group life insurance policies and annuities used to fund prearranged funeral contracts. The commenter recommends that N.J.A.C. 11:4-2.1(c)3 be deleted in the final adoption.

RESPONSE: The commenter's claim that "while the NAIC model regulations exempts all group policies used to fund prearrange funeral contracts, the Department only exempts those with producer involvement" is a misinterpretation of the proposal as published. The Department notes that the New Jersey replacement regulation provides that the Department will exempt contracts only where there is no producer involvement in the transaction, but where a producer is involved in the transaction, there is no exemption.

On the issue of the confusion and inconsistency that the NAIC term "prearranged funeral contract" creates with regards to existing statutory definition provided for within N.J.S.A. 17B:17-5.1, the Department notes that there is no inconsistency involved and that "prearranged funeral contract" means "prepaid funeral agreement" as defined by N.J.S.A. 17B:17-5.1. The Department further notes that N.J.A.C. 11:4-2.1(c)3 is not redundant because it deals with a specialty market that warrants separate treatment. Therefore, the Department has determined to retain the provision upon adoption.

Federal Standards Statement

A Federal standards analysis is required when any State agency adopts, readopts, or amends State regulations that exceed any Federal standards or requirements.

A Federal standards analysis is not required because the adopted rules, amendments and repeals are exclusively the subject of State law and 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 the proposal indicated in brackets with asteriks *[thus]):

11:4-2.3 Duties of producers

(a) No change from proposal.)

(b) If the applicant answers "yes" to the question regarding existing coverage referred to in (a) above, the producer shall present and offer to read to the applicant, not later than at the time of taking the application, a notice regarding replacements in the form as described in subchapter Appendix A, incorporated herein by reference, or other substantially similar form approved by the Commissioner. However, no approval of the Commissioner shall be required when revisions to the notice are limited to the deletion of references not applicable to the product being sold or replaced. ***The notice may be presented to the applicant either in writing via a hard copy or electronically.**

1. If the notice is presented electronically, the insurer shall mail the applicant a copy of the signed notice within three business days after the application is submitted to the insurer.*

[1] ***2*** The notice shall be signed by both the applicant and the producer attesting that the notice has been read aloud by the producer, or that the applicant did not wish the notice to be read aloud (in which case the producer need not have read the notice aloud) and shall remain with the applicant ***or be mailed to the applicant as provided in (b)1. above***.

[2] ***3*** (No change from proposal.)

(c) - (d) (No change from proposal.)